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DIARY FOR JUNE.

4. Sat...Easter Term ends.
5. Sun...*Whit Sunday.*
8. Wed...First meeting of Parliament at Ottawa.
12. Sun....*Trinity Sunday.*
13. Mon...County Court Term for York begins.
14. Tues..County Court sitt. (except York) begins.
15. Wed..Magna Charta signed, 1215.
17. Fri.....Burton and Patterson, JJ. Ct. of Appeal, sworn in, 1874.
18. Sat....Earl Dalhousie, Gov.-General, 1820. Battle of Waterloo, 1815.
19. Sun...*1st Sunday after Trinity.* County Court Term ends.
20. Mon..Accession of Queen Victoria, 1837.
21. Tues..Galt, J., sworn in C. P., 1869.
23. Thurs. Hudson Bay Co. Territory transferred to Dom., 1870.
26. Sun....*2nd Sunday after Trinity.*
28. Tues...Queen Victoria crowned, 1837.
30. Thurs. Hon. J. B. Robinson, Lt. Gov. of Ontario. P. E. Irvine, Prest. of P. of Canada.

TORONTO, JUNE 15, 1881.

WE HAVE before us a letter from a valued correspondent on the subject of reporting; referring especially to the reporting of cases wherein no written judgment is given. We will return to the subject hereafter.

MECHANICS seem at length to be arriving (judging from remarks noticed in the secular press) at a conclusion which we prophesied long ago, viz.: that the Act passed for their protection is not all that they expected. It has been a nuisance to many, and of very little benefit to any one. Another measure passed for the relief of that fraud of the 19th century—the "working man"—has also received execration from a different class. The employer who hires a servant is now practically without redress when left in the lurch at a critical moment. Both measures are said to have resulted from a desire to influence the "free and independent" element, and neither have been found satisfactory.

A CORRESPONDENT takes to task some criticisms which have appeared in these columns extracted from advanced sheets of Messrs. Taylor & Ewart's work. Like, we fancy, most of our readers, we still remain in happy ignorance as to who is right. We feel like boys of a certain turn of mind, who like to keep their sugar-stick till the last moment. It would be a fatal mistake by anticipation to spoil the delights of a long vacation by beginning too soon the study of the Judicature Act. One cannot fancy a holiday more enjoyably spent. The Attorney-General is doubtless happy in that the legislature has been safely delivered. If the parents alone had the care of the infant the profession would be happy too.

AN article lately published in this journal (p. 74), on the right of Queen's Counsel to defend prisoners, has been copied into the London *Law Times* and the Irish *Law Journal.* A correspondent writes to the former paper as follows:

"For many years it has been, and it is still, the undoubted practice for those who desire to retain a Q. C., to appear for a defendant in a criminal case, to apply to the Treasury for a license to enable him to do so; and I remember the late Chief Justice Wilde declining to hear a Queen's Counsel for a defendant, on the ground that his license had not been received, although it had been duly applied for, and was on its way to Worcester, the assize town. The modern practice, however, is for judges to accept an official notification that a license has been applied for, and that it will be duly forwarded."

DOMINION CONTROL OVER PROVINCIAL LEGISLATION.

(Continued from page 221.)

The next precedent specially worthy of notice appears to be that of the Act relating to the Goodhue Will, being 34 Vict., c. 99, Ont., which has been already alluded to. The Lieut.-Governor, Sir W. Howland, assented to the Act, but in transmitting it to the Governor-General, said: "I regard the principle involved in the Bill, and sanctioned by the Assembly, as very objectionable, and forming a dangerous precedent; but in the absence of instructions, and upon the advice of my Council, I gave it assent" (Can. Sess. P. 1877. No. 89, p. 181.).

Mr. Becher, one of the trustees under the will, however, memorialized the Governor-General against the Act, in which he submitted that the enactments of the said Bill were beyond the powers of the Legislature, "and unconstitutional in depriving persons of rights and property without their consent and without any compensation whatever." And he annexed a list of his objections to the Bill, in which he argued that it was without precedent, unnecessary, and a violation of the rights of property—(*ib.* p. 181-184).

The Minister of Justice, Sir John Macdonald, however, on Feb. 22, 1872, reported simply that "as it is within the competence of the Provincial Legislature," it should be left to its operation. This was accordingly done.

It is noticeable, however, that when the validity of this Act came before the Court of Appeal (19 Gr. 367), all of the judges who touched on the merits of the Act at all expressed strong disapprobation of such legislation. Chief Justice Draper, indeed, goes so far as to say, (p. 381)—

"It would be indecorous to express what it would be fitting for a Court to express, if such changes had been procured in the testator's lifetime, by or through any fraud or imposition upon him. . . . It cannot, however, be disrespectful to quote the language of Lord Tenterden: 'It is said, the last will of a party is to be favorably construed, because the testator is *inops consilii*. That we cannot say of the Legislature; but we may say that it is *magnas inter opes inops*.'"

And, as has been shown above, he indicates in the passage there quoted that in his view the Governor-General might rightly have disallowed the Act.

Such an opinion is clearly an authority in favor of the constitutional right to veto such legislation, and the expressions in that and other of the judgments as to the injustice of such legislation, may have influenced the Dominion Executive in their action as regards subsequent legislation to which similar objections were held to apply.

The next case in point seems that of Mr. Ryland, who in 1875 petitioned the Governor-General complaining of a bill then pending in the Quebec Legislature, which he alleged, was to the detriment of his vested rights and interests in respect of the registrarship of Montreal, which had been conferred upon him, by the Imperial Government, in lieu of a patent office formerly held by him under the crown in Canada.

A number of the professional and influential inhabitants of Montreal, also memorialised the Governor-General against the bill, declaring that "if carried into execution, it will cause inconceivable difficulty and confusion, in procuring the necessary information in the transfer of property and investment of capital, and, in many cases, will quadruple the present cost and expense of registration." (Can. Sess. Pap. 1877. No. 89. p. 257).

Mr. Edward Blake, then minister of Justice, in a long report as to this act, expressed views favorable to the justice of Mr. Ryland's complaints, and, saying he was disposed to believe that the considerations to which he had adverted could not have been brought to the attention of the local authorities, he recommended that they should be afforded an opportunity of reconsidering the the legislation in question with the light

thrown upon it by the petitions and representations before him.

With regard to the petition of the inhabitants of Montreal, he remarks: "Its representations do certainly deserve the greatest consideration at the hands of those entrusted with legislative powers in the matters to which they related. These matters, however important, are nevertheless essentially of a local character." (Can. Sess. Pap. 1877. No. 89. p. 264-5).

In reply, the Lieutenant-Governor of Quebec declared that Mr. Ryland had had ample time to present his objections to the legislation in question to the Quebec legislature,—denied he would suffer a pecuniary wrong,—submitted that the legislature of Quebec had not overstepped its constitutional limits, and declared that the legislature was disposed to do full justice to Mr. Ryland. In conclusion he says :—

"The essentially local character of the measure not being contested, and the facts represented by Mr. Ryland in support of his position being incorrect in their most important part, I would respectfully represent to His Excellency, that my Government could not, with a due regard to its own dignity, and to the respect it owes to the Legislature, propose the repeal of the law in question."—(*Ib. p.* 267.)

In a report on this despatch of the Lieut.-Governor, Mr. Edward Blake submitted that it gave a different complexion to the case, and that "as between the assertions of a Provincial government and an interested individual, faith and credit must be given to the representations of the former,"—and in consideration of the assurances that the Quebec Government were prepared to accord full justice to Mr. Ryland, and of the local character of the act, recommended the act should be allowed, which report was duly acted on.—(*Ib. p.* 268.)

The constitutional right of interference, if it had been thought expedient, by the Governor-General in Council, seems implicitly asserted in this report, and scarcely appears to be denied in the despatch of the Lieut.-Governor. But there are obvious distinctions between this case and an ordinary case of an individual complaining of injury to vested rights, inasmuch as the rights Mr. Ryland claimed to have respected had been conferred on him by the Imperial Government, in lieu of an office formerly held by him under the Crown in Canada.

The next precedents calling for notice appear to be those of the various Prince Edward Island Land Acts.

