DIARY FOR SEPTEMBER.

2. Mon..Last day for delivery of appeal books.
4. Wed..Napoleon III. deposed, 1870.
5. Thurs. Lord Metcalfe, Gov.-General, died 1846.
6. Fri....Law Society Convocation meets.
7. Sat...Trinity term ends.
10. Tues..Sittings of the County Court of the County of York begin.
12. Thurs. Frontenac, Governor of Canada.
13. Fri....Quebec taken by British under General Wolfe, 1759.
14. Sat...Jacques Cartier arrived at Quebec, 1535.
16. Mon..Atlantic cable opened 1858. Sittings of Court of Appeal.
17. Tues..Toronto Assizes.
19. Thurs. Lord Sydenham, Gov.-General, died 1841.
24. Tues..Guy Carleton, Lieut. Gov. and Com.-in-Chief, 1766.
30. Sir Isaac Brock, Pres. Can., 1811.

CONTENTS.

Canada Law Journal.

Toronto, September, 1878.

We have delayed issuing this number so that we might include in it some notes of cases recently decided in the Court of Common Pleas.

The learned Chief Justice of Ontario has, we regret to learn, been compelled to seek change and rest, owing to a severe attack of illness. The best wishes of the profession and the public attend him. A little relaxation from the duties which he has so well and industriously performed, will, we trust, enable him shortly to return in renewed health and vigour. Mr. Justice Wilson at once, we understand, offered to give up his leave of absence, to assist in the judicial work during the Chief's absence. This is just the self-denying conduct we should have expected from that learned and devoted judge, but we trust that some arrangement will be made which will not render this sacrifice necessary.

The *New Zealand Jurist* falls foul of the Court of Appeal in that Colony for taking no exception to some fictitious appeals that were gravely argued before it by some professional gentlemen who possibly wished for an adjudication on some doubtful point, or who desired to air their eloquence or angle for business which was slow in coming to them. The Editor, who does not lack either energy, pluck or brains, must be a thorn in the side of a judiciary which, judging from the contents of the *Jurist* is not the wisest or most prudent in Her Majesty's dominions. It certainly is a serious offence to turn a Court of Justice into a Debating Club.

The Report of the Inspector of Division Courts for 1877 is before us. The first part is taken up with a discussion as to the taxation of clerk's and bailiff's fees; examples being given of bills of costs overcharged by those officers. These overcharges must have been a great source of unlawful profit to the officers, and corresponding loss to the litigating public. Much odium has fallen upon these Courts from conduct of this sort. If the Inspector has to any ex-

tent remedied the evil he will have deserved the thanks of the community.

The most interesting part of the Report to the general reader is a return of Division Court business for the year ending November 30th, 1877. The Courts in the County of Wentworth (including Hamilton) can boast of having 4,468 suits entered, but they only collected $35,186, whilst those of York (including Toronto), with about 4,800 suits, collected about $56,000; Wellington, with about 3,600 suits, collected about $43,000; Simcoe, with about 3,854 suits, collected about $46,000; Northumberland and Durham, with 3,615, collected $34,237; Bruce, with 3,527, collected $38,991. The total number of suits entered, exclusive of transcripts of judgment summonses, were 73,374. The aggregate amount of claims entered was $2,028,968, and the amount of money paid into Court was $777,967. These figures do not include a number of divisions from which no returns were sent. There is a great difference in proportion between the number of judgment summonses in different counties, *ex gr.*, in York they were in the proportion of 808 to 4,215 suits entered; in Wentworth only 388 to 4,468 suits, &c.

The above figures give some idea of the importance of these Courts, and allow ample scope for those interested in the statistics to work out their own theories to their own satisfaction.

The criminal law is the same in every part of the Dominion. The law of evidence in criminal cases is also theoretically the same; but practically there is as much difference in the administration of justice in criminal cases in the Province of Quebec and the Province of Ontario as there is between our Statute Law and the Code Napoleon. We have lately read in the daily papers the report of a prosecution in the City of Montreal of certain alleged Orangemen. Whatever may have been thought of it in Quebec, it would in Ontario bother even a lawyer, to say nothing of a layman to understand what the private notions of Sir Francis Hincks as to whether Orangeism was objectionable or otherwise, or whether a green flag or an orange rosette was the more exciting to the average Celt, had to do with the prosecution of Mr. David Grant, who at that time, at least, had not even been shewn to be a member of the alleged secret society. To a lawyer whose studies have commenced with Blackstone and ended with the Criminal Statutes of Canada and a text-book on evidence in criminal cases, the proceeding is unintelligible and farcical in the extreme. Almost the only question of fact deposed to by this witness, appears to have been as to which was the shortest route from one spot in the city to another; any carman at the nearest cab-stand could probably have given more satisfactory evidence on the point. The whole thing is so incomprehensible to us in this Province that we cannot discuss it, but it does seem a pity that those who have in their hands the administration of criminal justice in the largest city in the Dominion should not be at some pains to understand something of the principles of evidence applicable to a criminal enquiry in a British Court of Justice.

