DIARY FOR SEPTEMBER.

2. Tues .. Capitulation of Sedan, 1870.
4. Thurs.. French Republic proclaimed, 1870.
7. SUN... 13*th Sunday after Trinity.*
9. Tues... Sebastopol taken, 1855.
14. SUN... 14*th Sunday after Trinity.*
17. Wed... First Upper Canada Parliament met at Niagara, 1792.
21. SUN... 15*th Sunday after Trinity.*
28. SUN... 16*th Sunday after Trinity.*

CONTENTS.

EDITORIALS:

Baron Martin's Retirement 245
County Judges' Salaries 245
Appeals from the Court of Revision 245
Lord Westbury 245
The Admission of Barristers to Foreign Bars 246
Passages at Arms between Editors 246
New Law Books 246
Meeting of County Judges 247
New Ontario Election Act 249
Criticisms on the Reporters 249

SELECTIONS:

Foss and his "Biographia Juridica" 251
Lawyers' Incomes 256
The Law of Clubs 258

CANADA REPORTS:

ONTARIO:

NOTES OF RECENT DECISIONS:

Common Law Chambers 259

ASSESSMENT CASES:

Appeals from the Court of Revision—*Assessment of Bank Stock* 259
In re Pain v. Town of Brantford—*32 Vict., cap. 36, sec. 63—Assessment Appeal* 261

ENGLISH REPORTS:

CHANCERY:

Booth v. Alcock—*Light and air—Lessor and lessee—Grant of lights—Injunction* 263

COURT OF QUEEN'S BENCH:

Reg. v. Castro—*Contempt of court—Speeches at public meetings—Pending trial—Collection of funds for defence—Vituperation of judge and attack upon witnesses—Privilege of members of parliament—Fine and imprisonment* 264

REVIEWS:

Revue Critique 271
Les Ans Du Roy Richard le Second 271
The Practice of the High Court of Chancery 272
Cunningham's Reports 273
Sir George Cooke's Reports 274
Sir Robert Brooke's New Cases 275
Ontario Law List 275

LAW SOCIETY OF UPPER CANADA 276

THE
Canada Law Journal.

Toronto, September, 1873.

It is rumoured that Baron Martin will shortly leave the Bench, owing to the deafness with which he has recently been afflicted. Mr. Hawkins, it is said, will probably be his successor.

County Judges will, as appears by a recent notification from the audit office, receive their salaries monthly instead of quarterly as heretofore; a change which will doubtless be found convenient to many. If the notification also stated that they, as well as the Superior Court Judges, should hereafter receive double their present emolument, we do not think the country would in the long run suffer any loss.

The Assessment Act of 1868-9 requires that a person dissatisfied with the decision of the Court of Revision may appeal therefrom by serving a notice of appeal upon the Clerk "within three days after the decision:" (sec. 63). It has been held by several of the County Judges, following the ruling of Judge Gowan, of the County of Simcoe, that the three days should count from the time of the particular decision and not from the day of the close of the Court of Revision.

Lord Westbury, formerly known as Sir Richard Bethell, whose death has recently been announced, was not only a powerful and sarcastic advocate, but is said to have been the greatest lawyer of his generation. The force of his extraordinary learning and intellect and remarkable judicial aptitude, as evinced both formerly as Lord Chancellor and more recently in the European Assurance arbitration, was gradually drawing him upward

from the partially retired position which he has occupied since dragged from his lofty position by an unworthy son.

As an item in connection with the gradual assimilation of the laws of the various confederated Provinces, we notice that several Nova Scotians are, and have been studying in this Province, intending, when called to the Bar, to return to their native Province. One of these (Mr. Sedgwick) has returned to Halifax to practice. It would appear that he had to obtain a private Act of Parliament, at the last Session of the Local Legislature, authorizing his admission to the Bar of Nova Scotia, as by some careless legislation in 1872 the statutes providing for the admission of British and Colonial barristers had been repealed. We believe, however, that the law has recently been so amended that English barristers, and barristers of those Provinces that extend similar privileges to members of the Nova Scotian Bar, can now be admitted to the profession in that Province, without a previous course of study there. It may some day become a question to discuss whether complete reciprocity in this respect should not prevail in all the Provinces of the Dominion.

There have been some amusing passages at arms between the "grave and reverend" editors of the *Law Magazine* and *Law Times* anent the Judicature Bill. The latter criticised sharply some observations of the former, and described their argument as "twaddle." The *Law Magazine* then retorted by accusing the *Law Times* of a fulsome attempt to pay a high compliment to Lord Selborne at their expense. "We have known," says the *Law Magazine*, "ill-behaved children at school try to curry favour with the schoolmaster by informing him of some uncomplimentary statement made concerning him by some one of their fellows. The *Law Times* seems to be endeavouring to approach the Chancellor and say, 'Please, Lord Selborne, the *Law Magazine* says you are an uninformed person.'" Thereupon the *Law Times* shifts its ground and makes some caustic remarks upon the following observations of the writer of an article in the *Law Magazine* for July, wherein it is stated, when speaking of the penalties of the law, "Justice is dependent upon evidence, and if evidence is false, and the falsity is of such a nature that it cannot be discovered, some seeming injustice will there and then be done, for the judges thus deceived will, according to law and justice, inflict a penalty on one whose self-will has not been opposed to the universal will, who has not committed crime. He does this, even though he may be unaware of the fact, that he may give back to the criminal the free will he has parted with to do him a justice and a right, and where he does this, deceived by the false words of many witnesses, he tries to give a man back that which he has not lost, and, therefore, he does that which is unjust, but what is nevertheless inevitable." We feel almost as impressed with the mysterious profundity of these two long paragraphs as the bewildered editor of the *Law Times*.

NEW LAW BOOKS.

Several legal works by Ontario barristers have been or will shortly be issued from the press. We have recently reviewed Mr. Taylor's book on Titles, and we have now before us a work on the law of insurance as applicable to Canada, by Mr. S. R. Clarke, already favorably known to the profession by his book on the Criminal Law. Mr. R. T. Walkem, of Kingston, has in the press a treatise on Wills, which cannot but be most acceptable in the altered state of the law on this difficult subject. We have good reason to think that the author will do his work well. Mr. Ewart (of Ewart's Index to the

Statutes) is compiling a book on Costs, which is much wanted by students and practitioners. McMillan on Costs, though in many respects defective and occasionally inaccurate, sold well and was found useful. Mr. Harrison has in the printers' hands, and now nearly completed, another edition of his Municipal Manual, rendered necessary by the recent Act. We fancy this must have rendered necessary a re-casting of the whole work; but however this may be, we do not doubt but that the proper course has been taken. We should counsel its being kept back for a few months to see what further changes the Ontario Legislature may make. It will be strange if they do not make some. Mr. Cooper has continued his Chancery Digest by a supplementary volume, which is said to be much superior to the first one, which was not all that could have been desired. It is not given to every man to know how to make a Digest. But this brings us to the last book on our list, which is by far the most important one of them all—the much wanted, long promised, and patiently waited for Digest by Mr. Christopher Robinson, Q. C. We fancy we already see the hardworked lawyer actually gloating over this book, for will it not save him, day after day, hours of weary labour. It will contain all the cases "from the beginning of the (Upper Canada) world" to the present time, thus superseding and practically rendering waste-paper the labours of Mr. Harrison in "Robinson & Harrison's Digest," the labours of Mr. Henry O'Brien in "Harrison & O'Brien's Digest," and that of Mr. Cooper in his "Chancery Digest" and supplemental volume. We understand that this new digest by Mr. Robinson, in the preparation of which Mr. Frank Joseph has been assisting him, will be in the hands of our readers before Christmas. The sooner the better.

MEETING OF COUNTY JUDGES.

Complaints have been made, and not without foundation, of a want of uniformity in the rulings of County Judges, leading to much inconvenience and bringing the administration of justice into disrepute by reason of a lack of that certainty which is the essence of law and order. Let us look at the causes of the evil and the most available means of remedying it.

It may be, and we fear is the fact that in the selection of those gentlemen who preside over the local Courts a few mistakes have been made, and that some perform their duties in a perfunctory and unsatisfactory manner, not being equal to their position, whilst others again are all that can be desired, being of such ability, learning and industry, that they would sit with credit to themselves and advantage to the public on the Superior Court Bench. But the fact is, there is scarcely any inducement to men of the first rank in the profession to accept County Judgeships. The inadequacy of the salaries is in itself a sufficient reason in a new country where there is little inherited wealth, and families have to be provided for. When the best men at the bar can hardly be found to accept judgeships in the Superior Courts of law and equity for this very reason, it is manifestly absurd to expect them to retire to a county town on salaries barely sufficient to keep body and soul together.

But no matter how good a lawyer may be appointed, his position as a County Judge is necessarily peculiarly difficult. The principal difficulty is the want of attrition. They have not, as a rule, the advantage of hearing cases before them argued by counsel of the experience and ability of those who conduct cases at the Assizes or in Term. Neither have they the books to refer to that can be had in the Osgoode Hall Library. But above all they have no fellow Judge to consult

with on subjects of difficulty. Each Judge does, and in the new points daily arising in his multitudinous duties, each Judge must decide them according to what is right in his own eyes, without that "talking it over" which is so necessary to bring out the various points of a case, and to show it in its different bearings and aspects. Isolation, moreover, almost inevitably tends in the large majority of men to narrow the legal mind.

None feel these difficulties more than the County Judges themselves, and we are not therefore surprised to see, and are very glad to be able to chronicle the efforts that they are making (with some not very brilliant exceptions) to remedy the evil as far as it lies in their power to do so. Hence the meeting of County Judges to which we alluded in our last issue.

On the 24th of July last a large number of them met at Osgoode Hall, in the Convocation Room, which had been placed at their service for that purpose, and inaugurated a series of meetings which we cannot but think will have a most beneficial effect in the administration of justice in the Local Courts.

His Honor Judge Gowan presided. The fact of his being Chairman of the Board of County Judges would in itself entitle him to this distinction, but in other respects it was fitting that one who has for years thoroughly commanded both the confidence of his brethren and that of the public, should in this as he has done on other occasions, take a leading part in matters of law reform. To his influence, combined with the energetic action of the best of the County Court Bench is mainly due the organization of these meetings, and to his tact and management as Chairman is largely attributable the success of the meeting which has recently terminated.

Although much was done in the way of organization and preliminaries, it would be unfair to expect too much from that which is but a commencement. We take, moreover, some small share of blame to ourselves for not being in a position to detail more fully what did take place of a generally instructive character. We intend, however, in future to be better prepared to relate what may be useful to our readers, and in this matter we are promised the valuable assistance of the Judges themselves and their Secretary.

Of the various subjects brought before the meeting we may mention that discussions took place as to the practice under the Partition Act, and a conclusion arrived at that it should be settled by rules, and that suggestions as to these rules, and as to the fees of officers, &c., should be made to the Judges of the Superior Courts, and for this purpose a committee consisting of Judges Jones, McDonald and Hughes was appointed to draft rules and frame a tariff, &c.—As to which is the better mode of taking evidence under sec. 4 of the Married Woman's Real Estate Act of 1873, whether *viva voce* by the Judges, or by affidavit, and how the evidence should be perpetuated. —As to the meaning of the word "claim" in the Division Court Amendment Act of 1869, and the extent to which an attachment affects a debt due by the garnishee to the primary debtor, under that Act.—As to the practice to be followed in case of an appeal to a County Judge from the award of an Assignee under the Insolvent Acts.—As to the jurisdiction of the County Judges under 31 Vict. cap. 26.—As to the expediency of having a fixed salary to Surrogate Judges in lieu of fees, and as to which a committee consisting of Judges Gowan, McDonald, Hughes, Kingsmill, and Burrowes, was appointed to endeavor to obtain a practical result in that direction.—As to the proof of wills made in a foreign country, of real estate in Ontario, then being a resident executor, the others residing abroad, &c.

NEW ONTARIO ELECTION ACT.

Of the statutes passed during the late session of the Ontario Legislature, not the least interesting to the legal profession is that entitled "An Act to amend the Law respecting Elections of Members of the Legislative Assembly, and respecting the Trial of such Elections:" 36 Vict., cap. 2.

When the important reforms, which have been effected in the law of parliamentary elections during recent years, both in Great Britain and in this Province, were first made, many persons were of opinion that a standard of political purity was being aimed at, which it would be impossible to attain in practice. But as far as our experience of the working of the present Provincial Election Law has extended, those fears appear to have to a great extent been groundless; and the system so far has been largely successful in preventing corrupt practices, and reducing the expenses of elections. In addition, since in this, as in many other instances, our legal reforms have been preceded by corresponding legislation in England, we have had the advantage of being able to confirm the results of our own experience by observing the operation of similar laws in another country.

Those who have paid attention to recent election trials under the new system cannot have failed to observe that a conviction of the inutility of attempts to evade the law is taking possession of the minds both of candidates and of electors; and such a conviction is the best assurance of further improvement in the future. This alteration for the better may be attributed chiefly to the change in the tribunal before which election petitions are heard, and it cannot be denied that there is a strong antecedent probability that the law will be enforced with greater certainty and strictness by men, such as the Judges of the Superior Courts, experienced in the discharge of judicial functions, than by parliamentary committees, composed of avowed political partizans, who in many cases are destitute of legal training or experience. The fear of course is that, as "familiarity breeds contempt," so new modes of evading the law will be discovered which will be difficult not only to defeat, but may not be covered by the law as it stands.

The first six sections of the new Act are in furtherance of principles already adopted, and are intended to assist in remedying certain defects which have become apparent in practice. The remainder of the statute, with the exception of a few sections of minor importance, consists of new matter, and may be roughly divided into three heads, treating respectively of election expenses and accounts—the preliminary examination of parties and production of documents—and the mode of holding a scrutiny.

With reference to the opinions expressed by a certain class of people, that although all the statutory enactments that ever have been framed, or probably ever will be framed, both have and will fail absolutely to destroy mendacity and corruption at elections, yet to those statutory enactments we must look for aid in raising the tone of public morality in political matters—for the higher that tone is raised, the nearer is the destruction of mendacity and corruption approached.

We shall next month refer briefly to the more important sections of the Act.

CRITICISMS ON THE REPORTERS.

[CONTINUED.]

In the former paper we forgot to refer to Barnewell and Alderson's reports in their proper order. It was stated in the *American Law Review* that Alderson B. was not responsible for the reports in the first term of the first volume of these reports. The writer, however, observed that he had mislaid the reference to sup-

port this position. It is to be found in the language of Alderson B. himself, as reported in *Barrett* v. *Power*, 18 Jur., 156. We now proceed in alphabetical order with the remainder of the reporters.

Croke's Reports. "Much weight is due to the authority of Croke."—Per Mansfield, C., in *Simmonds* v. *Swaine*, 1 Taunton, 549.