"For upwards of half a century," wrote the Lieut.-Governor of the Island in transmitting the reserved P.E. I. Purchase Act of 1874, for the consideration of the Governor-General, "the Land Question," so called, "has agitated the minds of the people of this Province, and repeated attempts have been from time to time made by the local legislature to get rid of the leasehold system prevalent here, and the aid of the Imperial Government has been frequently invoked for that purpose, by endeavoring to obtain its sanction to the establishment of a Court of Escheat, on the ground of the non-fulfilment by the grantees of the condition of their grants from the Crown, but to which Her Majesty's Government invariably refused to accede." (Can. Sess. papers, 1875, No. 61, p. 38.)

Certain parties interested petitioned the Secretary of State for the Colonies, that the royal assent might be withheld from this Land Purchase Act, of 1874. Whereupon the Colonial Secretary forwarded the petition to the Governor-General of Canada. In his report, dated December 23, 1874, the Minister of Justice, M. Fournier, now Judge of the Supreme Court, but then a member of Mr. Mackenzie's government, recommended the disallowance of this Act on grounds which clearly appear in the concluding paragraphs of his report (Can. Sess. papers, 1875, No. 61, p. 40.) :—

"Several petitions are presented against the allowance of this Bill; some, as above stated, having been sent to the Secretary of State for the Colonies, and others directed to His Excellency. In transmitting one presented in

England, Lord Carnarvon requests the careful consideration of your Excellency's ministers in respect to it. They submit that the proposed Act is subversive of the rights of property, and that it will prove most ruinous to proprietors in the colony, and a dangerous precedent to establish as a mode of allaying popular agitation; after entering upon details of the past, they submit that the Act is without a precedent in the history of legislation, and that even if it were called for as constitutional as respects its object, the mode of procedure adopted by it would prove most ruinous and harassing to the owners of property in that Island. They allege that the government, which is practically irresponsible as it cannot be sued in a court of law, might hold this Act over the unfortunate proprietor who cannot force on the proceedings when once commenced, nor obtain compensation or costs when such proceedings have been abandoned; and they dispute the recitals to the Act, and pray for the disallowance of the same. The other petitions allege various reasons in respect to which they, as proprietors and British subjects, would be much injured and damnified if the Act passed. The allegations in these petitions are very forcibly urged, and represent features *which cannot but be regarded as contrary to the principles of legislation in respect to private rights and property.*"

"The undersigned is of opinion that the Act is objectionable, in that it does not provide for an impartial arbitration in which the proprietors would have a representation for arriving at a decision on the nature of the rights and the value of the property involved, and also for securing a speedy determination and settlement of the matters in dispute.

"Under all the circumstances of the case, the undersigned has the honor to recommend that the Bill so reserved, intituled "The Land Purchase Act, 1874," do not receive the assent of your Excellency in Council."

This Report was duly approved, and the Bill was disallowed.

Subsequently, in 1875, the Prince Edward Island Legislature passed another Land Act. In his report on this Act, dated May 26, 1875 (Can. Sess, P., 1877, No. 89, 338), M. Fournier, acting-Minister of Justice, observes that the objections on account of which the prior Act of 1874 was disallowed have been removed, "and a fair representation of the interests of all parties concerned, has been provided for, and an impartial tribunal has been insured to each proprietor." He says, therefore, that he is of opinion "that the subject dealt with in the Bill, is one coming within the competence of the Legislature, and *inasmuch as the objectionable features of the previous Bill have been removed*," he recommends that the Act of 1875 be assented to. The Act was accordingly allowed.

In 1876, an Act was passed to amend the said Act of 1875, and to validate certain proceedings had under it. This Act was reserved for the consideration of the Governor-General. Parties interested petitioned against it.

The nature of the provisions of this Act, are specially noticeable in connection with the present subject. In his Report on it, the acting-Minister of Justice, Mr. R. W. Scott, says:—(Can. Sess. Papers 1877. No. 89, p. 133)—

"The effect of the first portion of the Act, appears to be that the interpretation of the Supreme Court of the Island of the Act of 1875, upon which certain awards of Land Commissioners were held bad, is reversed, and the awards in question declared as valid. . . . The undersigned has the honor, under the circumstances, to report that there does not appear to be any reservation in the Act of the rights of . . . . parties to whom awards made."

In conclusion he says:—

"That without giving weight or consideration to any great extent to the allegations in the petitions which are unsupported by any actual proof, he is of opinion *that the reserved Bill is retrospective in its effect; that it deals with rights of parties now in litigation under the Act which it is proposed to amend, or which may fairly form the subject of litigation; and that there is an absence of any provision saving the rights and proceedings of persons whose properties have been dealt with under the Act of*

1875." He therefore recommends that the Bill entituled "An Act to amend the Land Purchase Act of 1875," do not receive the assent of the Governor-General in council.

The Bill was accordingly disallowed.

Shortly after this an Act was passed by the Legislature of Quebec, being 39 Vict. c. 7, "To compel Assurers to take out a license." A petition was presented to the Governor-General against this Act by the agents and managers of a large number of insurance companies carrying on business throughout Canada.

Mr. Edward Blake, then Minister of Justice, reported on this Act on Oct. 16, 1876 (Can. Sess. Pa. 1877. No. 89, p. 137). After remarking that the question as to the constitutionality of the Act might have much light thrown on it by a certain case then pending, and that therefore, it was better to defer any determination on this point for the present, and after disposing of the further objection that the law interfered with Canadian legislation, he goes on to deal with objections that had been raised by the memorialists with reference to the policy of the measure. This portion of the report has an obvious bearing on the present subject. The Minister observes that the tax to be raised by the requirement of a license is strictly for the purpose of revenue; and under B. N. A. (sec. 92 sub. s. 2) each Province may exclusively make laws in relation to "direct taxation within the Province in order to the raising of a revenue for Provincial purposes." He nevertheless proceeds to say:—

"The policy of laying a tax of this nature is open to great objection. It must fall, in the end, upon those interested in the assurances. It may be considered to be a tax upon providence and thrift, and its operation may have an injurious effect far beyond what may be recompensed by its pecuniary results, but these are views which, although they should be fairly weighed, *and although they might in some cases force upon the Canadian Government the necessity of disallowance*, are yet subject to this observation, that the people of a province who require to raise a revenue for their local wants, and who tax themselves for the purpose, may rightly claim, *and must fairly be permitted a considerable latitude in the determination what these shall be*, and that considerable confidence may be placed in local public opinion as a remedy for the indicated evils where they may exist."

He then goes on to observe that in one particular the Act appeared specially objectionable, viz., because it imposed upon companies, which had already contracted at a specified premium, calculated upon various elements, not, however, including a taxation of the gross premium,—a deduction not from its net profits, but from the gross premium—and the companies were not in a position to recoup themselves by calling upon the insured to pay the tax.

"This," he says, "seems objectionable in principle, and calculated to produce a feeling of insecurity abroad, with reference to Provincial legislation; and the undersigned recommends that the attention of the Lieutenant-Governor should be called to the provision with a view to its amendment during the ensuing session, at any rate, in so far as it affects contracts made before the passing of the Act."

In a report dated Oct. 19, 1876, duly adopted, the same Minister observes with regard to a certain Act of the Province of Quebec passed in 39 Vict. for the erection of certain parishes, that it is a question whether a Local Legislature can delegate its powers in the manner contemplated in that Act, and adds: "It seems to the undersigned, that it would avoid the questions to which he has referred, *and would be more in accordance with the true principles of legislation* that these cases should be dealt with, as heretofore, when they arise."

In the case of the Province of Manitoba there appear many specially strong examples of the exercise of the prerogative of disallowance. Thus in 1876 an Act respecting the survey of lands was disallowed on the Report of the Minister of Justice that it was "at present premature and unnecessary." (Can.

Sess.: P. 1877. No. 89, p. 229). Again in the same year another Manitoba Act was disallowed on a report of the Minister advising its disallowance: "especially as in his opinion, the original Act" (of which the Act in question was in amendment) "afforded all the necessary protection to the purchase of Half Breed Land rights."

Without pretending to have referred to all the precedents in point, it seems to be clear that so far as constitutional practice is at present settled, the prerogative of vetoing Provincial legislation may be constitutionally exercised by the Governor-General in Council, when the Acts in question :—

(1) Are illegal, as, for example, contravening Imperial Acts on the same subject matter and applicable to the colonies (Todd, 168-192):—

(2) Are unconstitutional as ultra vires the Provincial Legislatures under the B. N. A. Act :—

(3) Interfere with the concurrent jurisdiction possessed by the Dominion Parliament in the same subject matter :—

(4) Are opposed to the general interests of the Dominion : under which head may be cited those examples of acts of Manitoba and British Columbia disallowed or objected to because calculated to interfere with the projected building of the Canada Pacific Railway, (see Can. Sess. p. 1877, No. 89, p. 195; *ib.* p. 288); and under this head, indeed, should perhaps be put those cases where the enactments of the Provincial acts,

(5) Are opposed to sound principles of legislation; or at all events when they contain retroactive provisions divesting private rights and property. The above precedents show many examples of interference on thi, ground, and the report of the Minister of Justice, published in the last number of this journal, shows the latest to be the recent disallowance of the Ontario Act of last session "for protecting the public interest in rivers, streams and creeks."