It will be of some interest to note a decision of the Supreme Court of Indiana (*The State* vs. *Hood*, Chicago Legal News, 1877, p. 376), in connection with the case of *Reg.* vs. *Roy*, recently before our Court of Queen's Bench. In the former case, it appeared in evidence that the divorce was granted in Utah, in a

suit between two persons, neither of whom was, at the time of the proceedings, a resident of Utah. It was held, that neither of the parties had placed themselves under the jurisdiction of Utah, and that the Court in Utah had not, and could not have, jurisdiction to grant the divorce in question, and that the same was utterly inoperative and void: that the divorce was granted in violation of the sovereignty and jurisdiction of another State, and in violation of the plainest principles of international and constitutional law.

It was also held, that the decree of divorce in that case was not within the operation of that clause of the Constitution of the United States, which declares that full faith and credit shall be given in each State to the public Acts, records, and judicial proceedings of every other State. That clause does not include judgments, and decrees which show upon their face that the Court rendering them had no jurisdiction in the premises.—

In the case of *Iley.* vs. *Roy*, the Court held that the evidence failed to disclose a *bona fide* intention on the part of Roy, to reside in Utah. It was therefore unnecessary to decide as to the constitutionality of the act which *The State* vs. *Hood* declares to be unconstitutional.

The question whether interest is recoverable after maturity on a note at the rate (more than the legal rate) specified in it, when nothing is said as to the rate after maturity, has recently been decided in the negative in the Supreme Court of Maine, in *Eaton* v. *Boissonault*, 5 Rep. 270. The *Central Law Journal* thus comments on that case:—

"This decision is in accord with most of the authorities. It was so decided in *Ludwick* v. *Huntsimger*, 5 Watts & Serg. 51; *Brewster* v. *Wakefield*, 22 How. 118; *Burnhisel* v. *Firman*, 22 Wall. 170; and by the English House of Lords in the recent case of *Cook* v. *Fowler*, L. R. 7 H. L. 27. This rule has been followed in Connecticut, in *Hubbard* v. *Callahan*, 42 Conn. 524, and in Rhode Island in *Pierce* v. *Swanpoint Cemetery*, 10 R. I. 227. The reason given by Lord Selborne, in the last English case, is, that interest for the delay of payment, *post diem*, is not given on the principle of implied contract, but as damages for a breach of contract; that while it might be reasonable, under some circumstances, and the debtor might be very willing to pay five per cent. per month for a very short time, it would by no means follow that it would be reasonable, or that the debtor would be willing to pay, at the same rate, if, for some unforeseen cause, payment of the note should be delayed a considerable length of time. In the Rhode Island case, the court says that if the parties to the note, or other contract for the payment of money, intend that it shall carry the stipulated rate of interest till paid, they can easily entitle themselves to it by saying so, in so many words. On the other hand, in a recent case in Massachusetts, the court held that when a recovery is had upon a note bearing ten per cent. interest, the plaintiff is entitled to interest at the same rate till the time of verdict. *Brann* v. *Hursell*, 112 Mass. 63. The reason given is, that 'the plaintiff recovers interest, both before and after the note matures, by virtue of the contract, as an incident or part of the debt, and is entitled to the rate fixed by the contract.'"

The rule in this country has, up to this time, been in favour of the rate of interest fixed by the parties. See *Howland* v. *Jennings*, 11 C. P. 272; *Montgomery* v. *Bouden*, 14 C. P. 45; and *Young* v. *Pluke*, 15 C. P. 360.

ASSIGNMENT OF CHOSES IN ACTION.

The former general rule of law that choses in action cannot be assigned so as to give to the assignee a right to sue for it at law in his own name, has been to a considerable extent changed by the late Statute of Ontario, 35 Vict. c. 12, which

now forms part of the Mercantile Amendment Act in the Revised Statutes (c. 116, ss. 6. 12). The Act is retrospective in this sense that it applies to assignments of debts and the like made before it came into operation, so as to give the assignee the right to sue in his own name: *Cole* v. *Bank of Montreal*, 39 U. C. R. 54, and *Wallace* v. *Gilchrist*, 24 C. P. 40.