Croke Car. and Croke Jac. "That was a period in which actions of slander had greatly multiplied, and it had become necessary to stop them, and without doubt, some of those decisions would not be supported at the present day."—Pollock, C. B., in *Tozer* v. *Mashford*, 20 L. J. Exch. 226.

Durnford and East's (Term) Reports. "These are distinguished for care and accuracy of finish, and a matchless propriety of style. They have never been surpassed for general accuracy, and the point and precision with which the essence of the decisions is abstracted in the marginal notes."—9 Law Mag., N. S. 340.

Dyer's Reports. "Of high authority." 29 Law Mag., 340.

Espinasse's Reports. "It was commonly said that Mr. Espinasse heard half his reports and reported the rest."—Per Pollock, C. B., in *Whyman* v. *Gath*, 17 Jur., 560.

"Not a book of high authority." Per Blackburn, J., in *Laycock* v *Pickles*, 4 B. & S. 497.

Hobart's Reports. "His book of cases commands the highest authority."—31 Law Mag., 94.

Lilly's Reports. "A book of no great authority."—Per Willes, C. J., in Willes, R. 29.

Lofft's Reports. "These are but of very slight authority."—Per Lefroy, B., in *Cardiff* v. *Piercy*, Ir. Cir. R. 520.

Modern Reports, Vol. vii. Said not to be of high authority,—in *Chorlton* v. *Lings*, 17 W. R., 291.

Modern Reports, Vol. xii. "The 12th volume is a book of no great authority."—Per Crampton, J., in *Kennedy* v. *Stewart*, 7 Ir. L. R., 424, n.

Mosely's Reports. "Mosely is not a book of very great authority."—Per Shadwell, V. C., in *Brown* v. *Lockhart*, 4 Jur., 168.

Maude & Selwyn's Reports. "These reports are less cited in practice than any other reports of modern times, in proportion to the period of time over which they extend."—9 Law Mag., N. S. 340.

Plowden's Reports. "I cannot be wrong in accepting the precedent as sufficient, when Lord Ellenborough in *Wain* v. *Warlters*, 5 East 10, said of Plowden's Reports, that better authority could not be cited."—Per Wilson, J. in *Attorney General* v. *McLachlin*, 5 Prac. R. 73.

Peere Williams "is a great authority—as a reporter a very learned person, and I believe a very accurate reporter he is generally allowed to be:" Per Lord Brougham in *Ex p. Aloo:* 11 *Jur.* 858.

Pollexfen's Reports. "His reports of arguments are of authority, having been revised by him after he became Chief Justice."—*Hawkworth* v. *Morgan*, Rowe R. 453. See also *Allgood* v. *Blake*. 21 W. R. 63.

In *North's* "Life of Guilford" it is said, "Pollexfen, since the Revolution, published a book of reports, as they are called, consisting chiefly of his factious arguments." Cited in Greenleaf's Over-ruled Cases, p. 382.

Ridgeway's Parliamentary Cases. "*Vincent* v. *Going*, 3 Ridg. P. C. 599, is only reported in a book of no authority." Per Walsh, M. R. W. *Davis* v. *Kennedy*, Ir. L. R. 3 Eq. 56.

Ryan & Moody's Crown Cases Reserved. "The statements of fact are always drawn up by the Judges respectively before whom the questions arise, and each judgment is understood to be settled by some member of the bench, usually Mr. Justice Bayley." 4 Law Magazine 16, n.

Skinner's Reports. "His reports are highly esteemed." Woolrych Serjeants, p. 522.

Strange's Reports. The passages in parenthesis are comments on the notes of the reporter. See Clark's Colonial Law, p. 8 4 n.

"As to authority, two cases in Strange have been cited on opposite sides. We will set off one against the other." Per Bramwell, B., in *Preston* v. *Dania*, 21 W. R. 128.

Taunton's Reports. "The 8th volume is of very little authority." Per Parker, B., in *Isberg* v. *Bowden*, 1 C. L. R. 725, note.

Vaughan's Reports. "The reports in that book are in general very satisfactory." Per Lord Cranworth in *Carlisle* v. *Whaley*, L. R. 2 E. & I. App. 419.

Vernon's Reports. In Greenleaf's "Overruled Cases" it is said, that Lord Kenyon, C. J. observed that it had been an hundred and an hundred times lamented that Vernon's reports were published in a very inaccurate manner. His notes were taken for his own use, and not intended for publication. Yet he was the ablest

man in his profession. Greenleaf, p. 148, and see also *Hadley* v. *Clarke*, 8 T. R. 266, and *Russell* v. *Russell*, 1 Moll. 526.

"The cases reported in the 2nd vol. of Vernon are very inaccurate. They were published after the death of Mr. Vernon, which may perhaps be the reason." Per Turner, L. J., in *Mornington* v. *Keene*, 4 Jur. N.S. 982, n.

"The cases in Vernon are not considered to be very accurate." Per Lord Cottenham in *Truelock* v. *Robey*, 11 Jur. 999.

VESEY (JUNIOR) REPORTS. "When he reported Lord Thurlow's Cases, Mr. Vesey was a very young man, afterwards he became an excellent reporter." *Calhoun* v. *Thompson*, 2 Moll. 287.

WILLES' REPORTS. "These were not published for more than half a century after the decision in *Omichund* v. *Barker*, 1 Wil. 84. The manuscript was furnished by the Chief Justice's grandson." Greenleaf's Over-ruled Cases, p. 531.

A defendant was indicted for keeping a house of ill fame. His defence was that he kept no *house* at all, but only a *boat*, and therefore did not come within the purview of the statute, which made no mention of such structures. He had a flat-boat very comfortably fitted up for the purpose to which he designed to put it, and in which, carrying his cargo of frail goods and damaged virtue, he was wont to navigate up and down the waters of the Mississippi, bringing his wares to any market where at the moment there seemed to be the liveliest demand, and rejoicing in the belief that he had fairly floated out of the reach of the criminal statutes. But the Supreme Court were unable to appreciate the subtle distinction which had seemed so patent even to the unskilled vision of this layman. They risked their reputations upon the decision that a *boat* was a *house*, vouched in poor Mr. Webster with his big dictionary to sustain their views, and punished the defendant summarily.—*Am. Law Review.*

As an illustration of what common law pleading is capable, we may mention that a cause is now pending in which no less than eighty-one pleas have been put upon the record.—*Law Times.*

SELECTIONS.

FOSS AND HIS "BIOGRAPHIA JURIDICA."

We need only refer to former numbers of this Magazine for a just appreciation of the late Mr. Foss's biographical sketches of the Judges of England.* In 1848 Mr. Foss commenced his labours, and in 1857 he had completed six volumes of his work, which in 1865 he brought to a conclusion in three more volumes. These volumes contained something more than memoirs; they traced chronologically the different incidents and changes in the courts of Westminster that occurred from the reign of William the Conqueror to that of her present Majesty, and gave an account under each reign of the judicial personages who then administered the law. The usefulness and importance of the work may be summed up in the words of the reviewer of these volumes.

'To have successfully supplied a chasm in the legal literature of England is no unenviable success. To have executed the task with such a depth and variety of research, with such vigilance, acuteness, judgment, and skill, as to set all future competition at defiance, and produce at once a perfect work in its kind, is assuredly high praise. This high praise, however, and nothing less than this, is fairly due to Mr. Foss. Hitherto Dugdale's Origines Judiciales and Chronica Series has been the only guide for the inquirer into the personal history of the Bench. But every one who has had occasion to consult that work must be aware of its manifold imperfections; its faults of commission and omission; its inaccuracies, misstatements, blunders, and general untrustworthiness. In the work before us, an almost perfect accuracy and fulness has been achieved by an almost unequalled labour of research. The Year-books and subsequent Reports, the State Trials, the Patent Rolls, the Close Rolls, the Baga de Secretis, the Pells Records, the stores of the State-Paper Office, the Lansdowne MSS., the Harleian MSS., and other MSS. in the British Museum, MSS. in the College of Arms, the Egerton MSS., the Petre Papers, the Paston

* "Law Magazine," Late Series, Numbers 11, 37 and 60.

and other family Papers, the Black Book of Lincoln's Inn, County Histories, Local Histories, Wood's Fasti, the Gentleman's Magazine, the Camden, the Chetham, and other Societies' publications, are some of the sources from which Mr. Foss collects his information. Accordingly the result is a mass of learning which, besides exhibiting multiplied points of interest to genealogists, antiquarians, and historians, not seldom throws light on questions of law, and especially questions of constitutional law. But it is principally as a companion to the Year-books and earlier reports, and abridgments and treatises, that the book will be found useful for the studies, and in the practice, of the bar.'

The present notice, besides a short account of the life of the author, has reference only to Mr. Foss's biographical dictionary.* This work, which is of the ordinary octavo size and printed in double columns, contains 800 pages, and no less than 1600 biographical sketches of judges. It is an abridgment of the larger work, being limited to the biographical portion only, but it comprehends every name therein introduced, with corrections, to which has been added the judges who have been appointed since 1864. The author in his preface gives a short account of the various alterations in the respective reigns, caused by the many changes in the administration of justice and the arrangement of the courts. This statement, though brief, explains the various designations given to the different judges at different periods; but in the larger work there is a full historical account of the courts, judges terms, counsel, the Inns, &c., with other interesting details.

To prepare such a volume as this must have been a task of no little magnitude. The names are arranged alphabetically, both as to family name and title. It is, therefore, easy of reference by either. The plan of the work is to trace, first, the pedigree of each person, then the professional character and appointments, and thirdly, the declining years and decease. In this way the result of a great deal of antiquarian research has, in each case, been brought together in a few words, and no pains have been spared to make the work a trustworthy guide to legal history.

Among the many details of the characteristics of the Bench is here and there a good joke, which the proceedings of the Court often occasioned. Baron Alderson, a great favourite with juries, and in his reasoning deep, solid and acute, had a great taste for witticism. Once a counsel on applying for a *nolle prosequi* pronounced the penultimate syllable long. 'Stop, sir,' said the baron; 'consider that this is the last day of the term, and don't make things unnecessarily long.' At an assize town a juryman said to the clerk who was administering the oath to him, 'Speak up, I cannot hear what you say.' The baron asked him if he was deaf, and on the juryman answering, 'Yes, with one ear,' he replied, 'Well then,' said the baron, 'you may leave the box, for it is necessary that a juryman should *hear both sides*.'

Justice Hayes, one of the three additional judges made on the passing of the Act remitting the trial of election petitions to the judges, joined with an amiable disposition a rare power of amusing his companions at the bar. His judicial career was lamentably short, dying almost in the exercise of his judicial duties in fifteen months. It is said of him—"He was, in fact, a man of 'infinite jest,' and if there had been an album kept in Westminster Hall, to recall the witticisms of the bar, many would have been the pages devoted to his witty pleasantries and whimsical pieces."

Justice Powell, Junior, was a profound lawyer, and much respected in private life. Dean Swift represented him—

"As the merriest old gentleman he ever saw, speaking pleasant things and chuckling till he cried again. When Jane Wenham was tried for witchcraft before him, and charged with being able to fly, he asked her if she could fly, and on her answering in the affirmative he said, 'Well, then, you may; there is no law against flying.' The poor woman was saved from the effects of her own faith, and received the Queen's pardon."

Going back above a century and a half, many stories are told of the quaint sayings of the administrators of the law, among which may be mentioned an anec-

* A Biographical Dictionary of the Judges of England, from the Conquest to the present time, 1066 to 1870. By Edward Foss, F.S.A., of the Inner Temple. London: John Murray. 1870.

dote of Baron Powys, who retired from the Bench at the age of seventy-eight in 1726. The biographer says:—

"With moderate intellectual powers, he filled his office with average credit, but was commonly laughed at by the bar for commencing his judgments with 'I humbly conceive,' and enforcing his arguments with 'Look, do you see.' He is the reputed victim of Philip Yorke's badinage who, dining with the judge, and being pressed to name the subject of the work which he had jokingly said he was about to publish, stated that it was a poetical version of Coke upon Lyttleton. As nothing would satisfy Sir Littleton (the Baron) but a specimen of the composition, Yorke gravely recited,—

"He that holdeth his lands in fee
Need neither to shake nor to shiver,
I humbly conceive; for look, do you see,
They are his and his heirs' for ever."

We might here have introduced the judgment of Sir John Pratt about the woman and her settlement, reported and preserved in a catch with which our readers are familiar.

Of Sir Thomas Richardson, who was appointed Chief Justice of the Common Pleas in 1626, it is said that while attending at the Assizes at Salisbury, a prisoner, whom he had condemned to death for some felony, threw a brickbat at his head; but, stooping at the time, it only knocked off his hat. On his friends congratulating him on his escape he said, 'You see, now, if I had been an *upright* judge I had been slaine.' The additional punishment upon this offender is thus curiously recorded by Chief Justice Treby, in the margin of Dyer's Reports (p. 188, b):—'Richardson, C. J. de C. B. at Assizes at Salisbury in Summer 1631, fuit assault per Prisoner la condemne pur Felony;—que puis son condemnation ject un Brickbat a le dit Justice, que narrowly mist. Et pur ceo immediately fuit Indictment drawn pur Noy envers le Prisoner, et son dexter manus ampute et fixe al Gibbet, sur que luy mesme immediatement hange in presence de Court.'

Justice Shelley, in the sixteenth century, seems to have been somewhat of a humourist on the Bench. In a case which he thought overlaboured beyond its merits he compared it to a Banbury cheese, which is worth little in substance when the parings are cut off; for so this case,' said he, 'is brief, if the superfluous trifling which is on the pleadings be taken away.'

Chief Justice Tindal greatly enjoyed a joke. It is related that:—

"One of the learned serjeants coming too late for dinner at the Serjeants' Inn Hall found no place left for him. While waiting for a seat, 'How now,' said the Chief Justice, 'what's the matter, brother? You look like an outstanding term that's unsatisfied.' Of another serjeant he was asked whether he thought him a *sound* lawyer. 'Well, sir,' said he, 'you raise a doubtful point, whether *roaring* is unsoundness.' When another stormy leader was addressing a jury in the civil court at Buckingham, he spoke so loud that the Chief Justice, who was delivering his charge in the Criminal Court, enquired what that noise was. On being informed that Serjeant —— was opening a case, 'Very well,' said he, 'since Brother —— is *opening*, I must *shut up*,' and immediately ordered the doors between the two courts to be closed. The following, though not strictly professional, will perhaps be deemed quite as good. When Lady Rolle, on her husband's death, refused to let the hounds go out, a learned serjeant asked the Chief Justice whether there would be any harm if they were allowed to do so with a piece of crape round their necks. 'I can hardly think,' said Sir Nicholas, 'that even the crape is necessary; it ought surely to have been sufficient that they were in *full cry*."