A. H. F. LEFROY.

LEGISLATION AS TO LEASES.

In a recent nnmber of the *Law Journal* there is an article on the "Leases Bill, 1881," which aims at the mitigation of the proviso for re-entry for breach of covenant; which occurs in every ordinary lease. A bill framed with a similar object was some time ago introduced by Lord Cairns, and has already passed the House of Lords. Our contemporary proceeds to discuss and contrast the two measures, in order, as it says, "to promote the speedy passing of the better of the two." As the subject is an important one, and will probably be found, sooner or later, to require legislative action in Ontario, we reproduce a portion of the article in the *Law Journal*, which, it will be noticed, expresses a preference for the measure introduced by the learned ex-Lord Chancellor.

"The principal clauses of Lord Cairns's bill, relating to the forfeiture of leases, and forming a small part of his bulky Conveyancing and Law of Property Amendment Bill, run thus :—

A right of re-entry . . . . for a breach of any covenant . . . . shall not be enforceable . . . . unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to make compensation in money for the breach, and the lessee fails within a reasonable time thereafter to remedy the breach if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for such breach. Where the lessor is proceeding by action, or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may . . . . apply to the Court for relief, and the Court may grant, or refuse, relief as the Court, having regard to the proceedings of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and, in case of relief, may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or other matters relative to the breach, or to any subsequent like or other breach, as the Court in the circumstances of each case thinks fit.

The principal clause of the present Leases Bill runs thus :—

Where a lessor is proceeding by action, or otherwise, to enforce a right of re-entry . . . . or has within the last two preceeding months re-entered under any such right without action, the lessee may . . . . apply to the Court for relief, and the Court may grant or refuse relief, *i. e.*, [the remaining words follow those of Lord Cairns's clause] : provided that the costs of the action shall be payable on the same principle as if the application for relief were an action for the redemption of a mortgage.

Both the bills alike provide that they are to 'apply to leases made either before or after the commencement of this Act, and are to have effect notwithstanding any stipulation to the contrary;' also that they are to apply although the proviso has been inserted in the lease in pursuance of any statute ; but Lord Cairns's bill does not contain a provision which appears in the Leases Bill that 'no effect shall be given' to a proviso for re-entry upon breach of a covenant that all assignments and underleases shall be prepared by the lessor's solicitor.

And now, which is the better measure, and why? We cannot but think that the first proviso of Lord Cairns's clause that there is to be no re-entry without prior notice and claim of reasonable compensation is a very valuable one, and has been most unwisely omitted from the Leases Bill. The qualification of the barbarous 'common form' proviso for re-entry by a 'common form' stipulation for notice has for many years been a customary insertion on behalf of the lessee's solicitor ; and we very much doubt whether a soiicitor ought to allow his client to accept an absolute proviso for re-entry without a caution as to its possible results. The same remark would apply to trustees and mortgagees. Indeed, the term 'leasehold security,' when applied to the mortgage of a lease containing an absolute proviso for re-entry, is a delusion. However this may be, we think the stipulation as to notice is a highly desirable one to insert in the bill, upon the simple ground that it will lead to the difficulties being settled by correspondence between the parties—which will probably result in a new lease—instead of necessitating an immediate application to the Court.

We observe that neither bill contains, as former bills did, any exceptions. Former bills contained savings for the breach of a covenant against assignment without license, and for agricultural tenancies. We fail to see any reason for excepting agricultural tenancies from the operation of the bill ; but strong reasons might be said for keeping out of its scope the breach of the covenant not to assign or underlet without license—a breach of such a kind being, it would be said, a 'wilful breach.' On the whole, however, we think that these arguments ought not to prevail. Cases may easily be imagined in which, from an impossibility of discovering the whereabouts of the ground landlord, there must be either an assignment without his leave, or no assignment at all.

It is only necessary to add that both measures provide a kind of code of the law as to 'relief against forfeiture,' except as to non-payment of rent, repealing the enactments 22 & 23 Vict. c. 35, ss. 4-9, and 23 & 24 Vict. c. 126, s. 2, by which the Court has power to give relief against a forfeiture caused by failure to insure. We see no reason for excepting the law of relief against forfeiture for non-payment of rent from the general consolidation, and hope that the promoters of the Leases Bill will see their way to supplying this defect."

SELECTIONS.

LARCENY OF ANIMALS.

IN *Rex* v. *Mann*, Supreme Court of the Hawaiian Islands, April, 1881, the defendant had been convicted of stealing turkeys. Two questions arose : whether the turkeys in question were "wild animals," and thus not subject of larceny ; and whether ownership had been proved. The court, Judd, J., said : "The essential facts are as follows : On the mountain range of this island, back of Waialua, called the Waianæ mountains, are numbers of turkeys. These birds were brought to this country so long ago that there is no remembrance existing as to the exact time when or by whom they were imported. These birds are now in a wild state, afraid of man, breeding in the unfrequented parts of the mountain and bush country, and have been hunted down and caught by devices, precisely

as if they were *feræ naturæ*. They are not penned or fed, marked by the land-owner, nor does he exercise any actual control over them, except as he may be able to catch them and reduce them to his possession. It is well known that the domestic turkey is descended from the wild turkey, first found in America, modified by breeding and the care of man, and this accounts perhaps for the tendency to revert to the wild state which is so strongly manifested in them. These turkeys, although 'wild,' are not properly speaking 'wild animals.' Where the phrase 'wild animals' is used, the word 'wild' is used as a generic term to indicate that they are of a species not usually domesticated and does not refer to their comparative docility or familiarity with men. We consider that these turkeys are not properly speaking animals *feræ naturæ*, though partaking of their habits. The land on which the defendant is alleged to have taken the turkeys in question is the land of 'Mokulua,' in Waialua, the property of the prosecuting witness, Gaspar Silva, who claims the ownership of the turkeys by virtue of their being on this land and of value to him. Now to say that these turkeys are A.'s solely because they are on A.'s land, would lead to the absurdity that they would become B.'s, when they went on to B.'s land. Suppose on a cerain night A. goes into the woods on his own land and ensnares part of a flock of the so-called 'wild turkeys,' and the rest of the flock, being disturbed, cross over the boundary to the land of B., and the next night A. ensnares them on B.'s land. On the theory advanced, that the place of capture determines the ownership, the latter taking would be larceny. In the case before us, if the owner of the land where the alleged taking of the turkeys took place was able to trace them, as the undisputed descendants of birds owned by him or his grantors, he would thus show title to them. So far from this being the evidence in this case, it is more than probable that these turkeys are not the descendants of a parent stock introduced on this island by one person, but that these birds have received accessions at different times from the tame turkeys of many different individuals. In the absence, therefore, of proof of ownersnip of these turkeys by the prosecuting witness, aside from the fact that they were caught on his land, and it being proved that they cannot be distinguished from any other turkeys on contiguous lands, they are not the subject of larceny." Conviction reversed, and prisoner discharged.

This is in harmony with *State* v. *Mary Turner*, 66 N. C. 618. Mary was indicted for stealing "one turkey of the value of five cents." Thus it seems turkeys are cheap in North Carolina. The report does not disclose the date of the offence, but we infer it was shortly before Thanksgiving. Mary having been convicted, a motion in arrest of judgment was made upon the ground "that the indictment was insufficient, for that it failed to state that the turkey stolen was a *tame* turkey. That the turkey was a native fowl of America, large numbers are found in every part of the State, wild and unreclaimed, and the indictment should have negatived the presumption that the turkey in question was wild and unreclaimed." The motion was sustained, but this was reversed by the Supreme Court. The court said: His honor was mistaken in this case, in supposing that our domestic turkey is a creature *feræ naturæ*. All the authorities cited by his honor are cases of creatures *feræ naturæ*, and we take the case to be clear, that where a creature, for the stealing of which a defendant is indicted, is *feræ naturæ*, it will not be sufficient to allege that the property was the goods and chattels of one A, B., the owner; in such case, the indictment must further allege that the creature was dead, tamed, confined, or reclaimed. 2 Russ. on Crimes, 152. But surely this cannot be the case, when the defendant is indicted for stealing one of our domesticated turkeys. In 2 Bish. Crim. Law, secs. 787, 788, speaking of animals, *feræ naturæ*, and of which larceny may be committed when reclaimed, the author says, 'domestic animals and fowls, such as horses, oxen, sheep, hens, peafowls, turkeys, and the like; which being tame in their nature, are the subject of larceny on precisely the same grounds as other personal property.'"

The following animals have been held "wild": Deer, rabbits, hares, conies, fish, rooks, doves, pigeons, martens, bees. Whart. Crim. L., sec. 869. In *Warren* v. *State*, 1 Greene (Iowa), 106, it is said: "As this principle applies, by common law, to monkeys, bears, foxes, etc., it will evidently apply to 'coons.'"

But such animals as are reclaimed and confined, and may serve for food or use, are subjects of larceny. Thus, young pheasants hatched and reared by a hen. *R.* v. *Shickle*, L. R., 1 C. C. 158. Marked swans, even on

a public river. Dalt. Just. 156. Pea-hens. *Com.* v. *Beaman*, 8 Gray, 497. Pigeons in a cote. *R.* v. *Cheafor*, 5 Cox's C. C. 367. In this case Lord Campbell said: "The pigeons were the subject of larceny, although they had the opportunity of getting out and enjoying themselves." This is probably because of the *animus revertendi* in the birds.

In *Swan* v. *Saunders*, Q. B. Div., 44 L. T. (N. S.) 424, it was held that freshly imported parrots were not "domestic animals," within the statute of cruelty to animals. The court said: "I do not say that a parrot might not become a domesticated animal, when thoroughly tamed and accustomed to the society of human beings, but these were young unacclimatized birds freshly imported into England. They are clearly different from fowls and other poultry, and the evidence goes to prove that they were not tamed and domesticated."

In regard to fish, it is not so clear. All the books agree that if fish are confined in a tank or otherwise so that they may be taken at the pleasure of him who has appropriated them they are the subject of larceny. "Fish confined in a net or tank are sufficiently secured; but how, in a pond, is a question of doubt, which seems to admit of different answers, as the circumstances of particular cases differ." 2 Bish. Cr. L. sec. 685; 1 Hale's P. C. 511; Fost. Cr. 366. An English statute made it indictable to steal fish from a river, in any inclosed park. In a case "where the defendant has taken fish in a river that ran through an enclosed park, but it appeared that no means had been taken to keep the fish within that part of the river that ran through the park, but that they could pass down or up the river, beyond the limits of the park at their pleasure; the judges held that this was not within the statute." *Rex* v. *Corrodice*, 2 Russ. 1199.

Oysters planted and staked out where they do not naturally grow come within this rule. *State* v. *Taylor*, 3 Dutch. 117. They seem however barely to come within the description of animals. In the last case the court said: "The principle, as applied to animals *feræ naturæ*, is not questioned. But oysters, though usually included in that description of animals, do not come within the reason or operation of the rule. The owner has the same absolute property in them that he has in inanimate things or in domestic animals. Like domestic animals, they continue perpetually in his occupation, and will not stray from his home or person. Unlike animals *feræ naturæ*, they do not require to be reclaimed or made tame by art, industry, or education; nor to be confined in order to be within the immediate power of the owner. If at liberty, they have neither the inclination nor the power to escape. For the purpose of the present inquiry, they are obviously more nearly assimilated to tame animals than to wild ones, and perhaps more nearly to inanimate objects than to animals of either description. The indictment could not aver that the oysters were dead, for then they would be of no value; nor that they were reclaimed or tamed, for in this sense they were never wild, and were not capable of domestication; nor that they were confined, for it would be absurd." In *Fleet* v. *Hegeman*, 14 Wend. 42, the Court said: "Oysters have not the power of locomotion any more than inanimate things, and when property has once been acquired in them, no good reason is perceived why they should not be governed by the rules of law applicable to inanimate things." "They have been reclaimed, and are as entirely within his possession and control as his swans, or other water fowl, that may float habitually in the bay." But in *Caswell* v. *Johnson*, 58 Me. 164, oysters were held to be fish.

At common law the rule of property in reclaimed wild animals excluded many which were called "base," principally because they are not fit for food. But in this country the rule seems to be more flexible. Thus in *State* v. *House*, 65 N. C. 744; S. C., 6 Am. Rep. 744, a conviction of larceny of an otter from a trap was sustained. The court said: "All the distinctions as to animals *feræ naturæ*, and as to their generous or base natures, which we find in the English books, will not hold good in this country. The English system of game laws seems to have been established more for princely diversion than for use or profit, and is not at all suited to the wants of our enterprising trappers. We take the true criterion to be the *value* of the animal, whether for the food of man, for its fur, or otherwise. We know that the otter is an animal very valuable for its fur, and we know also that the fur trade is a very important one in America, and even in some parts of North Carolina. If we are bound absolutely by the English authorities, without regard to their adaptation to this country, we should be obliged to hold that most of the animals, so valuable for their fur, are not the subject of larceny, on account of the baseness of their

nature, while at the same time we should be obliged to hold that hawks and falcons, when reclaimed, are the subject of larceny in respect of their generous nature and courage."

Dogs are generally held not the subject of larceny, being "base." *State* v. *Holder*, 81 N. C. 527; S. C., 31 Am. Rep. 517; *State* v. *Lymus*, 26 Ohio St. 400; S. C., 20 Am. Rep. 722; *Ward* v. *State*, 48 Ala. 161; S. C., 17 Am. Rep. 31. But otherwise when they are taxed. *People* v. *Maloney*, 1 Park, 593; *Mayor* v. *Meigs*, 1 McA. 53; S. C., 29 Am. Rep. 578; *Ex parte Cooper*, 3 Tex. Ct. App. 489; S. C., 30 Am. Rep. 152; *Harrington* v. *Miles*, 11 Kans. 480; S. C., 15 Am. Rep. 355.

It has always been held that any dead animal, whose carcass is fit for food, or use, is subject to larceny; but the query arises whether a dead and stuffed dog is subject of larceny in those States where a live dog is not. Probably the expense of the stuffing would bring it within the rule. So a dead dog may be better than a live lion.—*Albany Law Journal.*

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COMMON PLEAS.

EASTER TERM—JUNE 1.

THE ONTARIO BANK v. MITCHELL.

Judgment debtor—Examination of—R. S. O., cap. 50, sec. 304.

In an examination of a judgment debtor under R. S. O., ch. 50, sec. 305, the object of the enquiry is to show what property or means the debtor has at the time of examination, which can be made available to the creditor, and the enquiry is not restricted to the period of the contracting of the debt, but it may be shewn that at some anterior time, no matter how far back the debtor had property as to which he may be required to give an account of, and it is not a sufficient answer to the enquiry merely to say that it has all been disposed of before the debt was incurred. A rule moved to set aside an order of commitment of defendant for his refusal to give an account of property had before the contracting of the debt, was therefore refused.

C. J. Holman, for plaintiff.

J. B. Clarke, for the defendant.

CHANCERY.

Boyd, C.] [June 1.

FRASER v. GUNN.

Mortgage, assignment of—Mortgage paid but not discharged—Subsequent incumbrancer—Priority.

The original owner of land created a mortgage thereon in favor of one M., and died without redeeming, and the equity of redemption in the premises descended to C. F., his heiress-at-law, who, with her husband, P. F., joined in a conveyance thereof to trustees charged with the support and maintenance of the plaintiffs, and subject to which and the mortgage in favor of M., the premises were vested in P. F. in fee, who subsequently, and in September, 1875, paid the amount due on M.'s mortgage, but which was not actually discharged. In December following P. F. sold to W. F., conveyed to him the equity of redemption, and procured M. to assign to W. F. his mortgage, and convey to him the legal estate. In March, 1877, W. F. mortgaged the land to a Loan Company, but did not assign the M. mortgage, and subsequently the plaintiffs filed a bill seeking to have the charge for their maintenance enforced against the mortgage estate.

Held (reversing the finding of the Master at Hamilton), that the Loan Company were, under the circumstances, entitled to priority over the plaintiffs to the extent of the amount secured by M.'s mortgage.

J. V. Teetzel, for plaintiff.

F. B. Robertson, for defendant.

Boyd, C.] [June 1.

COURT v. HOLLAND.