In days of yore dissipation was carried on to an alarming extent among the upper classes, and many of the brightest luminaries at the bar and on the bench were votaries to the prevailing vice. The last four of the Chief Justices of the King's Bench in the reign of Charles II, Scroggs, Pemberton, Francis, and Jeffreys, may be cited as remarkable proofs of the general profligacy of the period. The Bishop of Salisbury, author of the 'History of the Reformation,' seeing his son, afterwards a Justice of the Common Pleas, who was then leading a dissolute life, uncommonly grave, asked him the subject of his thoughts. 'A greater work,' replied he, 'than your lordship's "History of the Reformation."' 'What is that, Tom?' 'My own reformation, my lord.' The bishop expressed his pleasure, but at the same time his despair of it.

Lord Henley, afterwards Lord Chancellor, was another jovial and hilarious young man when at the bar. It is said of him that, having to apologise to a Quaker at Bristol for some indecent liberties taken in cross-examination of him at a trial, when he became Chancellor, he engaged him to pay the freight of some wine consigned to him, and afterwards invited him to dine at his table, where he good-humouredly related to the company the particulars of their early fracas.

Among the anecdotes that have reference to the early follies of Chief Justice Mott is the following, which shows that he did not hesitate to acknowledge them when the confession would serve the ends of justice :—

"In a trial of an old woman for witchcraft, the witness against her declared that she used a 'spell.' 'Let me see it,' said the Judge. A scrap of parchment being handed up to him, he asked the old woman how she came by it, and on her answering, 'A young gentleman, my lord, gave it to me to cure my daughter's ague,' enquired whether it cured her. 'Oh! yes, my lord, and many others,' replied the old woman. He then turned to the jury and said, 'Gentlemen, when I was young and thoughtless, and out of money, I and some companions, as unthinking as myself, went to this woman's house, then a public one, and, having no money to pay our reckoning, I hit upon a stratagem to get off scot-free. Seeing her daughter ill of an ague I pretended I had a spell to cure her. I wrote the classic lines you see, and gave it to her, so that if any is punishable, it is I, and not the poor woman." She was of course acquitted, and did not fail to receive from the judge a compensation for the trouble he had caused her. In none of the trials before him for this supposed crime was a conviction obtained, and prosecutions for it from this time fell into discredit, which was increased by his putting into the pillory one Hathaway, convicted of pretending to be bewitched by a poor woman whom he had indicted for the crime. Of the idle companions of his youthful frolics there is a melancholy tradition that it was his fate to have one of them tried before him and convicted of felony. The prisoner was afterwards visited by him in gaol, and to his enquiry after their college intimates, answered, 'Ah! my lord, they are all hanged but myself and your lordship.'"

A circumstance, not unlike the foregoing, occurred not many years ago at a trial before Chief Justice Jervis, whose social character and judicial powers were of the highest order, and who possessed a surprising memory in summing up the details of evidence.

"A young man of large property had been fleeced by a gang of blacklegs on the turf and at cards. . . . A private note-book with initials for names, and complicated gambling accounts, was found on one of the prisoners. No one seemed to be able to make head or tail of it. The chief justice looked it over and explained it all to the jury. Then there was a pack of cards which had been pronounced by the London detectives to be a perfectly fair pack. They were examined in court, every one thought them to be so. They were handed to the judge. . . . When the charge began, he went over all the circumstances till he got to the objects found upon the prisoners. 'Gentlemen,' said he, 'I will engage to tell you, without looking at the faces, the name of every card upon this pack.' A strong exclamation of surprise went through the court. The prisoners looked aghast. He then pointed out that on the backs, which were figured with wreaths of flowers in dotted lines all over, there was a small flower, the number and arrangement of the dots on which designated each card.'"

Sir John Trevor, Master of the Rolls, it is said by Roger North :—

"Was bred a sort of clerk in the chambers of old Arthur Trevor, an eminent and worthy professor of the law in the Inner Temple. 'A gentleman,' he adds, 'that observed a strange-looking boy in his clerk's seat (for no person ever had a worse sort of squint than he had), asked who that gentleman was : 'A kinsman of mine,' said Arthur Trevor, 'that I have allowed to sit here to learn the knavish part of the law.' That he was bettered by the instruction may be doubted ; but that he became an able proficient there is evidence in the reputation he gained of being the best judge in all gambling transactions, of the tricks and intricacies of which he had personal experience."

A ludicrous story is told of Chief

Justice Pratt. While on a visit to the Lord Dacre, in Essex, accompanied in a walk by a gentleman notorious for his absence of mind, he came to the parish stocks.

"Having a wish to know the nature of the punishment, the chief justice begged his companion to open them so that he might try. This being done, his friend sauntered on and totally forgot him. The imprisoned chief tried in vain to release himself, and on asking a peasant who was passing by to let him out, was laughed at and told he 'wasn't set there for nothing.' He was soon set at liberty by the servants of his host. Afterwards, on the trial of an action for false imprisonment against a magistrate by some fellow whom he had set in the stocks, on the counsel for the defendant ridiculing the charge and declaring that it was no punishment at all, his lordship leaned over and whispered, 'Brother, were you ever in the stocks?' The counsel indignantly replied, 'Never, my lord.' 'Then I have been,' said the chief justice, 'and I can assure you it is not the trifle you represent it.'"

Of the private character, social status, and legal and public reputation of the many learned individuals referred to, the volume abounds in description. Painful as some of the cases which have attracted notice of late, there were, among the ranks of the bar in days gone by, struggles equally formidable, and, no doubt, great learning was obscured and buried for want of opportunity of bringing out. The tide of fortune had not been taken at the ebb. Persevering industry appears to have been the order of the day among our forefathers. At the latter end of the eighteenth century and the beginning of the present, debating societies were thought more of, and many of our greatest judges owed their success in the profession in no small measure to the experience and reputation they gained in discussing questions of law in these places. Lord Kenyon, during his years of pupilage, occupied every instant of his time in study:—

'He lived in a small set of chambers in Brick-court in the Temple, and was constant in his attendance in Westminster Hall, where he began taking notes of the cases he heard there so early as 1753. The small means which his father could allow him obliged him to live with the greatest economy, by which he contracted a habit of parsimony which stuck to him to the last day of his life; and he was proud even in his prosperity of pointing out the eating-house near Chancery Lane in which he and Dunning and Horne Tooke used to dine together at a cost of 7½d. a head.'

An anecdote is told of the late Sir Frederick Pollock when a pupil at St. Paul's school under Dr. Roberts:—

"Fancying that he was wasting time there as he intended to go to the bar, he intimated to the head master that he should not stay; and that the doctor, who was desirous of keeping so promising a lad, thereupon became so cross and disagreeable that one day the youth wrote him a note, saying he should not return. The doctor, ignorant of the cordial terms on which the father and son lived together, sent the note to the father, who called on him to express his regret at his son's determination, adding that he had advised him not to send the note. Upon which the doctor broke out, 'Ah! sir, you'll live to see that boy *hanged*.' The doctor, on meeting Mrs. Pollock some years after his pupil had obtained university honours and professional success, congratulated her on her son's good fortune, adding, quite unconscious of the humorous contrast, 'Ah! madam, I always said he'd fill an *elevated* situation.'"

Francis North (Lord Guildford), whose uncle was treasurer of the Inn at which he was called, swept the admission fee into the new student's hat, saying, 'Let this be a beginning of your gathering money here.' But in order to make ends meet he had to relinquish the acquaintance of many of his fellows, whose habits were too extravagant for him, and took for relaxation his violin and practiced music, of which he was passionately fond.

Chief Justice Saunders commenced his career in the deepest poverty, his associates being of the lowest class. Having learnt to write he qualified for an attorney's clerk, and afterwards read for the bar.

Great and learned lawyers have existed in all ages, and we owe the basis of some of the greatest modern legal text-books to the learning of our ancestors. Speaking of Lyttleton our biographer says:—

"His name is still sacred in Westminster Hall, and his celebrated work, '*The Treatise on Tenures,*' which Coke describes as 'the most perfect and absolute work that ever was written in any human science,' and for which Camden asserts that 'the students of the Common Law are no less beholden than the civilians are to Justinian's Institutes,' will ever prevent its being forgotten. The treatise itself is, however, now seldom read without the valuable commentary of Sir Edward Coke, a production which, as no one would dare to enter the legal arena without fully digesting, has been illustrated successively by the eminent names of Hale, Nottingham, Hargrave, and Butler."

(To be continued.)

LAWYERS' INCOMES.

From time immemorial lawyers have been popularly regarded as an overpaid and greedy set of fellows; and many hard things have been said and written of their avarice and extortion. But as a rule they have never been, and are not now, well paid nor greedy nor avaricious. Much of this evil report has come from the jealousy usually felt by those compelled to do manual labor toward those who labor with their brain. We believe it to be a fact that the majority of those who have won the highest places at the bar have been remarkable for their liberality to their clients, and for carelessness of their own pecuniary interests.

Lord Bolingbroke, in a moment of despondency, said: "There have been lawyers that were orators, philosophers, historians; there have been Bacons and Clarendons, my lord; there shall be none such any more till, in some better age, men learn to prefer fame to pelf, and climb the vantage ground of general science." There is a grain of truth in this, for no lawyer can hope for "fame" or "pelf" either, who neglects to "climb the vantage ground of general science." But is it not asking too much to ask the lawyers to give up the "pelf" when all the rest of the world is racing for it? If they do their work honestly and thoroughly they are worthy of their reward. Fame is of course to be desired. To have our merits appreciated two or three centuries hence, long after what was once our mortal substance is "stopping a beer barrel," is a very pleasant notion to entertain; but one who labors for that alone is not unlike Verdant Green who, in a drunken freak, buried the college plate in the quadrangle "to provide for posterity."

An income of eight or ten thousand a year, *argent comptant*, carries along with it many solid advantages, and the lawyer who can command this has no reason to consider his a hard lot, because posterity may not assign to him, in the Temple of Fame, so lofty a niche as Milton occupies, who sold his Paradise Lost for £15, or as Rembrant tenants, who was obliged to feign his own death before his pictures would provide him a dinner. There is a deal of truth in that homely proverb, "Solid pudding is better than empty praise." The reputation which wins current value during life is more useful to the possessor than honor which comes after death, and which comes as David says in the "Rivals," "Exactly when we can make shift to do without it."

The fees of the lawyers of antiquity were not, it seems, large, unless we go away back to the lucky Isocrates who was said to have received one fee of twenty talents, about $18,000 of our money, for a speech that he wrote for Nicocles, King of Cyprus; but kingly clients, and *such* kingly clients, have been *exceedingly* rare in the world's history. In the year 1500, 3s. 4d. was thought to be a sufficient fee to a sergeant for advice to the corporation of Canterbury regarding their civic interests, and only a little later the wealthy Goldsmiths' Company liberally rewarded a sergeant, "learned in the law," by a fee of 10s., and that for services in an important matter. From the "Household and Privy Purse Expenses of the Le Stranges of Hunstanton," it appears that noble house paid to Mr. Knightly 8s. 11d. "for his fee, and that money yt he layde oute for suying of Simon Holden," and the same lawyer also received at another time 14s. 3d. "for his fee and costs of sute for iii. termes."

It is recorded of Sir Thomas More that he "gained, without grief, not so little as £400 by the year," and this income, partly made up from the emoluments of his judicial appointments, was said to be a very considerable one, and equalled by but few of the bar. In Elizabeth's reign a fee of ten shillings was the ordinary reward, and the fact that the ten shilling

piece was called an "angel," led to that witty saying, then common, that "a barrister is like Balaam's ass, only speaking when he sees the angel." Elizabeth's solicitor-general received but £50, and the king's counsel to James I. only £40 a year, with an allowance for stationery. But these were only a kind of retaining fee, and similar fees were paid for business done. When Francis Bacon was James' attorney-general, at an annual salary of only £81 6s. 8d., he managed to make £6,000 per year, a princely income, indeed, in those days.

Maynard, the great parliamentary lawyer of Charles I.'s time, received on one round of the western circuit £700, which Whitelock, a contemporary, believed "was more than any one of our profession got before."

In Charles II.'s time a thousand pounds a year was considered a good income for a successful practitioner, but the great advocates and leaders made anywhere from two to four times that amount, and Sir Francis North, attorney-general, received from private and official business nearly seven thousand pounds. He was avaricious and grasping, and made every penny count. In the "Life of Lord Keeper Guilford," Sir Francis' method of gathering his fees is thus described: "His business increased, even while he was solicitor, to be so much as to have overwhelmed one less dexterous; but when he was made attorney-general, though his gains by his office were great, they were much greater by his practice; for that flowed in upon him like an orage, enough to overset one that had not an extraordinary readiness in business. His skull caps which he wore when he had leisure to observe his constitution, as I touched before, were now destined to lie in a drawer to receive the money that came in by fees. One had the gold, another the crowns and half crowns, another the smaller money. When these vessels were full they were committed to his friend (the Hon. Roger North) who was constantly near him, to tell out the cash and put it into the bags according to the contents."

Sir John Cheshire, King's Sergeant, made about the year 1720, an average annual income of 3,246*l*, and Mr. Jeaffreson, in his charming "Book about Lawyers," gives the following statement of the growing fortunes of Charles Yorke: "1st years' practice at the bar, 121*l*; 2nd, 201*l*; 3rd and 4th, between 300*l* and 400*l* per annum; 5th, 700*l*; 6th, 800*l*; 7th, 1,000*l*; 9th, 1,600*l*; 10th, 2,500*l*." While solicitor-general his income for one year reached 5,000*l*, and his receipts during the last year of his attorney-generalship amounted to 7,322*l*, a goodly income surely even for an attorney-general. But Lord Eldon, who used to tell the story that during the first year after his call to the bar, he only received a little over half a guinea, did even better than Yorke, for it appears from his fee-book that during his tenure of the attorney-general's office his receipts some time exceed 12,000*l* a year. Lord Kenyon's income before his elevation to the bench was estimated at about 8,000*l*, and yet he was so penurious that it was said to be impossible to tell whether his trowsers were cloth or leather, so greasy were they.

Erskine's rapid rise and brilliant career are well-known. Within eight months from his call to the bar he received the splendid fee of £1,000 from Admiral Keppel; and in latter years, when he had become the first advocate of England, his receipts were estimated as high as £12,000 a year, but this is probably a little too high. Edward Law's retainer for the defence of Warren Hastings brought with it £500, a sum not unworthy the princely fortune of the great Indian.

Of the receipts of the great lawyers of this country, there is hardly data enough to speak with exactness. Choate's income, or rather the value of his professional business, has been put at $18,000, but he was so indifferent about pecuniary matters that he probably did not receive, in hard cash, much above half that sum. Webster's income while at the bar is said to have been about the same; not large incomes surely for two such eminent lawyers in a great commercial city like Boston. But matters have mended even in Boston, and there are lawyers there to-day whose incomes from their profession are double those of Webster and Choate.