Mortgagor and mortgagee—Assignment of mortgage subject to equities—Occupation rent—Puisne incumbrancer.

A mortgagor and mortgagee dealt together for some years without having had any settle-

ment of accounts, and the former became insolvent. At the date of the insolvency there existed a right of set-off, in favor of the mortgagor for a balance due him on their general dealings.

Held,—affirming the finding of the Master—that such right of set-off passed to the official assignee of the mortgagor, and that a transferee of the security took it subject to the equity.

As between mortgagor and mortgagee, there is nothing to prevent the mortgagee taking possession at a fair and reasonable rent agreed upon between them. In such a case the mortgagee is not a "mortgagee in possession" in the technical sense of the term.

In such a case, however, a subsequent incumbrancer—prior to the first mortgagee, entering into such possession—is not bound by such an arrangement; and the Master may charge the first mortgagee with a fair occupation rent although it exceeds that stipulated for.

J. Maclennan, Q.C., for plaintiff.

G. M. Ray for defendant.

Proudfoot, V. C.] [June 11.

ROBLIN v. ROBLIN.

Marriage when one party intoxicated—Conspiracy to procure a marriage—Subsequent acknowledgment of validity of marriage—Alimony—Undertaking to receive wife—Costs.

In order to render void a marriage, otherwise valid, on the ground that the man was intoxicated, it must be shown that there was such a state of intoxication as to deprive him of all sense and volition, and to render him incapable of understanding what he was about.

Semble—A combination amongst persons friendly to a woman to induce a man to consent to marry her, it not being shown that she had done anything to procure her friends to do any improper act in order to bring about the consent, would not avoid the marriage.

A marriage entered into while the man is so intoxicated as to be incapable of understanding what he is about, is voidable only, and may be ratified and confirmed.

Three years after the ceremony of marriage which the man alleged he was induced to enter into while under arrest and intoxicated, an action at law was brought against him for necessaries furnished to the woman, and for expenses for the burial of her child in which the question of the validity of the marriage was distinctly put in issue, the man signed a memorandum, endorsed on the record in which he admitted the existence and validity of the mariage, and consented to a verdict for the plaintiff in the action.

Held,—That if the marriage was previously voidable it was thereby confirmed.

In a suit by the woman for alimony brought eighteen years after the marriage on the ground of refusal by the man to receive her, he set up the invalidity of the marriage; but while under examination stated that if it was determined that she was his wife he would receive her as such; the Court (Proudfoot, V.C.) while finding there was a valid marriage, decreed that upon the defendant undertaking to receive the plaintiff as his wife, the bill should be dismissed, but ordered the defendant to pay the costs between solicitor and client.

C. Moss, for plaintiff.

Walbridge, Q.C., and *S. H. Blake*, Q.C., for defendant.

Spragge, C. J. O.*] [June 11.

JESSUP v. GRAND TRUNK RAILWAY CO.

Railway Co.—Land acquired on condition of using it for station.—"Place," meaning of.

The plaintiff being the owner of a tract of land near Prescott, on the 29th of October, 1869, agreed with the contractors engaged in the laying out of the railway of the defendants, and in acquiring lands and rights of way for the construction thereof, that in consideration of their placing the station of the railway for Prescott upon his land, to convey to the contractors, their heirs, &c., six acres of such land for that purpose, and, if necessary, for the purposes of such station, to allow them to take an additional quantity, not exceeding in all ten acres. The station was erected in 1855 on the said lands, and used by the company until 1864 when it was closed, and a station selected about 1½ miles from the plaintiff's lands, and station buildings erected thereon, in consequence of which the plaintiff's remaining lands became greatly depreciated in value.

* These cases were heard by the present Chief Justice Ontario whilst Chancellor.

Held, that under the circumstances, and considering, amongst other things, that the plaintiff would derive a permanent advantage from the station being retained permanently on the lands conveyed by him, and which he had granted in fee, instead of simply giving the company a right of way, the words in italics had been used in a sense indicating permanancy, the consideration for the conveyance would not be performed by merely erecting the station, and afterwards removing it at the pleasure of the company.

In such a case the Court (SPRAGGE, C.) considered that the plaintiff would be entitled to a decree, referring it to the Master to inquire as to damages, or directing a restitution of the lands, if they were not again used by the company for the purpose for which they had been conveyed to them.

It appearing in the case that the company had, since the institution of this suit, re-occupied the lands for the purposes of the station, that fact was to be recited in the decree, and leave reserved to the plaintiff to move in the cause should the company subsequently discontinue the use of these lands for their station.

Bethune, Q. C., for plaintiff.
W. Cassels, for defendants.

PETERKIN V. MACFARLANE.

Notice of title.

The rule laid down in *Barnhart* v. *Greenshields*, 9 Moore, P. C. 36, that a purchaser of lands is not bound to attend to vague rumors, or to statements by mere strangers, but that a notice to be binding must be given by some person interested in the estate, has not been strictly observed in this country.

When a purchaser has such notice as to affect his conscience, so as to make it inequitable in him to purchase, and take and register a conveyance to himself, having at the same time knowledge that its effect would be, if allowed to stand, to defeat a title known by him to exist in another, his conveyance will not be allowed to prevail against such title.

Boyd, Q.C., for plaintiff.
Moss, for defendant.

COLLARD V. BENNETT.

Fraudulent conveyance—Husband and wife—Statute of Elizabeth.

The defendant B., who was carrying on a thriving business, and possessed of personal property to the value of about $1,000, his debts not exceeding half that sum, in 1876 bought some land which he had conveyed to his wife, who had been instrumental in increasing the earnings of her husband. It was shown that all debts due by B. at the time of the settlement had been paid before the institution of this suit by the plaintiff, whose debt had accrued after this conveyance.

Held, under the circumstances, that the plaintiff was not in a position to impeach the conveyance, as it had not been made with a view of placing the property beyond the reach of future creditors.

In 1877, B. being in difficulties, could not obtain credit. In 1878 the debt to the plaintiff was contracted, and in the same year B. made additions to the house on the land, which he paid for.

Held, that in this respect the case came within the principle of *Jackson* v. *Bowman*, 14 Gr. 156.

Bethune, Q.C., for plaintiff.
W. Cassels, for defendant.

JOHNSTON V. REID.

Consolidation of mortgages—Valuable consideration.

The rule that a mortgage shall not be redeemed in respect of one mortgage, without being redeemed also as to another mortgage of the same mortgagee's, applies as well in a suit to purchase as to redeem.

In such a case the property embraced in one mortgage realized more than sufficient to discharge such mortgage. The plaintiff, having obtained execution against the lands of the mortgagor, took a mortgage on the lands comprised in the other mortgage of the defendant, which was registered after it, but without notice thereof.

Held, (1) that the defendant had not the right, as against the plaintiff, to consolidate his mortgages, and make good the loss on the second, out of the surplus on the first sale, the policy

of the Registry Act being to give no effect to hidden equities. (2) That by taking a mortgage, and thus giving time to the mortgagor, the plaintiff, an execution creditor, was a holder of his mortgage for value.

Bethune, Q.C., for plaintiff.

W. Cassels, for defendant.

REPORTS.

IN THE COUNTY COURT OF SIMCOE.

SUMMERFELDT V. NEELANDS.

Costs—Setting aside judgment—Reasonable time.

Writ issued on 11th March, 1879; served on 5th May, 1879. The plaintiff never declared. On the 2nd of March, 1881, notice was served on the plaintiff's attorney by the defendant's attorney of the latter's intention after the lapse of the then ensuing term to sign judgment of *non pros.* In pursuance of this notice the defendant did on the 14th of April, 1881, sign judgment for his costs, and wrote a letter on the same day notifying the plaintiff's attorney that he would issue execution within a week, if the costs were not sooner paid. This letter was received on the 16th of April, and was the first intimation the plaintiff had of the judgment being signed. On the 19th of April, the plaintiff obtained a summons to set aside the judgment on the grounds that the plaintiff, not having declared within a year from the return day of the summons, was out of court (sec. 93, C. L. P. Act, R. S. O. Cap. 50), and that a proper notice had not been given, a notice to declare within eight days being necessary under sec. 94.

The defendant maintained *first:* that although under sec. 93 the plaintiff was out of court, yet the defendant was not, and the section did not exclude the defendant from signing judgment for his costs even after the expiration of the year from the day summons was returnable, and *secondly:* that the plaintiff was too late in his application.

In support of the summons was cited Chitty's Archbold, 10 Ed. pages 203 and 1409, to, and Chitty's Forms, 7 Ed. p. 95.

To the second contention it was urged that irregularities have only to be moved against within a *reasonable time*, and before another step has been taken by the party applying, (106 Reg. Gen. Trinity Term 20 Vict.) and in this case a reasonable time had not elapsed because knowledge of the signing of judgment had only been obtained on the 16th of April, the 15th being Good Friday. The 17th was Sunday, and the 18th Easter Monday, so that in reality the plaintiff had applied on the second day after the receipt of notice. And in any event, counting from the 14th to the 19th, there would only be five days, which was a reasonable time within which to move (Harrison's C. L. P. Act, page 52).

ARDAGH J. J. held that upon the authority of *Cooper* v. *Nias* 3 B. A. 271, the judgment must be set aside, but that the plaintiff had not applied within such a reasonable time as to entitle him to costs, notwithstanding cases referred to in Harrison's C. L. P. A. 52.

(Note by Editor C. L. J.)

There is no point on which Judges are so liable to be misunderstood as that which relates to the giving or refusing costs. A Judge may express an opinion on some point, which opinion, though not given directly as the reason, is nevertheless at once set down as that assigned for granting or refusing costs. In this case the point, is we think, a new one, and we can well understand the Judge making the summons absolute without costs.

LAW STUDENTS' DEPARTMENT.

EXAMINATION QUESTIONS.

FIRST INTERMEDIATE.

Mercantile Law, &c.

1. A. makes an offer to "B." by letter dated 26th April, 1881, to sell him goods enumerated therein for the price of $200. B. receives the letter on the 27th, and writes and posts a letter accepting the offer on the 29th, and immediately thereafter receives a letter which had been written by A. on the 28th, rescinding his offer. State accurately the rights of the parties.

2. Give a short statement of the law in regard to a wife's power to bind her husband by contract.

3. "Persons may stand in the position of partners as to third persons without being partners *inter se*." Explain and illustrate this assertion.

4. A promissory note made by A., payable three months after date at the Canadian Bank of Commerce in Toronto, to the order of B., and endorsed by him to C., is not paid at maturity. State fully and accurately the rights of C. against A. and B. respectively, showing what C. must *necessarily* do to enforee such rights, giving reasons for your answer.

5. What are the necessities of a contract to answer for the debt, default, or miscarriage of another person in order that such contracts may be enforced? Give reasons for your answer in full.

6. State the common law rules as to appropriation of payments by a debtor to his creditor.

FIRST INTERMEDIATE.

Smith's Common Law—O'Sullivan's Manual.

(HONORS.)

1. How was Canada acquired by Great Britain? What laws prevailed and what constitutional changes were made up to the meeting of the first legislature of the Provinces? Answer briefly.

2. What do you understand by *hearsay evidence?* Upon what reasoning is the rule supported, that as a general thing hearsay evidence is inadmissible. Are there any exceptions to the rule? Answer fully.

3. A. ships a quantity of goods from Hamilton to Port Hope by the Great Western, and pays them the freight over the whole distance, and they give him a bill of lading. The goods are damaged while on the Grand Trunk Railway between Toronto and Port Hope. Against whom are A.'s remedies, and why?

3. A., driving on the street is, through the gross negligence of C., injured. A. subsequenly dies. What was the rule of Common law, and how has the rule been varied by Statute as to the right of his representatives to bring an action for damages against B.?

5. Discuss briefly how far a master is responsible for the torts of his servant?

6. A. went into a grocery and said to the grocer, "Let B. have the $10 worth of groceries he was asking you for, and if he does not pay you for them, I will." B. afterwards failed to pay the grocer. Would A. be liable? Give your reasons for your answer.

SECOND INTERMEDIATE.

Leith's Blackstone—Greenwood on Conveyancing.

(HONORS).

1. What do you understand by title by purchase? Is the estate of X. in the following examples one acquired by purchase: (1) A. gave land to X. and the heirs of his body, (2) A. granted land to B. and the heirs of his body, one of whom X., took the land on B.'s death, (3) A. devised land to X., who was his heir-at-law.

2. Land is granted to the use of A. and the heirs of his body, but if B. should return from Rome within three years then to B. in fee. Is there any method by which B.'s remainder may be defeated? Explain.

3. Are there special characteristics of a conveyance by which an entail is barred? Explain.

4. A married woman was the owner in fee of Blackacre and in tail of Whiteacre. She joined with her husband in a mortgage of both which was afterwards paid off. Who is entitled to the lands, and for what estate? Explain.

5. Certain trusts are to be declared by a marriage settlement, and the settlor wishes to retain power to cancel these or control them after the consummation of the marriage. How can his desire be effectuated?

6. By what means were the numerous ancient tenures reduced to the tenure by which lands are held in Ontario? Answer fully.

7. Is there any right (1) to dower, or (2) to curtesy out of equitable estate? If so what is the limit of the right?

Broom—Books III. and IV. Underhill on Torts, &c.

(HONORS.)

1. What are the remedies severally at law and in equity for a public nuisance, and a private nuisance?

2. What are the requisites to establish the injury of false imprisonment? Under what circumstances would such an action lie against a Justice of the Peace.

3. A. goes into a public house and after remaining till closing hours, refuses to leave at the request of the proprietor, is he liable to any and what action, and upon what principle?

4. How far and in what cases is the plea of duress a ground of defence on a criminal trial?

5. A., a police officer, having a warrant for the arrest of B., on a charge amounting to misdemeanor, meets him in the highway, B. resists arrest and runs away, and in the pursuit A. fires his pistol after B. and kills him. Is A. liable to indictment for any, and if any, what offence?

6. Under what circumstances may a man finding *lost* goods and appropriating them to his own use, be indicted for larceny?

EXAMINATION FOR CALL.

Dart's vendors and purchasers—Walkem on wills—Statutes.

1. A testator devised Whiteacre to X. conditionally upon his executors completing the purchase of Blackacre (which in that event was to go along with Whiteacre) within a specified period; but in case the executors "should not be able" to purchase Blackacre then Whiteacre was to go to R. The executors, although "able," neglected to complete the purchase. What are the rights of the respective parties?

2. A vendor sells an estate "with all faults." Can he in all cases enforce specific performance? Explain fully.

3. Does a vendor's solicitor incur any liability by inducing the purchaser through misrepresentation to accept a defective title? Answer fully.

4. What is the rule as to the concealment of advantages connected with the estate by the purchaser from the vendor?

5. At a sale the auctioneer made certain verbal alterations in the conditions of sale. In what condition is the purchaser as to (1) enforcing, and (2) defeating a bill for specific performance with the variation?

6. A testator devises land to A., and if he should die without leaving issue, then to B. What estate does A. take? Explain and mention any recent change in the law.

7. A testator by his will directs all his debts to be paid out of his personal estate; devises Whiteacre to B. upon which is a mortgage, which the testator has covenanted to pay, and gives the residue of his estate to C. By whom must the mortgage be paid? Give your reason.

8. Land was conveyed to a trustee in fee, and the legal estate vested in him for a purpose which has been accomplished. The trustee dies. In whom does the legal estate vest? Explain.

Equity Jurisprudence.

1. Give illustrations of constructive fraud arising from peculiar fiduciary relations.

2. Give some general rules which illustrate the construction which Courts of Equity have adopted in the case of wills, by a departure from the literal and grammatical import of the words used in the will, in order to give effect to the intention of the testator.

3. Explain and illustrate the doctrines of set-off as administered in equity.

4. Define a trust, and give Lord Coke's description of a use and trust in land.

5. When the personal estate out of which pecuniary legatees are to be paid has been exhausted by creditors, out of what assets and as against what parties are such legatees entitled to be paid?

6. Explain and illustrate what is meant by "remoteness" as affecting a devise under a will?

7. What is the rule with respect to notice to the counsel or solicitor being notice to the client?

8. State in what cases the statute of limitations cannot be pleaded as a defence.

9. Devise of lands in trust for sale and out of the proceeds to pay debts; after payment of debts in full there is a surplus. Who is entitled to it?

10. Has the Court of Chancery at present any jurisdiction to grant relief by way of Mandamus, Prohibition or *Quo Warranto*? Explain fully.

CERTIFICATE OF FITNESS.

Smith's mercantile law—Common law pleading and practice—The statute law.

1. Give a short sketch of the history of English Commercial Law.

2. To what extent will a Court of Equity in-

terfere to examine and adjust the accounts of partners between themselves? Answer fully.