In New York there are two or three of the "leaders" of the bar who pocket annually, or at least have during the eight or ten palmy years just past, anywhere from fifty to one hundred thousand

dollars. But these are exceptional cases, and there are probably not fifty lawyers in New York, whose income, from their regular business, reaches ten thousand per annum.

The rank and file of the profession in this country do not make on the average three thousand a year, and a young man that has worked himself into a business worth two thousand a year is thought to have a very flourishing practice. There are of course many who have done better, while on the other hand there are many who have done worse.

It is a popular impression that the *speaking* lawyers, those who appear in court and have their names connected, in the newspapers, with the trial of cases, are the ones who reap the golden harvest, but this is by no means always the case. "Office business," as it is here called, is quite as profitable as "court business," and he who confines himself to the routine of office practice is apt to have in the end quite as much *eclat*, as he who devotes his energies to the more brilliant duties of the court room.—*Albany Law Journal.*

THE LAW OF CLUBS.

A Club is not a partnership, and the rights and liabilities of its members *inter se*, and towards the public, are not regulated by the law of partnership. In the matter of St. James' Club, 2 D. G. M. & G. 383, Lord St. Leonard said: "The law, which was at one time uncertain, is now settled that no member of a club is liable to a creditor, except as far as he has assented to the contract in respect of which such liability has arisen." And again he says: "The individuals who form a club do not constitute a partnership nor incur any liability as such." This case decided also that clubs are not "associations" within the meaning of the winding-up acts of 1848-9. The latter acts relative to "winding-up" do not change the law as to clubs as laid down in this case. The case of *Flemyng* v. *Hector*, 2 M. & W., 172, decided in 1836, is the leading case in England in respect to the liability of individual members of clubs for supplies furnished to the club. The "Westminster Reform Club" was organized under the following rules: That the initiation fee should be ten guineas; that the annual subscription should be five guineas; that if any subscription was not paid within a limited time, the defaulter should cease to be a member; that there should be a committee to manage the affairs of the club; and that all the members should discharge their club bills daily, the steward being authorized, in default of payment on request, to refuse to continue to supply them. The court held, in an action by an outsider against a member to recover for supplies furnished, that the individual members were not personally liable; for that the committee had no authority to pledge the personal credit of the members. Baron Parke, in his opinion, used the following language: "The rules of the club from its constitution. . . . This action is brought against the defendant on a contract, and the plaintiff must prove that the defendant, either himself or by his agent, has entered into that contract. That should always be borne in mind. . . . It is upon the construction of these rules that the liability of the defendant depends." In order to render a member of a club liable, it must be made to appear that the rules of the club specially authorized the incurring of the personal liability, or that the member distinctly assented to it. *Todd* v. *Emly*, 8 M. & W., 505, was an action against a member to recover for the price of wine furnished to the committee of a club. Baron Alderson said that, "in order to establish the liability of the defendant, the jury should have been satisfied that what was done was not only within the knowledge of the committee generally, but also within the particular knowledge of the defendant." See, also, *Reynell* v. *Lewis*, 15 M. & W. 517; *Wood* v. *Finch*, 2 F. & F., 447. There are a few cases in which personal liability was held to exist upon grounds not at all infringing upon the doctrine of the above cases. In *Cross* v. *Williams*, 7 H. & N., 675, an officer of a volunteer rifle corps was held responsible for uniforms furnished to the corps by a tailor, upon the principle that the officer had pledged his personal credit. In *Cockerell* v. *Aucompte*, 26, L. J. C. P., 194; 2 C. B. N. S., 440, the members of a club were held liable for coal purchased by the secretary, on the ground that the constitution of the club authorized the pledging of their personal credit.

Waller v. *Thomas*, 42 How., 337, was an action for rent against the members of the "City Club," a body consisting of over seven members, and therefore coming within the company laws of the State, in which the principal question was, whether under the New York statutes of 1849, 1851, and 1853, the members could be prosecuted in their individual capacity before exhausting the remedy against them in their collective capacity. The court held that mode of action was optional, in the first instance. This case is not inconsistent with the general English law on the subject of club liability.

The relations of committees to the remaining members of the club have not been judicially established, but where committee-men incur positive liability, their remedy over against the other members would depend upon the nature of the agency.

With regard to the funds of the club, it may be remarked that a court of equity will interfere to prevent waste or improvidence: *Charitable Corporation* v. *Sutton*, 2 Atk., 400; The court will not usually interfere to reinstate an expelled member. In *Hopkinson* v. *Marquis of Exeter*, 37 L. J. Ch., 173; L. R., 5 Eq., 63, by the rules of the club of which plaintiff was a member, it was made the duty of a general committee to arraign any member whose conduct or character was injurious to the interests of the society. Plaintiff was expelled in the prescribed manner, but the court would not interfere, no caprice or wrong motive being proved. In *Gardner* v. *Freemantle*, 19 W. R., 256, the power of expulsion was placed in the discretion of the committee, and the court would not interfere.—*Law Magazine.*

CANADA REPORTS.

ONTARIO.

NOTES OF RECENT DECISIONS.

COMMON LAW CHAMBERS.

(Reported by Mr. C. C. Robinson, *Student-at-Law.)*

Mitchell v. Roberts.

Law Reform Act—Postponing trial.

[June 5th, 1873, *Mr. Dalton.*]

Held, that on the return of a summons to try the cause in a County Court, on the ground that no difficult questions of law will arise, it is no answer to the application to put in affidavits, which are properly grounds for postponing the trial.

McDermott v. Elliott.

Law Reform Act—Expediting clause—Amendment.

[June 9th, 1873, *Morrison, J.*]

Held, in a case proper to be brought down to the County Court by the Law Reform Act of 1868, but the entry under form "A" was omitted from the issue book, but notice of trial having been given for the County Court, that the omission is not properly a ground for setting aside the issue book and notice of trial, but that the plaintiff will be allowed to amend on payment of costs.

Plews v. Mutton.

Interrogatories—Discovery of documents, &c.—C. L. P. Act, secs. 189, 199.

[June 16th, 1873, *Mr. Dalton.*]

Held, that on an application for leave to administer interrogatories when a party desires to ascertain what documents his opponent has in his possession relating to the suit, he must proceed under sec. 189 of C. L. P. Act, and cannot administer an interrogatory to that effect under sec. 199.

ASSESSMENT CASES.

In the Matter of the Appeals from the Court of Revision of the City of Kingston.*

Assessment of Bank Stock.

Bank stock is personal property, liable to assessment.

Bank stock held by a person as trustee, is not assessable as against the trustee.

It is immaterial as to the locality where bank stock may be said to exist, as, unlike real property, it must, like other personal property, be assessed at the place of business or residence of the owner.

[Kingston, July 9, 1873—*Burrowes, Co. J.*]

The following persons who had been assessed in respect of certain stock held in several char-

* Since the above judgment was printed, we have received notes of decisions on the same point by Judges Boswell and Dennistoun, who have arrived at a different opinion from that expressed by Judge Burrowes. We shall publish their judgments next month.—Eds. L. J.

tered Banks appealed from the decision of the Court of Revision in the City of Kingston to His Honor Judge Burrowes.

John Watkins, in respect of shares of the stock of the Bank of Commerce, the Bank of Montreal, and the Merchants' Bank, alleged to be illegally assessed and assessed to a greater amount than their proper value.

George C. Hale, in respect of shares of the stock of the Bank of Montreal held by him in his own right, and in respect of shares of the stock of the Banks of Montreal and British North America held by him as trustee for Mr. Orlibar; and in respect of shares of the Bank of British North America, the Merchants' Bank, and the Bank of Commerce, held by him in his own name, but of which other persons were beneficial owners; all which shares were alleged to be unlawfully assessed, and to be assessed to a greater amount than their proper value.

The Queen's College, in respect of shares of he stock of the Merchants' Bank unlawfully assessed.

The parties appeared by Counsel as follows:—

Jas. A. Henderson, Q. C., George A. Kirkpatrick, G. M. Macdonell, and *Jos. Bawden* appeared for the different appellants, and *James Agnew* for the Corporation of the City of Kingston.

Burrowes, Co. J.—After giving this matter the best consideration in my power I have arrived at the following conclusions:—

1. For the purpose of assessment in Ontario all property is divided into real property and personal property. Real property consists of land, including buildings, things forming in law part of the realty, and minerals, except what belongs to the Queen. Personal property consists of all property except real property, and property exempted by the statute: 32 Vict., Ontario, cap. 36, sec. 41.

2. Bank stock is personal property exempted from assessment so long as there is a special tax on bank issues, but no longer: 32 Vict., cap. 36, sec. 9, sub-sec, 16, O.

3. There is no longer a special tax on bank issues: Dominion Statutes, 34 Vict., c. 5, sec. 15; therefore bank stock is personal property liable to assessment.

4. It is clear that the Legislature of Ontario considered that bank stock would be liable to assessment under 32 Vict., c. 36, sec. 4, unless it were expressly exempted from assessment, which they did by sec. 9, sub-sec. 16, of same statute; it was therefore exempt until the exemption was repealed by subsequent legislation. It is therefore not now exempt, but now forms a part of the personal property defined by sec. 4 not exempted from assessment, and it is liable to assessment as a part of the rateable property mentioned in section 8, same Ontario statute.

5. In assessing bank stock it is to be estimated at its actual cash value: 32 Vict., cap. 36, sec. 30, O.

6. There is a remarkable difference in the manner prescribed for the assessment of real and personal property. Real property is to be assessed in the municipality in which it lies. Personal property owned by a person having a farm, shop, factory, office, or other place of business, where he carries on a trade, profession or calling, shall, *wherever situate*, be assessed in the municipality or ward where he has such place of business at the time when the assessment is made; 32 Vict., cap. 36, sec. 39, and if he has two or more such places of business in different municipalities or wards, he shall be assessed at each for that part of his personal property connected with the business carried on thereat, or for part at one place of business and for part at another: sec. 40; and if he has no place of business he shall be assessed at his place of residence: sec. 41.

7. I consider the effect of these provisions to be that real property must be assessed in the municipality where it lies, and that personal property, *wheresoever it is situated*, must be assessed in the municipality where the owner carries on his business, or if he has no place of business, where he resides.

8. The question of the place where bank stock exists, whether at the chief place of business of the bank, or at the place of business or residence of the owner, is of no importance, inasmuch as it is personal property and therefore, no matter where situate, liable to assessment at the place of business or residence of the owner.

9. The exemption of property which is owned out of this province does not affect any of the bank stocks of which the assessment is complained against, except that of Mr. Orlibar; for all the other owners reside in Ontario.

10. Assessments of property held in the name of one man as trustee for, or for the benefit of another, should be made distinctly from assessments made against a man in his own right: sec. 44.

11. Personal property of the University of Queen's College is exempt from assessment as being the property of a public literary and scientific institution: same statute, sec. 9, sub-sec. 10.

12. I consider therefore that the decisions of the Court of Revision should be confirmed, except in the case of Queen's College, and of Mr. George Hale in regard to his assessment for the stock of Mr. Orlibar.

13. The decision of the Court of Revision in the case of Queen's College is reversed; and it is ordered that the assessment roll shall be amended by omitting the assessment of Queen's College, and by striking out the assessment of Mr. Hale *quoad* the stock of Mr. Orlibar, which had been transferred from Hale to Orlibar before the assessment, and by entering the assessment of Mr. Hale in such a manner as to distinguish his private stock from that which he holds in respect of other persons, and the stock of every such other person from that of all the rest.

14. Although this decision is apparently final, yet it is not really so, inasmuch as the validity of the assessment may be readily questioned by means of an action at law in any court of competent jurisdiction.

In re Pain v. Town of Brantford.

32 Vict., cap. 36, sec. 63—Assessment—Appeal.

Held, 1. That the Clerk of the Division Court is not bound, under sec. 63, sub-sec. 3 of the Assessment Act, to receive an appeal unless the sum of $2.00 be deposited with him as security for the costs of the appeal.

2. That if so disposed he may give credit for the amount, and, if he does so, the appeal is properly entered and ought to be heard by the County Judge.

3. That a complainant to the Court of Revision is bound to appear and support his appeal. But if he fail to do so, it is in the power of the Court to hear the complaint *ex parte*, and if after such an *ex parte* hearing the Court affirm the assessment, the complainant may appeal from the decision to the County Judge.

[Brantford, July 9, 1873—*Jones, Co. J.*]

This was an appeal to the Judge of the County Court of the County of Brant, under and pursuant to sec. 63 of the Assessment Act, against the decision of the Court of Revision of the Town of Brantford, in respect of the assessment of Thomas H. Pain. The complaint made was that he was wrongfully on the roll. The complainant did not appear before the Court to support his complaint, but the Court of Revision having called the complainant and he not appearing, made an order confirming the assessment. From this order the complainant appealed. He gave the notice of his intention to appeal under sub-sec. 1 of sec. 63 of the Assessment Act, within the time limited in that behalf by that section. But he did not deposit the sum of $2.00 within the same time as required by sub-sec. 3 of that section. His attorney gave several notices of intention to appeal from the decision of the Court of Revision and arranged with the Clerk of the Division Court to give him a cheque for the aggregate amount, so soon as the number was ascertained. The cheque, however, was not given until long after three days, and shortly before the day fixed for the County Judge for the hearing of the appeal.

Harrison, Q. C., objected that the appeal ought not to be heard, because the sum of $2.00 was not deposited in the manner and within the time limited by the statute, and because the appellant not having appeared to support the complaint in the Court of Revision, the Court rightly affirmed the assessment, and he could not be looked upon as a party dissatisfied or aggrieved within the meaning of the Act. As to the first point, he argued that the right of appeal is only given on certain conditions, one of which is that the party shall within three days give written notice of appeal, and the other that he shall at "the same time and in like manner" deposit the sum of $2.00 for each decision appealed against "as security for the costs of the appeal." That the one is quite as imperative as the other, and that a failure in either disentitled the party from a right to appeal: *The Queen* v. *Cornwall*, 25 U. C. Q. B., 286. That the words being plain and the appeal given only to a class, the only question is, whether the appellant, according to the interpretation of the section, was one of that class, and that the language being plain it ought not to be discarded for "equivalents:". *McDowell* v. *Berry*, Ir. Law Rep. 399; *Cohen* v. *O'Donovan*, 3 Ir. Law Rep. 726; *Harding* v. *Knowlson*, 17 U. C. Q. B., 564; *Jackson* v. *Kassell*, 26 U. C. Q. B., 341. He also referred to Statutes 16 Vict. cap. 182, s. 28, Con. Stat. U. C. cap. 55, s. 63, to show that the $2 is not necessarily to be looked upon as security for the costs of the Court to the Clerk. As to the second point, he argued that a party complaining to a Court of Revision should appear and make good his complaint, or else be concluded by the ruling of the Court. He pointed out that any other construction of the section would enable a complainant to hold back his complaint, and for the first time spring the grounds of it upon his opponent in the Court of Appeal, and so in effect make the latter the Court of Original Appeal instead of a Court of Review as to the grounds of the decision in the Courts below. He cited *Rex* v. *JJ. Suffolk*, 1 B. & Al. 640; *Rex* v. *JJ.*

Kent, 9 B. & C. 283; *Rex* v. *Tucker*, 3 B. & C. 544; *The Queen* v. *The Inhabitants of Stoke Bales*, 6 Q. B. 158, 162.