3. What method is provided by statute whereby a person interested in the profits of a partnership concern can limit his liability for the partnership debts? Answer fully.

4. Define what is meant by a Joint Stock Company, and indicate the various ways which they may be formed.

5. In how far is a principal liable for the *negligence* of his agent? Answer fully, giving illustrations.

6. Give a short sketch of the respective rights of mortgagor and mortgagee of a British ship.

7. A payee of a promissory note for $500 given by the maker in consideration of $250 lent and a further illegal consideration, gives you the note with instructions to collect from the maker. How would you advise him to act in the matter, and why?

8. Point out, as fully as you can, the duties imposed upon a merchant who has taken a ship to freight.

9. Give the chief judicial decisions upon that portion of the 4th section of the Statute of Frauds which relates to answering for the debt, default, or miscarriage of another.

10. Define a *lien* and point out the various ways in which a lien may be lost. Answer fully.

CORRESPONDENCE.

"*Finals.*"

To the Editor of the CANADA LAW JOURNAL:—

SIR,—Will you kindly permit me, through the medium of your columns, to suggest to the Benchers the expediency of speedily informing those students who intend to present themselves for their final examination in August next, whether "by pleading and practice of the Courts" will be understood the present practice, or the practice under the Judicature Act?

For my own part, and I dare say other students would support my view, I would (provided timely notice were given) far rather prepare myself to pass an examination in the provisions of the Judicature Act, than spend somewhat futile labor in reviewing and adding to my knowledge of the C. L. Proc. Act, and the expiring practice. With the help of the annotated editions of the Judicature Act already in print, and reviewed in your last number, we should be enabled to gain a fair acquaintance with the new practice before August.

At all events, I would respectfully suggest to the Benchers to issue some order on the subject.

Your obedient servant,

IGNOTUS.

Alleged Errors in the Judicature Act.

To the Editor of the LAW JOURNAL.

SIR,—I observe in your issue of May 1st, some "points" noted from the advanced sheets of Messrs. Taylor & Ewart's forthcoming book on this subject. If you assumed these "points" to be reliable it is no wonder you expressed a fear that "other" mistakes and difficulties would be discovered in the Statute, and when the learned critic, cheered by your assurance, set to work to find some more "points," I was not surprised to see in your June number another crop of them.

I won't trouble you this time with more than a few of the absurd blunders which any one who reads the Statute and Rules will find the critic's "points" to be.

They say "A Divisional Court is one of the Common Law Courts, or the Court of Chancery, with their present quota of three Judges, yet in Sec. 29, s. s. 3, a Divisional Court shall be constituted by 'two or three *and no more*' of the Judges thereof."

I beg leave to say this is wrong. The Divisions of the High Court of Justice, the Q. B. Division, the C. P. Division, the Chancery Division are not what either the English or Ontario Statute means at all by "Divisional Courts," and he misquotes the language of the Section, when he says, "A Divisional Court shall be constituted by two or three *and no more* of the Judges thereof," *i. e.* of the Divisional Court. The Act does not say "two or three and no more" of the Judges of the Divisional Court, but "two or three and no more" of the Judges of the High Court. It provides that any number of such Divisional Courts may sit at the same time; and the Divisional Court need not have a single Judge who is attached to the particular Division of the High Court in which the suit brought before the Divisional Court was brought. It is only where "found practicable and convenient," that a Divisional Court is to include one or more Judges so attached to the Division. See Sec.

30. The High Court has nine Judges: a Divisional Court is to be composed of "two or three and no more" of these. So also there may be two Divisional Courts of the Court of Appeal (Sec. 42.)

Could a hostile critic hunting for "points" against a Legislative measure fall into a stranger misconception than this?

Another "point" is that Order 9, Rule 6, does not make provision for being acted upon in case of an acceptance of service and undertaking to appear. Did the writer overlook, that by the express provision of, Order 6. Rule 1, "no service of writ shall be required, where the defendant by his solicitor accepts service and undertakes to enter an appearance?"

Again it is asked under Order 9, Rule 6, "Has a statement of claim to be delivered or not?" and he says the Rule has it both ways. It is quite clear that such a statement of claim has not to be delivered, and that the Rule does not give it "both ways.". The Rule expressly declares that no "statement of claim need afterwards be delivered." The critic confounds the "statement of claim," which is a pleading, and the same as the "declaration" at law, or the "Bill" in Chancery, with what (following the English Rule) is described as a "statement of the particulars" of the plaintiffs claim. No pleading is to be delivered, but a "statement of particulars" is to be both filed and served.

Another "mare's nest" which has been discovered is that Section 62 specifies what the accountants duties shall be, while, he says, since 26 June 1876, there has been no such officer. If he look at the Chancery Act R. S. O. c. 40 s. 8 he will see that there is an express provision for an accountant, and this has never been repealed. No appointment of a separate Officer as an accountant has been made since the late Mr. Buell ceased to hold the Office, and in consequence of this the Court by the orders 625,626, assigned to the Referee in Chambers what had theretofore been the duties of the Accountant. The Judicature Act, order 56, rule 5, appoints the Registrar of the Court of Chancery to be the accountant "until, and unless some other person is appointed accountant of the Supreme Court."

The critic enquires "Are the Referee in Chambers, and Mr. Dalton to continue to discharge their judicial functions or be superseded by the Master in Chambers?" The 62nd sec. of the act continues to all officers their present judicial and other powers "Subject to any rules of Court." By one of the Rules (420) the Master in Chambers is to have "the power, authority, and jurisdiction theretofore are like cases possessed" by the Clerk of the Crown, and Pleas of the Court of Queen's Bench, and by the Referee in Chambers of the Court of Chancery.

The critic does not understand the part of Order 36, Rule 8, which he quotes, as is evident from his punctuation. Let him read it as follows, and perhaps he will see what it means:—"Any such application may be made by motion as soon as the right of the party applying, to the relief claimed, has appeared from the pleadings."

Again it is said, "Order 46, Rule 4, section 17, should be section 19." Section 17 is right. Let the writer look at the authorized issue of the statutes, and he will see his mistake.

Probably there are oversights in the statute, clerical mistakes, and oversights in substance, which will no doubt be discovered from time to time in the practical working of the new system, but it seems strange that Mr. Taylor and his assistants were so unfortunate as not to find them, though it appears they have zealously devoted themselves to the task. I think any one who will take the trouble to consider these "points" thus brought before the public, will see that they do not show the learning and acumen of the authors.

SCRUTATOR.

Defaulting Attorneys.

To the Editor of the CANADA LAW JOURNAL.—

DEAR SIR,—I have for some years past thought it very unfair to a large body of practising solicitors and attorneys in this Province, that when an application is made against one of their number, it should virtually involve a charge against the whole profession. The large proportion of our profession never have had an application made against them by a client, but, from the mode in which these matters are reported to the public, the words "Re A. B. a Solicitor," may cover the most honorable member of our honorable profession. It is but fair that each man should bear his own sins, and that men thus sinning should be known, and not that the whole body should have odium cast upon it by the irregularities of a small number of dishonest men, who are false to the oath they took when they were admitted to practise. Let the name of the sinner be known. It is but due to the public and ourselves that this should be so. Being warned of the defaulter, it is not our fault if he be trusted again.

Yours truly,

SOLICITOR.

June 16th, 1881.

OTTAWA CORRESPONDENCE.

We are glad to hear again from our correspondent at Ottawa, who, in April last, spoke of the legislation of the session :—

"I see some cases in recent numbers of your journal turning on the jurisdiction of Division Courts in cases where it depends on the amount, always a difficult question, as a mere trifle may give or take away the jurisdiction, and this in higher Courts as well as lower. The Supreme Court, in the case of *Levi* v. *Reed*, had a rather hard point to decide. The action in the Superior Court was for slander. Levi got judgment (without a jury) for $1,000 damages, and costs. Reed appealed, and the Queen's Bench in appeal, reduced the damages to $500. Levi appealed to the Supreme Court, praying that the judgment in appeal might be reversed, and that of the Superior Court restored, asking for the $1,000, and no more, and the Court could not (by the Quebec law at any rate) give him more than he asked for. The Judges agreed that the costs could not be counted as part of the sum demanded, and if they could have been they were under $1,000; consequently Reed, being content to abide by the judgment of the Queen's Bench and pay the $500 damages, and the Statute 42 Vict., cap. 39, s. 8, providing that there should be no appeal in any case "wherein the matter in controversy does not amount to the sum or value of $2,000," unless in cases where the rights in future may be bound (which they could not be in this case), or the validity of an act is called in question, it would seem that there was not jurisdiction. Yet the Court, on the exception to the jurisdiction maintained the latter, giving judgment for the $1000 and costs. Taschereau, J. dissented, and I think he was right. You will see the case in the Reports. The matter in controversy was really only $500: Reed declaring himself ready to pay *that* and Levi only asking $1000. There was a case mentioned by the judges who gave the judgment (*Hart* v. *Joyce*), on which they relied but it does not seem quite in point, for the Court *might* have given a judgment exceeding $2000 in amount as against the party losing: and in that case there seems to have been a difference of opinion among the judges: it was the former Taschereau, J. not the present, who joined in it, as I understand. The case was a strong one against Reed, but that does not alter the law. Will Mr. Mowat's new Act avoid the difficulty as to Ontario cases?

I liked the look of my little squib about the "innocents" as you put it It took off the stiffness of Wig and Gown, and recalled something of the time when :—

"The grave Lord Keeper led the brawls,
And Mace and Goldstick danced before him"

in the days of good Queen Bess, I suppose.

How do you like the changes in the Government? All seem to think Sir Alex. Campbell the best man for the Portfolio of Justice.

We have the Orders in Council and the Public General Acts printed off, and the Local and Private well advanced.

Dr. Todd is here with his LL. D., and his C. M. G. He won them well and may he wear them long.

BOOKS RECEIVED.

The Law of Registration of Titles in Ontario, by Edward H. Tiffany, of Osgoode Hall, Barrister-at-Law. Carswell & Co., Law Publishers, Toronto. 1881.

The Law of the Road; or, The Wrongs and Rights of a Traveller. (English edition.) Carswell & Co., 11 St. Giles St., Edinburgh. 1881.

FLOTSAM & JETSAM.

A Competent Juror.—Lawyer—Have you any fixed opinion about any thing? Juror—No. Lawyer—Is your mind so porous that it can leach out all past facts, memory, impression and sense of justice? Juror—It can. Lawyer—Would you acknowledge on due evidence that you were not yourself, but somebody else? Juror—I would. Lawyer—Are you sure, without due legal proof, that it is I who am speaking to you now? Juror—I am not. Lawyer—You assume that this i he year 1881 A.D., but you are open to the conviction, on due and sufficient evidence, that it may be 1881 B.C., do you not? Juror—I does. Lawyer—You are of the masculine gender? Juror—I am. But on due and sufficient evidence being produced you would even in this respect be prepared to admit you were mistaken? Juror—I might. Lawyer—Swear this gentleman. He is the juror. we long have sought and mourned because we found him not.—*Graphic* (N.Y.)

The honor of Knighthood has not been confined to the Chief Justice of this the "brightest gem" in the Queen's Crown. It was also recently conferred on Charles Lilley, Esq., Chief Justice of Queensland; James Prendergast, Esq., Chief Justice of New Zealand; and John Gorrie, Esq., Chief Justice of Fiji.

Law Society of Upper Canada.

OSGOODE HALL.

EASTER TERM, 44TH VICT.

During this Term the following gentlemen were called to the degree of Barrister-at-Law:—

George Bell, with honors; John O'Meara, Charles Henry Connor, George Macdonald, John Birnie, jr., Charles Egerton Macdonald, Howard Jennings Duncan, Stewart Campbell Johnston, Lendrum McMeans, William Boston Towers, Francis Edward Galbraith, Charles Wright, John Kelley Dowsby, Chas. Herbert Allen, Charles Elwin Seymour Radcliffe, James Leland Darling, John Clark Eccles, George William Baker, Hedley Vicars Knight, George Ritchie.

(The names are placed in the order of merit).

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

GRADUATES.

Adam Carruthers, B.A., James Alexander Hutchins, B.A., George Frederick Lawson.

MATRICULANTS OF UNIVERSITIES.

John L. Peters, Morris Johnson Fletcher, Francis Cockburn Powell, Toronto University.

JUNIOR CLASS.

Herbert Gordon Macbeth, Alson Alexander Fisher, William Edward Sheridan Knowles, Thomas Hobson, Robert Alexander Dickson, Peter D. Cunningham, Alexander McLean, William Thomas McMullen, Miron Ardon Everts, William John McWhinney, Richard Armstrong, Alexander Duncan McLaren, Edward Corrigan Emery, John Craine, Joseph McKenzie Rogers, W. Arthur Ernest Kennedy, Geo. Herbert Stephenson, Arthur W. Wilkin, Walter George Fisher.

And the examination of William Sorobie Beale was allowed him as an Articled Clerk.

RULES

As to Books and Subjects for Examination.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

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

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

Articled Clerks.

1881.
- Ovid, Fasti, B. I., vv. 1-300; or,
- Virgil, Æneid, B. II., vv. 1-317.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History—Queen Anne to George III.
- Modern Geography—N. America and Europe.
- Elements of Book-keeping.

In 1882, 1883, 1884 and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil, at their option, which are appointed for Students-at-Law in the same years.

Students-at-Law.

CLASSICS.

1881.
- Xenophon, Anabasis, B. V.
- Homer, Iliad, B. IV.
- Cicero in Catilinam, II., III., IV.
- Ovid, Fasti, B. I., vv. 1-300.
- Virgil, Æneid, B. I., vv. 1-304.

1882.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum, (B. G. B. IV. c. 20-36, B. V., c. 8-23.)
- Cicero, Pro Archia.
- Virgil, Æneid, B. II., vv. 1-317.
- Ovid, Heroides, Epistles V. XIII.

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

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

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

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.
Critical Analysis of a selected Poem :—
1881.—Lady of the Lake, with special reference to Cantos V. and VI.
1882.—The Deserted Village.
The Task, B. III.
1883.—Marmion, with special reference to Cantos V. and VI.
1884.—Elegy in a Country Churchyard.
The Traveller.
1885.—Lady of the Lake, with special reference to Canto V.
The Task, B. V.

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek :—

FRENCH.

A paper on Grammar.
Translation from English into French Prose :—
1881.—Emile de Bonnechose, Lazare Hoche.

OR, NATURAL PHILOSOPHY.

Books.—Arnott's Elements of Physics, 7th edition, and Somerville's Physical Geography.

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

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination, to be passed in the third year before the final Examination, shall be :—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery; O'Sullivan's Manual of Government in Canada; the Dominion and Ontario Statutes relating to Bills of Exchange and Promissory Notes, and Cap. 117, R. S. O., and amending Acts.

The Subjects and Books for the Second Intermediate Examination to be passed in the second year before the Final Examination, shall be as follows :—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing, (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law; Underhill on Torts; Caps. 49, 95, 107, 108, and 136 of the R. S. O.

FINAL EXAMINATIONS.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Smith on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Harris's Principles of Law, and Books III. and IV. of Broom's Common Law, Dart on Vendors and Purchasers, Best on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

FOR CERTIFICATE OF FITNESS.

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

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

The Primary Examinations for Students-at-Law and Articled Clerks will begin on the Second Tuesday before Hilary, Easter, Trinity, and Michaelmas Terms.

The Second Intermediate Examination, on the 3rd Tuesday.

The First Intermediate, on the 3rd Thursday.

The Attorneys' Examination, on the Wednesday, and the Barristers' Examinations, on the Thursday before each of the said Terms.

FEES.

Notice Fees	$1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Attorney's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fees	1 00
Fee in Special Cases additional to the above	200 00

The following changes in the Curriculum will take effect at the examination before Hilary Term, 1882:—

FIRST INTERMEDIATE.

Williams on Real Property; Smith's Manual of Common Law; Smith's Manual of Equity; the Act respecting the Court of Chancery; Anson on Contracts; the Canadian Statutes relating to Bills of Exchange and Promissory Notes, and Cap. 117 R.S.O. and Amending Acts.

SECOND INTERMEDIATE.

Leith's Blackstone (2nd edition); Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages and Wills); Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada; the Ontario Judicature Act; Caps. 95, 107 and 130 of the Revised Statutes of Ontario.

FOR CERTIFICATE OF FITNESS.

Taylor on Titles; Hawkins on Wills; Taylor's Equity Jurisprudence; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and the Pleadings and Practice of the Courts.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris's Principles of Criminal Law, and Books III. and IV. of Broom's Common Law; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills; the Statute Law and the Pleadings and Practice of the Courts.