A. S. Hardy, contra. The $2 is security only to the Clerk of the Court for his costs of the appeal; and he may waive the requirements of the statute made for his own protection, and give credit if so disposed, and that if he do so the party has sufficiently complied with the requirements of the Act giving the appeal, see Con. Stat. U. C. cap. 19, ss. 49, 50, 67 and 68. The Court of Revision having made an order, affirmed the assessment. This was a decision on the part of the Court, and from that decision the party dissatisfied had a right to appeal: *In re Judge of Perth and Robinson*, 12 U. C. C. P. 252; and at all events the right of appeal was not to be taken away in a doubtful case: *In re Justices of York and Peel and Mason*, 13 U. C. C. P., 159.

Harrison, Q.C., in reply. It is quite immaterial for whom the $2 is payable. The appeal is given only to a class, viz.—those who within three days give written notice of appeal *and* deposit $2. That appellant is shown not to be one of that class, and therefore ought not to be allowed to appeal. The question is simply one of the construction of the statute, and the construction is not open to any reasonable doubt.

Jones, Co. J.—In this matter two objections have been raised by Mr. Harrison, who appears for the respondent, against my jurisdiction to hear this appeal. Firstly, that the appellant did not within three days after the decision of his appeal by the Court of Revision deposit with the Clerk of this Court the sum of two dollars as security for the costs of this appeal; and Secondly, that the appellant did not appear before the Court of Revision and offer any evidence, either of himself or any other witness in support of his appeal, and that therefore, there was no hearing of the appeal, and no decision by the Court of Revision from which the appellant can appeal to me.

These objections apply to several of these appeals. I will consider them in the order in which I have stated them.

Under sub-sec. 3 of sec. 63 of the Assessment Act, if the $2.00 is not paid at the time the appellant gives the notice of appeal to the Clerk of the Division Court, or within the three days limited for lodging the appeal, I think the Clerk need not receive the appeal, and the case could not come before me for hearing.

In the present matter the Clerk received the appeal without the actual payment of the $2.00, waiving the present payment thereof, and taking the credit of the attorney of the appellant as payment or security for the payment of the money. Had he the right to do this, or having done it, is the appeal properly lodged, so that I have jurisdiction to try it? Is the $2.00 a security for the costs of the respondent, or as argued by Mr. Hardy, a security to the Clerk for his costs?

The 68th section of the Assessment Act provides that the costs of these appeals shall be taxed according to the Schedule of Fees under the Division Courts Act, as in suits for the recovery of sums exceeding the sum of $40.00 and not exceeding $60.00. The fees here referred to cannot be either the respondent's or appellant's costs, but the costs going to the Clerk, Bailiff, and fee fund. There is no tariff of fees taxable to plaintiff or defendant in Division Court proceedings. The $2.00 required to be deposited with the Clerk is stated to be paid as security for the costs of the appeal. This can only mean as security to the Clerk for the fees of himself, the Bailiff, and fee fund, for the costs of the proceedings required to be taken by them on the appeal. The $2.00 would not cover, in fact, the whole costs payable to the Clerk and the fee fund on the proceedings in this appeal, so that none of it could be a security to the respondent, or could in any event be awarded to him. This security, therefore, is not analogous to that given by recognizance in appeals from summary convictions; the recognizance there being enforcable for the costs of the respondent, if the Court so order.

An argument has been based by Mr. Harrison upon the old Assessment Act of 1853, (16 Vict. c. 182, sec. 28.) from which our present Act was consolidated, to show that this proceeding before me is not in the Division Court, nor of the character of a Division Court suit, and that the Clerk of the Division Court here is not entitled to any part of this $2.00 for his fees. I have examined this Act carefully, and do not think that these conclusions can be drawn from it. It is true that this is not a Division Court suit, but the proceedings are, I think, of the same character. The appeal is lodged with the Division Court Clerk. It is to be heard or tried by the County Court Judge, who presides in the Division Courts. The costs of the proceedings are to be taxed according to a certain schedule or tariff of fees payable to the Clerks and fee fund in that court, and the payment of the $2.00 is according to the practice adopted in these courts, of the Clerk requiring in ad-

vance a deposit to meet his fees, and those going to the fee fund, for the proceedings to be taken in each suit. See the note in O'Brien's Division Courts Act, on secs. 49 and 50 of that Act.

It was argued that the words "costs of appeal," and the words "costs of the court," in the above section referred, the former to the appellant's or respondent's costs, and the latter to the costs of the Clerk and fee fund, but I think they both clearly mean the same thing, viz., costs taxable to the Clerk and fee fund under the schedule mentioned in that section, for there are, as remarked, no costs taxable in Division Courts to either plaintiff or defendant, under the schedule referred to, nor on any proceedings in the court, and the section provides that each party shall bear his own witness fees, so that the respondent would not be entitled to any costs. The 28th section of the Act of 1853, provided that the costs of the court should in all cases be borne by the appellants, and this is the reason, I think, why he was required to deposit the $2.00. The deposit there being a security to the Clerk he may insist upon its being paid in advance in the same manner as the 49th and 50th sections of the Division Court Act require the fees of all proceedings to be paid to him in the first instance. But if he choose to waive it, or as in this case to take the security of the appellant's attorney, I think he may do so, and the legality of the proceeding is not affected thereby. The Clerk here takes the guarantee of a third party as payment of the $2.00 going to him. As far as all other parties are concerned, it is, I think, a payment, and the statute is satisfied.

I have not found the second objection so difficult to dispose of (see sec. 60, sub-secs. 13 and 14, and sec. 61 and 63 of Assessment Act). I do not entertain any doubt but that the final passing of the Roll by the Court of Revision, as provided by the 61st sec. of the Act, is a *decision* by that court of every appeal properly lodged before it, and that an appeal lies from such decision to the County Judge by any party dissatisfied with that decision, as provided by the 63rd section of the Act (see *In re County Judge of Perth and J. L. Robinson*, 12 U. C. C. P. 252.) Where a party lodges an appeal he ought in good faith to appear at the proper time and support his appeal, and if he does not do so the court may decide his case *ex parte* against him, but the statute would still give him the right of appeal if dissatisfied with that decision, and I do not think that right is lost from the fact that he did not appear in the court below and maintain his case there. Sec. 60, sub-sec. 13, implies, I think, that it is optional for the appellants to produce witnesses before the Court of Revision or not, and sub-sec. 14 provides that if they fail to do so the court may proceed *ex parte*.

I am glad that I have been able to come to this conclusion, as I should have regretted had the rights of the parties before me been disposed of upon a preliminary objection, without an enquiry into the merits, although it would have relieved me of a great deal of labor which I am not just now very able to perform. I have endeavored to give due weight to the forcible arguments of Mr. Harrison, on behalf of the respondents, but have not been able to agree in the conclusions he has come to, and I have felt it right when I have been in doubt to lean to such a construction of the statutes as would not shut the parties out from having their cases investigated before me. And on the authority of the case cited by Mr. Hardy, *In re Justices of Peel*, 13 U. C. C. P. 159, I have thought that in a doubtful case a party should not be deprived of his right of appeal.

ENGLISH REPORTS.

CHANCERY.

BOOTH V. ALCOCK.

Light and air—Lessor and lessee—Grant of lights—Injunction.

The court will restrain a landlord from interfering with his tenant's lights, although the diminution of light is not great, and although if the contest were merely between neighboring properties, the court would only award damages.

The defendant being lessee of properties A. and B., granted an underlease of A., "together with all lights," to the plaintiff. He subsequently acquired the fee in B.

The court restrained him from so building upon B. as to interfere in any way with the lights of his lessee of A.

[March 20, 1873.—28 L.T.N.S. 221.]

By indenture dated 31st Aug. 1864, the defendant underleased to the plaintiff for the term of twenty-one years a messuage, No. 26, Old Change, in the city of London, "together with all edifices, buildings, ways, lights, sewers, water-courses, rights, easements, advantages, and appurtenances." The lease contained a covenant for quiet enjoyment. At the time of granting the underlease the defendant was himself lessee of the messuage, for the term of eighty years, and was also assignee of an underlease of an adjoining messuage and premises in

Distaff-lane, situate on the east side of the Old Change property, of which the term would expire in 1868.

The messuage, No. 26, Old Change, was lighted on the east side by windows and a skylight. Subsequently to granting the underlease of the Old Change property, the defendant purchased the freehold of the property in Distaff-lane, and pulled down the messuage with the intention of rebuilding it. The defendant proposed to raise the new building 21ft. higher than the old one, which would have the effect of interfering to some extent with the plaintiff's light.

On the 19th Feb., 1873, the plaintiff filed a bill to restrain the defendant from raising the house in Distaff lane to a greater height than the house which formerly stood there, or so as to interfere with the plaintiff's light and air. The case now came on on motion for injunction.

Cotton, Q.C., and *E. Harvey* for the plaintiff.

Glasse, Q.C., and *W. R. Ellis* for the defendant.

The following cases were cited:—*Tipping* v. *Eckersley*, 2 K. & J. 264; *Beadel* v. *Perry*, L. Rep. 3 Eq. 465; 15 L. T. Rep. N. S. 345; *Senior* v. *Pawson*, L. Rep. 3 Eq. 330.

The Vice-Chancellor said he did not think the diminution of the plaintiff's light would be great, still there would be a material interference with it. If this had been an ancient light case between neighbouring proprietors, he thought it would have been a case for damages and not injunction; but it was clear that a landlord could not do anything in derogation of his tenant's rights. The plaintiff was entitled to the uninterrupted use of his lights for every purpose for which they could possibly be used. The injunction must, therefore, be granted.

COURT OF QUEEN'S BENCH.

Reg. v. Castro.

Contempt of court—Speeches at public meetings—Pending trial—Collection of funds for defence—Vituperation of judge and attacks upon witnesses—Privilege of members of Parliament—Fine and imprisonment.

The defendant had been committed for perjury by the judge who tried an ejectment in which he was claimant, and in which the issue was the question of his identity with a certain baronet alleged by the defendants to be dead. The jury, during the defendants' case, had expressed themselves satisfied that the claimant was not the person he swore he was, and he elected to be nonsuited. The grand jury at the Central Criminal Court found true bills against him for perjury and forgery; the prosecution removed the indictments by *certiorari* into this court; and it had been fixed, upon application of the Attorney-General, that the trial should take place at Bar next Easter term. The defendant and his friends, amongst whom were two members of parliament and one barrister-at-law, had held public meetings for the purpose of obtaining money for the defence at the forthcoming trial, and remarks had been made by the defendant and the three friends mentioned, imputing perjury and conspiracy to the witnesses for the defence at the trial of the ejectment, and prejudice and partiality to the Lord Chief Justice of this court, who, they said, had proved himself unfit to preside at the trial of the indictments. They also asserted the innocence of the defendant, and the injustice of his treatment.

Held, that the trial of these indictments was a proceeding of the court then pending; that, although the remarks at the meetings might be the subject of a criminal information, yet the parties who made them might also be prosecuted summarily for contempt of court; that these remarks indicated an attempt by means of vituperation to deter the Lord Chief Justice from taking any part in the trial, and also by attacks on the witnesses themselves to influence the public mind and prejudice the jury; that they unwarrantably interfered with the even and ordinary course of justice; that it was no excuse that the motive or purpose for which the meetings were held was justifiable, nor that the attempt to interfere with the course of justice was ineffectual; that the proceedings were a gross contempt of court; and that it was the duty of the court to put a stop to them.

The members of Parliament who made these remarks, when summoned to answer for contempt, apologised, and submitted themselves to the court. They were, therefore, only fined 100*l.* each; but it was held that the court would not allow the privilege of the House of Commons to prevent punishment by imprisonment of its members for a contempt in the administration of justice, if the occasion required it.

The barrister-at-law, whose offence was more aggravated than that of the others concerned, was sentenced to three months' imprisonment, and a fine of 500*l.*

The court, not desiring to prejudice the defendant in his defence at the forthcoming trial, merely bound him and one surety over in recognisances of 500*l.* each, to be forfeited if the defendant attended any more public meetings of the kind complained of.

[Jan. 20, 29, 1873.—28 L.T. N.S. 222.]

Upon the application of the prosecution, Mr. Guildford Onslow, M.P. for the borough of Guildford, and Mr. Whalley, M.P. for the city of Peterborough, had been summoned to answer a charge of contempt of court by endeavoring to prejudice the course of justice upon the trial of indictments which have been removed from the Central Criminal Court, but have not yet come to be tried. The defendant had been claimant in an ejectment, *Tichborne* v. *Lushington*, in the Court of Common Pleas, the only issue in which was the identity of the claimant with the person he alleged himself to be, viz., Sir Roger Charles Doughty Tichborne, Bart. The circumstances of the action are to be found reported in the case of *Tichborne* v. *Mostyn* (L. Rep. 8 C.P. 29; 26 L. T. Rep. 554.) The trial lasted 103 days, and during the case for the

defence the jury expressed their opinion in opposition to the claimant's alleged identity, and the claimant elected to be nonsuited. Bovill, C. J., who tried the case, then committed the claimant for perjury, and upon his Lordship's suggestion the prosecution was undertaken by the Treasury. Subsequently true bills for perjury and forgery were found against him by the grand jury at the Central Criminal Court; and those true bills, which are the indictments in this case, were removed upon *certiorari* by the prosecution into this court. The trial of the defendant for perjury has, upon the application of the Attorney-General, been fixed to be held at Bar, and to be commenced during next Easter term. Defendant, who is on bail, has, with his friends, been addressing public meetings in various parts of the country, convened by them for the purpose of obtaining funds in aid of the defence at the forthcoming trial.

Two of these public meetings were held at St. James' Hall, in the county of Middlesex, on the 11th and 12th Dec. last. Mr. Onslow, Mr. Whalley, and the defendant were present on both occasions. On the 11th Dec. Mr. Whalley, who was in the chair, addressed the meeting, and introduced Mr. Onslow, who then addressed the meeting and spoke in these terms:

It may be as well that I should explain to you that our object in addressing the British public had its origin on these grounds. We were refused in the House of Commons replies to questions we put to the Ministers. Our mouths were shut in that House, and knowing, as we do, that we are supporting the right man in a good and honest complaint, we have nothing left but to appeal to public opinion. We don't ask you to say whether he is or is not Sir Roger Tichborne; but we ask you to say and believe that he is an Englishman, and, as an Englishman, that he is justly entitled to fair play, which is the birthright of everyone of our countrymen. (Cheers.) Now, I maintain that in the late trial he did not receive the fair play he is entitled to. The long-winded speech of the Attorney-General, lasting 21 days (hisses), was never replied to, and we have a perfect right to assume that had Sergeant Ballantine been permitted to reply he would have turned the minds of the jury and of the public as much as they were turned by the Attorney-General. (Cheers.)

Mr. Onslow concluded a long speech by saying that in the great undertaking in which they were engaged they had obtained information, and would bring forward witnesses on the trial, that would, if the claimant were treated with the justice he had a right to demand, lead to his honourable and triumphant acquittal.

At the second meeting held on the next day, at which a Mr. Skipworth was in the chair, Mr. Whalley spoke thus:

There are then, gentlemen, in this case two questions. In the first place is this man truly Sir Roger Tichborne? (Loud cries of "Yes, yes.") In the second place is that fact known? Now, mark and observe this, because these are words which I speak with a due sense of responsibility to those whom I meet in social life, to the House of Commons, where I have and shall again pledge all that I have worked and laboured for during twenty years on the strength of my convictions—is that fact, if fact it be, known to the Attorney-General? has it been known to him throughout this prosecution? is it known to Her Majesty's Government, or to Mr. Gladstone, or, which is the same thing, have they given 100,000*l.*, or whatever other money they have given, out of your pockets, have they given that money to prosecute this man and to convict him of offences without taking the ordinary and proper means at their command for ascertaining the fact whether he be really guilty of perjury or not?

And again:

I have charged the Tichborne family, I have charged directly and in print the Doughtys, the Radcliffes, and the whole lot of them together, with knowing that he is the man, and combining in a conspiracy against him. (Loud cheers.) Now, ladies and gentlemen, you will naturally say how can we listen to such a Don Quixote as that? What a fool that man must be to throw himself into a quarrel that in no manner concerns him, merely as to the question whether this gentleman or somebody else is entitled to certain estates in Hampshire, and here it is, ladies and gentlemen, that I come to the real question which concerns you and me, and the hundreds of thousands of men that I have addressed throughout the country. Here we come now to the public question. Gentlemen, the time has not come when either I should be justified in speaking or you would be prepared to listen to those possibilities of conspiracy in a matter of this kind, which I do believe, it is my hope, my expectation, the very object for which I exert myself in this case, will in due time become more fully developed and understood by the people of this country. What is the nature of this conspiracy? What is the origin? What are the grounds on which, six years ago, these people met in a drawing-room in London, and said we will defy the laws of

England, we have these estates, here is the man, it is not expedient that this man should have these estates, we will keep them, we are strong enough in Parliament, strong enough on the Judicial Bench, strong enough in society to defy the laws of England. (Cheers.) Gentlemen, I am not prepared to enter into that to the extent I feel it. I say that I live in the hope that the time will come when it will be quite legitimate to address you on the nature of that conspiracy against Sir Roger Tichborne which I state here to-night, in accordance with a challenge which I gave three months ago at the last public meeting in London, in Oxford Hall, to this effect—That I should be prepared to meet the Attorney-General or any of the six counsel most eminent at the Bar, or any other advocates that he might put forward, and to satisfy any intelligent London audience that it was not consistent with the facts of this case, as I should present them to you, that he did not know throughout that trial that he was prosecuting that the claimant was Sir Roger Tichborne, and that he and the Government afterwards at his advice do now at this moment know, or that they have the means of knowing, that it is so; that in sustentation of their conspiracy for the purpose of retaining these large estates in the hands of the Arundel family, the leading family, as we know, in a certain influential circle of society—for the purpose of retaining these estates in that family, and sustaining the whole course of their conduct from first to last, that they do know, or, as I say, have the means readily of knowing, that they are attempting to prosecute to conviction, to penal servitude, or again to Newgate, a man whom they know to be innocent of the charge brought against him.

Mr. Onslow afterwards made a long speech at the same meeting, of which the drift was to urge the audience to make subscriptions for the defence, and in the result Mr. Whalley moved a resolution:

That this meeting declares its opinion, in common with the country at large, that the prosecution of the claimant at the public cost was uncalled for, and, in the absence of explanation, which had been refused, wholly unjustifiable, and demands public reprobation; and that the support and sympathy of the British public are justly due to the claimant. This resolution was carried.

Upon the reports of these speeches, verified by affidavit, *Hawkins*, Q.C. (with him *Bowen*) had on behalf of the Crown moved for and obtained the summonses herein. Both gentlemen now appeared in court accordingly.

Sir *J. B. Karslake*, Q.C. (with him *A. L. Smith*) on behalf of Mr. Onslow, read an affidavit filed by him, in which he stated, among other things, that for many years of his life he lived on terms of intimacy and friendship with the late Sir James Tichborne and Lady Tichborne, his wife, and upon the death of the latter he attended her funeral at Tichborne Park. Sir James Tichborne and he were natives of the same county, and they saw a good deal of each other at different times. After the arrival of the claimant in this country in 1866 he became acquainted with him, and was in communication with Lady Tichborne on the subject of his identity, and he knew from her that she identified him as her firstborn son, the issue of her marriage with Sir James Tichborne, and as far as he could judge, he believed she had no doubt whatever on the subject. He was earnestly entreated by her ladyship before her death not to abandon or desert her son, the said claimant, and he faithfully promised that he would never do so, and, honestly believing, as he had always done and still did, that the person identified by her is her son, he had endeavoured to the best of his ability and power during all the proceedings in the Court of Chancery and in the Common Pleas, to assist him in establishing his claim to the title and estates. It is a matter of notoriety, he said, that, ever since the claim was first made by the claimant to the present moment, his identity has been made the topic of conversation and discussion among all classes in the House of Commons, in the clubs, in society, and in almost every part of the kingdom: and finding that the result of the trial had had the not unnatural effect of creating a very strong prejudice against the claimant (the greater because many statements which had been made, but not proved by witnesses, were assumed to be true), he did attempt to counteract the feeling of prejudice, with the view and object, so far as he could attain them, of preventing the result of the trial from operating unjustly against the claimant in the criminal proceedings taken against him. After the release of the claimant from prison (Lady Tichborne, from whom during her life he received 1000*l.* a year since his return, having died) the claimant was wholly without funds to meet the expenses of his defence. He attended meetings in parts of the country with the object of obtaining funds for the purpose of defraying the expenses of his trial. The meetings of the 11th Dec. and the 12th Dec. 1872, mentioned in the affidavits filed upon obtaining the rule in this case, were meetings called for such purposes as

aforesaid. In the observations which he made, his desire, intention, and object were to counteract the feeling of prejudice existing against the claimant, so that he might, if possible, go into court to meet his trial for the criminal offence alleged against him unprejudiced by the result of the trial at *Nisi Prius*, and the comments which had been made upon him in the course thereof. He said that although now it was obvious to him that such observations, made with the sole object and purpose aforesaid, might be considered to have the effect of reflecting upon the character of witnesses and the conduct of the prosecution, it did not occur to him that such was or might be the effect. He had not the slightest intention of prejudicing or interfering with or preventing the course of justice, and it was with great regret that he had taken a course unwittingly which could be looked upon as indicative of having ever entertained any such intention. The affidavit thus concluded: "I repeat that at the time I made the observations complained of I had no intention whatever of interfering with the course of justice in the trials which are now pending. I made such observations under the circumstances and with the objects only above stated by me. As soon as I read the report in the public papers, of the motion to this honourable court, I saw that I had been betrayed into taking a course which laid me open to the imputation of having, in trying to remove prejudice operating against the claimant, created prejudice against the prosecution, and therefore, pending a trial, improperly commented upon matters connected with it; and I desire to express my unfeigned regret at having taken such a course, and to apologise in all sincerity to this honourable court for the conduct for which I am arraigned." So far as the counsel had been able to look into the subject, he found, he said, that where a matter was actually pending in a court it had always been deemed improper to comment upon the evidence which was or would be given on the hearing; and that if the effect of the comments were or might be to reflect upon the administration of justice, or to prejudice the fair trial of the case, then there was technically a contempt of court. In the present case the proceedings, no doubt, were so far pending that indictments had been found against the claimant which were standing for trial in this court; and so far as he could form an opinion from the authorities (though there was no express authority precisely in point), it might be considered that the proceedings were pending. If, however, he should be wrong in that view, and if in point of law the case was not pending, he hoped his admission would not prejudice the case of Mr. Onslow. The course he proposed to adopt, and which had been suggested to him by Mr. Onslow rather than suggested by himself to his client, was to explain the circumstances under which that gentleman came to use the words complained of, and this he had done in his affidavit. He desired to urge that from the course the trial of the action had taken, it had come to a close before the evidence had been fully gone into, and many things had been stated by the Attorney-General which, it was believed by his client, would not have been capable of proof, and Mr. Onslow had made his comments under the impression that the case, had it been concluded regularly, would have turned out very differently. No doubt, however, in the course of Mr. Onslow's speech allusions were made to the coming trial, and he felt bound to admit that there were observations made which technically amounted to a contempt, inasmuch as they might tend to prejudice the fair trial of the case. Therefore they would come within the rule he had adverted to, assuming that the court would be of the opinion that the case was pending. [COCKBURN, C.J.—On that point we entertain no doubt.] That being so, of course the case would come within the principle of several recent decisions in the Court of Chancery on this very case, with reference to observations in the press. And he expressed on the part of Mr. Onslow his regret that he should have been betrayed into these observations. [COCKBURN, C.J.—There is a question, Sir John, which I think it proper to put, and which is important. Are we to understand that Mr. Onslow, in expressing that regret, which has been so happily expressed by you on his behalf, intimates to the court his clear intention and resolution not again to take part in any such proceeding?] Most undoubtedly; and he made that statement at Mr. Onslow's direction.

Digby Seymour, Q. C. (with him *Morgan Lloyd* and *Macrae Moir*), on behalf of Mr. Whalley, read an affidavit, in which that gentleman entered at great length into the facts of the ejectment. The affidavit concluded as follows: "And I further say that I attended the said meetings with the sincere and honest conviction that the same were lawful public meetings, convened for a legitimate object, and that I had a full right to discuss the matters contained in the speeches delivered by me at such meetings. It never occurred to me that anything said by me at the said meetings would

unduly influence the jury that might be empanelled to try the said indictments, nor in any other way prevent a fair and impartial trial." The counsel observed that he was not aware of the course which was to be taken by Sir J. Karslake, who had acted without any communication or concert with him ; and while he fully concurred with him in the language he had employed, he felt it his duty to point out to the court that there was this distinction between the present case and any other, that here the parties were commenting upon a former trial which was concluded. [COCKBURN, C. J.—But with attacks upon the conduct and character of witnesses who were to be called again as witnesses. LUSH, J.—He suggests that what they have done once they would be likely to do again.] Mr. Whalley states that his only object was to promote an appeal on behalf of the defence. [COCKBURN, C. J.—But if the obvious effect was to prejudice the fair trial of the prosecution, the purpose would not be material.] It might be material in a case of mere constructive contempt such as this. In all the other cases there had been attacks upon particular witnesses in a trial or hearing still pending. [COCKBURN, C. J.—So there are here, for particular persons who are expected to be called as witnesses are charged with perjury.] This was explained as having reference to the former trial. [COCKBURN, C. J.—The question of identity being the same in the civil as in the criminal trial, those witnesses who gave their evidence in the former trial against the claimant would be called again in the ensuing trial to give their evidence against him. If the meeting had been convened only for the purpose of providing funds for the approaching trial, perhaps that might not in itself have been reprehensible. But if, speaking with reference to the approaching trial, those witnesses who it is known will be called to give evidence are denounced as conspirators, and as intending to give perjured evidence—is it to be doubted that this is a contempt? Is not this the test? Suppose a person afterwards called as a juror on the coming trial had been present at the meeting and heard these persons charged as perjured conspirators, would it not have been calculated to prejudice his mind?] If Mr. Whalley used language tantamount to that, he could not of course vindicate it ; but he denied that he had any idea of his language having such an effect. He was stating his reasons why persons should subscribe to the defence. That takes it out of the charge as to contempt. [BLACKBURN, J.—That is quite contrary to the law, as I have always understood it.] In all the previous cases on the subject there had been attacks upon witnesses for their evidence on the very proceedings then pending ; for instance, in the Chancery cases there had been attacks upon persons who had made affidavits in the case being heard. Surely there is a broad distinction between those cases and the present! [MELLOR, J.—Even if there had been no direct allusion to the coming trial, can any man doubt that the statement that the witnesses in the former trial were in a conspiracy to deprive a man of his estates by means of perjury, would have had an effect upon the public mind as to the coming trial, in which, of necessity, the question would be the same and the witnesses must be the same?] Mr. Whalley had a lawful object in view, in the course of urging which he had fallen into the use of this language. His object was only to promote subscriptions for the defence. [BLACKBURN, J.—I have no doubt in all cases of newspaper contempts which have occurred, the object was not to do injustice, but to promote the sale of the paper ; but has that ever been considered an excuse? LUSH, J.—Can any motive excuse the assertion at a public meeting that the witnesses on a coming trial are in a conspiracy to commit fraud by means of perjury?] He commented upon the evidence they gave at the former trial in order to show that they were combined together to defeat the claimant. [LUSH, J.—With a view to show that they were likely to give false evidence on the coming trial.] Not necessarily so. They might or might not be called at the next trial. These remarks might be the subject of criminal information. [BLACKBURN, J.—But even if so, it is no reason why a party should not be prosecuted for a contempt.] It might be a reason why the Court should not interfere summarily for a contempt that there was a remedy by way of criminal information. [MELLOR, J.—If Mr. Whalley had confined himself to pointing out the great odds against the claimant, arising from the wealth and social position of the family opposed to him, and had urged this as a reason for assisting him with subscriptions, avoiding all calumnious imputations upon those who were against him, his case would have been very different, and I should have felt very reluctant to visit him with any penalty. But he has not been content with this, and has imputed to the witnesses against him that they were in a conspiracy to defeat and convict an innocent man by means of perjury.] His object, however, was legitimate. [COCKBURN, C. J.—The motive or the object could not excuse

a contempt of court. BLACKBURN, J.—Unduly to interfere with a fair trial is not the less a contempt because it is done to get subscriptions for one side.] This is a "constructive contempt," and is, therefore, to be regarded with some jealousy. [BLACKBURN, J.—Where is the distinction between an actual contempt and a "constructive" contempt?] The distinction is very obvious: one is a direct attack upon the Court, and the other is only an indirect attack upon some of the parties or witnesses. [BLACKBURN, J.—Lord Cottenham said in *Mr. Lechmere Charlton's case* (2 Myl. & Cr. 316, 342), "It is immaterial what means are adopted, if the object is to taint the source of justice, and to obtain a result of legal proceedings different from that which would follow in the ordinary course. It is a contempt of the highest order."] That was a very different case from the present. But even adopting that definition here, that was not Mr. Whalley's object. This was a constructive contempt, and a novel case, and would carry the doctrine of contempt further than any case which has yet occurred. Mr. Whalley disclaimed any intention to pervert the course of justice, or interfere with a fair trial; and if he had been guilty of a contempt, it had been unwittingly, and in the conscientious discharge of what he believed to be a public duty. He apologised to the Court, and promised not to attend any such meetings in future.

Hawkins, Q.C. (with him *Bowen*) appeared for the prosecution, and read extracts of the speeches made at the public meetings. He left the matter in the hands of the Court.

COCKBURN, C. J. addressed Mr. Guildford Onslow and Mr. Whalley:—I have to express the unanimous opinion of the court (Cockburn, C.J., Blackburn, Mellor, and Lush, JJ.) that in the proceedings set forth in these affidavits to which you have been called upon to give an answer you have been guilty of a gross and aggravated contempt of the authority of the court. We are far from saying that when persons believe that a man who is under a prosecution on a criminal charge is innocent, they may not legitimately unite for the purpose of providing him with the means of making an effectual defence; and any expressions intended only as an appeal to others to unite in that object, though, perhaps, not strictly regular, would not be fit matter for complaint and punishment. We quite agree that it would be harsh and unnecessary to interfere with the expression of opinion honestly entertained, and expressed only for a legitimate purpose. But it is no excuse to urge when—at a meeting held for the purpose of providing funds—language is used which amounts to an offence against the law—and a contempt against the court—that the motive or the purpose for which the meeting was held was justifiable. And when we find that at a former trial the jury before whom the claimant gave his evidence declared that they disbelieved that evidence, and that the learned judge, who presided at the trial, directed his prosecution, and that a grand jury—the proper and constitutional tribunal—have found true bills against him on the serious charges of forgery and perjury—that such a man should be paraded through the country and exhibited as a sort of show at public assemblies as the victim of injustice and oppression, and that at these meetings—in violent and inflammatory language — witnesses who had given evidence against him on the former trial should be held up to public odium as having been guilty of conspiracy and perjury; that the counsel engaged against him, and even the judge who presided at the trial, should be reviled in terms of opprobrium and contumely; and, what is still more immediately to the present purpose, that the events of the pending prosecution should be discussed and the evidence assumed to be false; and that all this should occur, not merely in the provinces, but in the metropolis, almost in the precincts of the court and within the very district from which the persons are to come who are to pass in judgment between the Crown and the accused in the coming trial—how can we shut our eyes to the fact that there is here an outrage upon public decency and a great public scandal, and that the even and ordinary course of justice has here been unwarrantably interfered with? This court, therefore, cannot, under such circumstances, hesitate to exercise the authority which it undoubtedly possesses, for preventing the public discussion of any trial pending in the court. It has been attempted to be contended on your behalf that the meetings in question were convened solely for the purpose of obtaining money in order to enable the accused to carry on his defence, and with the additional purpose of removing any prejudice which the result of the former trial may have produced against him. But that can be no excuse if the language used amounts to an unwarrantable interference with the course of justice. And when we find that gentlemen of your station and position, gentlemen of education, members of the Legislature, have condescended to lend themselves to proceedings of this character, and to hold such language as

you have used on these occasions, we can only contemplate your conduct with astonishment and regret. When it is said that all this was done without any consciousness that it was an offence against the public justice of this court, though it must have the effect of creating prejudice with reference to the approaching trial, I can only accept that apology as really derogatory to the understanding of those who make it. There cannot be the slightest doubt in the mind of any sensible man that such a course of proceeding must interfere with public justice. If it is open to those who take the part of the accused to discuss in public the merits of the prosecution in his interest; then it must be equally open to those who believe in his guilt to take a similar course on the other side. And then we may have, on the occasion of a political trial, or any case exciting great public interest, an organized system of public meetings throughout the country, at which the merits or the demerits of the accused may be discussed and canvassed on the one side and the other, and thus, by appeals such as you have not hesitated to make to public feeling in this case, the course of public justice may be interfered with and disturbed. It is clear that such comment upon a proceeding still pending is an offence against the administration of justice and a high contempt of the authority of this court. Nor can it make any difference in point of principle whether the observations are made in writing or in speeches at public meetings, and we can have no hesitation in applying to the one case the same rule as to the other. We think, therefore, that the counsel for the Crown have done no more than discharge their duty in bringing this case under our notice; and we must deal with it in such a way as to repress, if possible, such improper proceedings in future. We are glad to find that on this occasion, though attempts have been made to distinguish this case from others in which the court has interfered in the exercise of its summary authority, yet both parties have through their counsel submitted themselves to the court, and have given a clear and distinct pledge that they will take no part in such objectionable proceedings again. If there had been any hesitation in giving such a pledge, or the slightest appearance of it, and if there had not been the most submissive attitude assumed, the court would have thought it necessary to use to the full extent the power and authority it possesses, and would have inflicted a substantial fine and also a sentence of imprisonment in addition. We are happily spared the necessity of taking the latter course in consequence of the very proper line you have both of you adopted. But we wish it to be understood that in the fine we are about to impose we have gone to the extreme of moderation, and that if on any future occasion proceedings of this kind shall be resorted to, the full power of the court, which it immediately possesses to restrain and prevent such proceedings by the infliction of adequate punishment, will be certainly inflicted with a stern and unhesitating hand. The mischief in the present case, so far as the positive effect of these proceedings is concerned, has been very trifling indeed, thanks to the good sense of the metropolitan press in forbearing from giving publicity to these offensive and objectionable proceedings. But your intention was not the less reprehensible, nor your conduct the less open to severe censure. However, under all the circumstances we think that, considering the position you have taken and the pledge you have given, a pecuniary penalty of moderate amount—moderate with reference to the circumstances of the case and the aggravated character of the offence you have committed—will satisfy the exigencies of the case. But that leniency which we now exercise will be appealed to in vain if any other person shall be found guilty of a similar offence. The sentence of the court upon you is that for this contempt you do each pay a fine of 100*l.* to the Queen, and that you be imprisoned until the fine be paid.

Upon consulting the other judges, the Lord Chief Justice almost immediately added:

To persons of your position it is not necessary to apply the latter part of this sentence. The sentence of the court, therefore, is that you do each pay a fine of 100*l* to the Queen.

Jan. 21.—Cockburn, C. J. to-day made the following remarks with regard to this matter:—I find that an impression has gone forth that, in remitting that part of the sentence pronounced yesterday which imposed imprisonment until the fine was paid, I was influenced by the anticipation of some difficulty as to the imprisonment of members of Parliament by reason of some privilege which members of Parliament possess. This is an entire mistake, imprisonment being only imposed as a means of insuring payment of the fine. I was reminded by my brother Blackburn that payment might be enforced without having recourse to imprisonment, and it at once occurred to me that it was unnecessary—looking at the position of these gentlemen—that imprisonment should be imposed until the fine was paid, especially as there were other means of enforcing payment. On that

ground alone, that part of the judgment was recalled. I had intended to intimate in the judgment which, with the concurrence of the court, I pronounced, that if in the case itself there had not been a perfect submission to the court on the part of the defendants, and the clearest and most positive pledge that there would be no renewal of the conduct complained of, the sentence of imprisonment would have been added to the pecuniary penalty. The possibility of any collision with the House of Commons had not appeared to us as ever likely to occur, especially as in the case of Mr. Lechmere Charlton, who was committed by order of the Court of Chancery, the House of Commons declined to interfere on behalf the privilege of their members to prevent punishment by imprisonment for a contempt in the administration of justice. I was anxious that there should be no misunderstanding on a matter of such importance as this, and, therefore, I have thought it necessary to correct an impression which seems to have prevailed as to the grounds on which we proceeded in remitting that part of our judgment to which we have referred.

Was Dr. Kenealy justified in deploring the "Hogarthian sallies" of Mr. Hawkins, which have enlivened the dull monotony of a twice-told tale? There are some advocates who are incapable of a joke, and they go through a Nisi Prius cause in such sincere earnest that they remind the spectator of the story of Serjeant Manning, who, when arguing a point of black letter law, was asked by Justice Maule whether he was performing a religious ceremony. We cannot concur with the opinion that justice is in any way hindered or frustrated by a reasonable amount of fun, and we dread the period when Mr. Hawkins goes to the Bench. It would be vain to expect Mr. Hawkins to suppress a witticism except under circumstances in themselves altogether inconsistent with it, and his success is in no small degree owing to his capacity for making matters pleasant. Of this fact we had evidence recently, when Mr. Hawkins was retained in a road indictment. After the trial a juryman was commiserated by a travelling companion on the score of having had to try so dry a case on so hot a day. The juryman replied that he was amply rewarded by Mr. Hawkins's speech, which was one of the most amusing he had ever heard. Conceive an amusing speech in opening an indictment for stopping up a highway! We regret that we do not see Mr. Hawkins's successor in the ranks of the Bar. The junior Bar, we believe, are too serious about getting small business to think of cultivating the lighter vein of rhetoric, or rhetoric at all. We are approaching an era in the history of the Bar when the sober narrative will occupy the old thrones of humour and pathos. A thoroughly commercial spirit pervades the Profession, and Dr. Kenealy would stamp out the last sparks of a genius which is as rare as it is agreeable.—*Exchange.*

REVIEWS.

Revue Critique. Dawson Bros., Montreal, April, 1873.

This number is not perhaps as interesting as usual. The leading articles are on the Navigation laws of Canada, from the indefatigable pen of M. Girouard; Foreign Marriages, by Mr. Hatton, and an article calling attention to some objectionable legislation in the Province of Quebec.

Les Ans Du Roy Richard le Second. Collect' Ensembl' hors les abridgments De Statham Fitzherbert et Brooke. Per Richard Bellewe, de Lincoln's Inne, 1585. Reprinted from the original edition. London: Stevens & Haynes, Bell Yard, Temple Bar, 1869. In 8vo., £3 3s., bound in calf antique.

The publication of this volume is an extraordinary example of enterprise in legal bibliopoly.

"Bellewe's cases" of thereign of Richard II. follows the year books of Edward III. When first published it supplied the chasm existing between the third part of the year books and the year book of Henry IV. Bellewe is sometimes cited as the year book of Richard II.

Sir Mathew Hale, in speaking of the reports of Richard II., said, "We have no printed reports of this king's reign; but I have seen the entire years and terms thereat in a manuscript, out of which or some other copy thereof, I suppose Fitzherbert abstracted those broken cases

of this reign in his abridgment." (Hale's Common Law, 175.) Before the publication of these cases Bellewe published a work known as the "Cases Petit Brooke, temp. Henry VIII." "Bellewe's cases" is simply a collection of cases from old abridgments. The conclusion to his preface is as follows: "And as your good liking of my labour bestowed in the said collection of Brookes' newe cases did not a little prevaille with me in the publishing hereof; so if I shall perceive that these yeres of R. 2 do finde ye like favour at your handes, It may encourage me to set the Printer on worke for all such other olde yeres of other kings as lie scattered in the said abridgementes, and which I haue in a readiness at present. And so wishing vnto you all increase of learning, vertue and happines, I take my leave the 10 of Januarie, 1585." Mr. Wallace, in his work on the Reporters, says, "Whatever favor or whatever want of it the second publication may have found at the readers' hands, no other collection that I know of by Bellewe ever appeared in print." The number of copies which he published is not known, but Mr. Wallace says, "Bellewe's Cases T. Richard II. is very rare. Mr. Green, whose collection of reporters is complete, has a copy, the only one I ever saw, except the copy that I have myself."

The numerous enquiries for "Bellewe's Cases," and the exorbitant price which copies realized, led Messrs. Stevens & Haynes to believe that a reprint would be acceptable to the legal profession and to librarians who desire to possess a complete and perfect series of the English Law Reports. With characteristic energy they carried out the undertaking. The result is a *fac-simile* of Bellewe — old black letter type, &c. The *Law Times* has described it as "one of the most intelligible and interesting legal memorials of the middle ages." In this we readily concur. We are in delight with the book. It is such a charming specimen of antique printing as to be really a wonder. If Bellewe were to arise from his grave and shake off the dust of centuries, he would most assuredly, when looking at a copy of this reprint, come to the conclusion that in all things save spelling, paper and printing the world is progressive. Indeed, it would puzzle him to tell the difference between the copy which he had "imprinted at London, by Robert Robinson, dwelling at Fewter Lane, neere Holborne," in the year 1585, from the copy published by "Stevens & Haynes, Bell Yard, Temple Bar, London, 1869."

No public library in the world, where English law finds a place, should be without a copy of this edition of Bellewe. The price is comparatively high, but no higher than sufficient to cover the great expense incurred in publishing a small edition of this old collection of cases. We hope that the enterprising law publishers will not be pecuniary sufferers in this or any similar venture which partakes of a national character, and especially when their publications are said to be far superior to any of the works of a similar class recently published at the expense of the nation under the auspices of the Master of the Rolls.

The Practice of the High Court of Chancery, with the Nature of the several Offices belonging to that Court, and the Reports of many Cases wherein Relief hath been there had and where denyed, and known as "Choyce Cases in Chancery." Reprinted from the edition of 1672. London: Stevens & Haynes, Bell Yard, Temple Bar, 1870. In 8vo., £2 2s., calf antique.

Messrs. Stevens & Haynes were so far encouraged by the success which attended their publication in 1869 of the rare book known as "Bellewe's Cases temp. Richard II." that they brought out a reprint of a still more rare volume, known as "Choyce Cases in Chancery," temp. Mary, Elizabeth and James I.

Mr. Wallace, in his valuable work on Reports, published in 1855, said, "As the volume is quite rare, so rare indeed that except the copies in Temple Library and the Library of Lincoln's Inn, I have never seen more than one copy of it anywhere," and then, for the benefit of his readers, extracted and published some of the cases.

There are no less than 250 cases in the volume, the greater part of which bear date from 1576 to 1583 (19 to 26 Elizabeth). There is one case of 1 Elizabeth. There are a few cases from 1603 to 1605. (1 to 3 Jas. I.) and several of 5 and 6 Philip and Mary.

Speaking of the cases, Mr. Wallace says, "Like Lombard, Tothill and a few similar works, this volume is one which these great cases that occur from time to time and stimulate inquiry into the very foundations of legal science will occasionally call forth, and it ought therefore to be in every public law library."

There were two antique editions of the work, the first bearing date 1652, in which the practice unfolded ends at page 100. There is then a break in the paging, "Choyce Cases" beginning at page 113 and ending at page 188. In the 1672 edition, the "Choyce Cases" begin at page 105 and end at page 180. The reprint is from the edition of 1672, "printed for Abel Roper, at the sign of the 'Sun,' in Fleet Street, against St. Dunstan's Church."

The anonymous author of it, speaking of his own performance, said: "Courteous Reader. The title of this Book promiseth much, yet I dare assure thee no more than the body of it will afford. And although something of this subject hath been heretofore printed, yet (without prejudice to them) I may bolde say that none hath traced the path of truth so fully and clearly (in the particulars mentioned in the title) as the Composer of the ensuing discourse hath done. But knowing the proverb that *verbum sapienti sat*, and taking thee (reader) for one of that stamp, I am resolved not to forestal thy Judgment by further commendations of that which (being read and understood) will sufficiently commend itself. However, I shall desire thee to pardon and excuse the erratas (for without doubt there will be some) of the Transcriber and Printer; in confidence of which courtesie, I will give thee passage out of this short entry into the fairhouse of the following Tract. Vale."

We shall imitate the plan of the author and bring our remarks to a close, taking the reader, gentle or otherwise, to be one of the stamp described by the author—a stamp of readers not yet extinct, and many of whom, residents in Canada, are subscribers to the *Canada Law Journal*.

This volume, in paper, type and binding (like "Bellewe's Cases,") is a *facsimile* of the antique edition. All who buy the one should buy the other. They are companion volumes—of modern birth, but very old faces—so old as to deceive "Old Antiquity" himself, if alive.

Reports of Cases Argued and Adjudged in the Court of King's Bench, in the Seventh, Eighth, Ninth and Tenth Years of King George the Second, during which time the Right Honourable the Earl of Hardwicke was Lord Chief Justice of that Court. By T. Cunningham. The third edition, revised and corrected by Thomas Townsend Bucknill, of the Inner Temple, Barrister-at-Law. London: Stevens & Haynes, Bell Yard, Temple Bar, 1871. In 8vo., price £3 3s., calf antique.

The reasons which led Messrs. Stevens & Haynes to reprint "Bellewe's Cases" and "Choyce Cases in Chancery," have induced them to continue the re-issue of the English Reporters, and to select Cunningham's Reports as the third of the series.

These cases were taken by a gentleman of considerable business at the Bar of the King's Bench, during the time Lord Hardwicke presided in that Court. They were afterwards perused and approved by some persons eminent in the law, by whose advice and under whose inspection the editor committed them to the press.

Several of the cases in the volume were reprinted in Ridgeway's Seventh Modern, and Strange, but the Reports of Cunningham are, in the words of the advertisement, "fuller and more circumstantial, both in the state of the facts and in the arguments of the bar and the bench."

The reporter, in his preface, a modestly remarks: "As these cases are published without any recommendation of authority, they have nothing to rely on but their own intrinsic worth, whatever it is; and that, it is hoped, will be sufficient to support them, as it has done some books which came into the world as naked and friendless as this; but which soon broke through the obscurity of their birth by the lustre of their merit, and are now of established reputation, recognized by every Court of Judicature in the Kingdom; so universally true it is (what was said by a very great man, the highest living ornament of the law) that every case well reported speaks for itself, and reason is the best authority, and indeed in

matters of science, no other authority ought to be submitted to. All, therefore, that the editor has to wish is that these reports may have leave to speak for themselves, and that reason with respect to them may be allowed to stand in the place of authority."

The instructive chapter which precedes the cases, entitled "A proposal for rendering the Laws of England clear and certain," gives the volume a degree of peculiar interest, independent of the value of many of the reported cases. That chapter begins with words which ought, for the information of every people, to be printed in letters of gold. They are as follows—"Nothing conduces more to the peace and prosperity of every nation than good laws and the due execution of them." The history of the civil law is then rapidly traced. Next a history is given of English reporters, beginning with the reporters of the Year Books from 1 Ed. III. to 12 Hen. VIII.—being near 200 years—and afterwards to the time of the author. In speaking of the qualifications of a good reporter, he says: "A good reporter should have a liberal education, understand both the theory and practice of the law, be able clearly to comprehend the reasoning of the judges, and be ready at writing down what he hears in shorthand, or otherwise, and afterwards digesting it." So in his preface he says: "He is the best reporter, who relates the greatest number of circumstances of a case and the reasons of the Judge, most at large. And, indeed, by a too earnest desire to be concise the reporter often becomes obscure; an error of the worst kind, and which is here carefully avoided." This was remarkably good advice in 1770, and has, by very many calling themselves reporters, been since disregarded. If Cunningham were now alive we think he would be appalled at the number of companions one is obliged to place alongside of his, in bookshelves. With the increase of the number of volumes is increased the labour of those who are obliged to refer to them.

This volume of Cunningham's (like "Bellewe's Cases" and "Choyce Cases,") is, in type, paper, binding, &c., a *facsimile* of the original. The scarcity of the volume and consequent high price has been the inducement to the publishers to reprint the volume.

Sir George Cooke's Reports and Cases of Practice in the Court of Common Pleas, 1706 to 1747. The third edition, with the additional cases and references contained in MS. notes made by L. C. J. Eyre and Mr. Justice Nares. Edited by Thomas Townsend Bucknill, of the Inner Temple, Barrister-at-Law. London: Stevens & Haynes, 1872. In 8vo., £3 3s.

This is the fourth volume of Messrs. Stevens and Haynes' series of antique reports. Like its predecessors it is a *facsimile* of the original. Sir George Cooke was Chief Prothonotary of the Common Bench. His reports have long been out of print. They have at all times been in good repute and copies anxiously sought for. In 3 Wilson, 184, Sergeant Jephson, citing *Palmer* v. *Sir J. Edwards*, said, "See the case at length, for it seems well reported by that very able chief prothonotary of the C. B."

The reason given by the publishers for the selection of Sir George Cooke's Reports as the next volume in the series, was because of their having become possessed of a copy formerly belonging to Mr. Justice Nares, and containing numerous MS. notes. These notes appear to have been partly his own and partly copied from notes made by Chief Justice Eyre. The authenticity of these notes is confirmed by Mr. Justice Nares. In *Crossley* v. *Shaw*, 2 W. Bl., 1088, he is reported to have said, "I have seen a manuscript note of Chief Justice Eyre of the case of Rawlins and Parry, which agrees with Sir George Cooke's."

These additions will add greatly to the value of the original volume. They have been carefully revised by the editor.

The original volume was published "In the Savoy, Printed by Henry Lintot (assignee of Edward Sayer, Esq.), for J. Stephens, at the Hand and Star, in Fleet Street; J. Werrall, at the Dove, in Bell Yard, near Lincoln's Inn; T. Waller, at the Crown and Mitre, and W. Sandby, at the Ship, in Fleet Street, 1747." Law books never can die or remain long dead so long as Stevens & Haynes are willing to continue them or revive them when dead. It is certainly surprising to see with what facial accuracy an old volume of reports may be produced by these modern publishers, whose good taste is only equalled by their enterprise.

Sir Robert Brooke's new Cases in the time of Henry VIII., Edward VI., Queen Mary. Collected out of Brooke's Abridgment, and Chronologically arranged, together with March's Translation of Brooke's New Cases, reduced alphabetically, under the proper heads and titles, with a table of the principal matters. London: Stevens & Haynes, Bell Yard, Temple Bar, 1873. 8 vo., Price £4 4s.

Robert Brooke, whose name this volume bears, was son of Thomas Brooke, of Cleverley, in Shropshire, by Margaret, his wife, daughter of Hugh Grosvenor, of Earmont. He was born at Cleverley, in the County of Salop, laid a foundation of literature at Oxford, and was educated in the law at the Middle Temple, "where he became the completest lawyer of his time." In 1542 he was elected autumn reader of the Temple, and in the latter end of the year 1550, elected a double reader. In 1552, he was made Serjeant, and in 1554 returned to the House of Commons, of which he was elected Speaker. The marriage of Queen Mary with Philip of Spain is said to have been the object of the assembling of Parliament. The session has, however, been better known from Protestant historians, who revile it for its proceedings and penalties against heretics and the efforts to restore Papal power. Brooke was a zealous member of the Roman Catholic religion, and gave so much satisfaction to the Queen for his zeal in its cause that she made him Chief Justice of her Bench. This was in 1554. He died September 5th, 1558, and is buried in the chancel of Cleverley Church, where a fine monument in the north wall may yet be seen to his memory.

This volume was his first volume of reported cases. It is called "little," either because of the size of the volume, which was very diminutive in the early days of folios, or because the title of the original edition shows it is. "Asevns Nouell cases de les ans et temp. Le Roy. H. 8, Ed. 6, et la Roygne Mary." "Ecrie ex le Graund Abridgment, composed per Robert Brooke, Chiualier tc. la disperse en les Titles. Mes Icy Collect, sub. ans.: Anno Do., 1578. Incœdibus Richardi Tottelli." The volume is occasionally cited as "Bellewe's Cases temp. Hen. VIII."

Though compiled by Bellewe there is no indication that he was the author, but in the very interesting epistle prefixed to the "Cases temp. Richard II." Bellewe states that the favour extended to his collection of "Brooke's New Cases," prevailed with him to publish another volume. His collection of "Brooke's New Cases" was published in 1578, seven years prior to his "Cases temp. Richard II." The "Cases temp. Richard II." was the last volume he published, though in the preface he indicated an intention to publish other volumes of collections of cases. He compiled the two collections upon different systems, one under years and the other under titles; but it would seem that the chronological arrangement was not so useful as the other, for March, in his translation of "Brooke's New Cases," has reduced them alphabetically under their proper titles.

Both the original and the translation having long been very scarce, and the mispaging and other errors in March's translation, making a new and corrected edition peculiarly desirable, Messrs. Stevens & Haynes have reprinted the two books in one volume, uniform with the preceding volume of the series of early reports.

This, like the other volumes of the series, is a *fac-simile* of the original. We notice that Kelgage's (W.) Reports and other volumes are in progress. We assume from the fact that the series is so regularly continued that the enterprise has not been a losing one. It cannot be a source of much profit considering the great expense of publication and the very limited edition that is likely to be in demand. If the publishers save themselves from actual loss they will, we understand, be satisfied. But as their public spirit demands a better reward, we hope there will be profit as well as compensation in store for them.

Ontario Law List, and Solicitor's Agency Book. By J. Rordans, Law Stationer. Seventh Edition. Rowsell & Hutchinson, 1873.

This Edition comes to us with many improvements and additions. It is now so well known, and so highly appreciated, that it is unnecessary to dilate upon its usefulness. We notice an improvement in the binding, which is very acceptable.

Law Society—Easter Term, 1873.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Easter Term, 36th Victoria.

During this Term, the following Gentlemen were called to the Degree of Barrister-at-Law:

No. 1257. Charles Victor Warmoll.
R. H. Caddy.
Hugh Matheson.
Harry Vincent.
James Reeve.
Michael Brennan.
Samuel Platt.
William Macdiarmid.
Robert Baldwin Carman.
C. R. W. Biggar.
George A. Mackenzie.

No. 1268. James Stafford Kirkpatrick.

Admitted and Called.

No. 1269. Henry J. Morgan.

And the following gentlemen received Certificates of fitness:

Charles R. W. Biggar.
J. B. McArthur.
Hugh Matheson.
Alexander Dunbar.
George A. Mackenzie.
Michael Brennan.
James Stafford Kirkpatrick.
D. G. Macdonell.
R. H. Dennistoun.
John McMillan.
C. Bogart.

And on Tuesday, the 20th May, the following gentlemen were admitted into the Society as Students of the Laws:

University Class.

Hamilton Cassels.
John W. Burnham.

Junior Class.

Rolland A. Macdonald.
Donald M. Christie.
G. Wallace Bain.
W. John Mulholland.
J. Clarke Eccles.
A. McD. Knight.
Franklin J. Brown.
Ethelwolf Scatcherd.
Hugh Stewart.
William Lawrence.
M. G. Cameron.

Articled Clerk.

Alfred Wright.

Ordered, That the division of candidates for admission on the Books of the Society into three classes be abolished.

That a graduate in the Faculty of Arts in any University in Her Majesty's Dominion, empowered to grant such degrees, shall be entitled to admission upon giving a Term's 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.

That all other candidates for admission shall pass a satisfactory examination upon the following subjects, namely, (Latin) Horace, Odes Book 3; Virgil, Æneid, Book 6; Cæsar, Commentaries Books 5 and 6; Cicero, Pro Milone. (Mathematics) Arithmetic, Algebra to the end of Quadratic Equations; Euclid, Books 1, 2, and 3. outlines of Modern Geography, History of England (W. Douglas Hamilton's) English Grammar and Composition.

That Articled Clerks shall pass a preliminary examination upon the following subjects:—Cæsar, Commentaries Books 5 and 6; Arithmetic; Euclid, Books 1, 2, and 3; Outlines of Modern Geography, History of England (W. Douglas Hamilton's) English Grammar and Composition, Elements of Book-keeping.

That the subjects and books for the first Intermediate Examination shall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C. S. U. C. c. 12), (C. S. U. S. caps. 42 and 44).

That the subjects and books for the second Intermediate Examination be as follows:—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law, C. S. U. C. c. 88, Statutes of Canada, 29 Vic. c. 28, Insolvency Act.

That the books for the final examination for students at law, shall be as follows:—

1. For Call.—Blackstone Vol. i., Leake on Contracts, Watkins on Conveyancing, Story's Equity Jurisprudence, Stephen on Pleading, Lewis' Equity Pleading, Dart on Vendors and Purchasers, Taylor on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

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

That the subjects for the final examination of Articled Clerks shall be as follows:—Leith's Blackstone, Watkins on Conveyancing (9th ed.), Smith's Mercantile Law, Story's Equity Jurisprudence, Leake 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.

That the Books for the Scholarship Examinations shall be as follows:—

1*st year.*—Stephen's Blackstone, Vol. i., Stephen on Pleading, Williams on Personal Property, Griffith's Institutes of Equity, C. S. U. S. c. 12, C. S. U. C. c. 43.

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

3*rd year.*—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Story's Equity Jurisprudence, Fisher on Mortgages, Vol. 1, and Vol. 2, chaps. 10, 11 and 12.

4*th year.*—Smith's Real and Personal Property, Russell on Crimes, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis' Equity Pleading, Equity Pleading and Practice in this Province.

That no one who has been admitted, on the books of the Society as a Student shall be required to pass preliminary examination as an Articled Clerk.

J. HILLYARD CAMERON,
Treasurer.