It has been held that the Act does not apply to cases where the assignment is made by way of pledge to secure a smaller sum and when the assignee has not absolutely transferred his whole interest: *Hostrauser* v. *Robinson*, 23 C.P. 350. But the Act may properly extend to the assignment of one of the payments in a mortgage payable by instalments, or a specific sum of money due on a covenant in a deed providing for other independent matters between the parties, or for one of two distinct claims embraced in an award: see *Wellington* v. *Chard*, 22 C. P. 518. So a valid assignment under the statute can be made of a sum of money awarded, without an assignment of the bond of submission as the foundation of the contract: *Ib.*

Neither does the Act extend to cases where the assignee holds the chose in action as a trustee for others and without any beneficial interest therein himself. To borrow the language of Chief Justice Moss, the Legislature had no intention of permitting the holder of a doubtful claim to transfer it for the mere purpose of litigating it in the name of the assignee and of avoiding personal responsibility. That would invite serious abuses of the law: *Wood* v. *McAlpine*, 1 App. R. 242. Of course, the Act was never intended to make claims assignable which by the policy of the law could not be validly assigned before the statute was passed, such as the future half-pay of an officer and a bond given by a husband and his surety to a trustee to secure payment of future alimony to his wife, in pursuance of a decree of the Court of Chancery: *Reiffenstein* v. *Hooper*, 36 U. C. R. 295. Apart from this consideration however a future debt or a contingent debt may be validly assigned: *Percy* v. *Clements*, 22 W. R. 803.

Among other cases decided upon this statute may be mentioned *Fowler* v. *Vail*, 27 C.P., 417, where it was held that a judgment was *prima facie* a debt and as such assignable under the Act so as to enable the assignee to sue therefor in his own name: *Blair* v. *Ellis*, 34 U. C. R. 466. In this case a curious question arose as to the effect of one partner assigning to his partner and himself a debt due from the defendant to the assignor. It was determined that both partners could sue for the debt in their joint names. In *Howell* v. *McFarland*, 2 App. R. 31, it was held that one partner had the right to assign debts due to the firm, so as to entitle the assignee to sue for the debts under the statute.

As to matters of pleading it has been decided that allegations in declaration that a chose in action was duly assigned in the manner required by the Act are sufficient upon demurrer: *Cousins* v. *Bullen*, 6 P.R. 71. Also, that where it appears that the assignor has divested himself of all beneficial interest, and the thing assigned is a debt or chose in action, the action *must* be brought in the name of the assignee: *Dawson* v. *Graham*, 41 U.C.R., 540. And in *O'Connor* v. *McNamee*, 28 C.P. 141, it was laid down that a party who assigned a debt to another could on a re-assignment to himself sue as if he had never assigned, and that he could reply such re-assignment to a plea setting up the assignment and that there would be no departure.

Upon the whole, and having regard to

the Administration of Justice Act, this statute has made no very great or important change in the law. No doubt the object of the Legislature was to enable a person, who had become beneficially entitled to a chose in action, to sue upon it at law in his own name, instead of being obliged to use the name of his assignor, or to resort to a Court of Equity: *Wood* v. *McAlpine*, 1 App. R. 241. And to the extent to which the Act applies, assignees of choses in action have a status and condition assigned to them by the statute law of the land; and for all matters touching their rights, privileges and liabilities, we must henceforth look to the statute law, the construction of which in all Courts must be uniform according to the terms expressed in the statute: *Smith* v. *Niagara District Mutual Insurance Company*, 38 U.C.R. 577. But when it is remembered that the assignment of debts and choses in action was always recognized in Equity and could be enforced there by the assignee, and that by the Administration of Justice Act, a purely money demand may be prosecuted at law, although the plaintiff's right to recover may be an equitable one only, it is evident that the special Act under consideration is not of much practical efficiency. In fact it may be broadly said that the Administration of Justice Act does in effect embody the terms of one of the general orders of the Court of Chancery, whereby it is provided that an assignee of a chose in action may institute a suit [action] in respect thereof without making the assignor a party thereto: G. O. 58; R. 7.

LAW SOCIETY.

EASTER TERM, 1878.

The following is the *resumé* of the proceedings of Convocation during this Term, published by authority.

Monday, 20th May, 1878.

The minutes of last meeting were read, approved and adopted. The following gentlemen received certificates of fitness to practise as Attorneys, namely:

Messrs. T. G. Meredith, M. Wilson, I. Campbell, T. Ridout, O. R. Macklem, W. F. Franks, W. E. Higgins, J. J. Manning, J. W. Holmes, J. Robinson, J. Craig, H. Vivian, and L. Olivier.

The petitions of Messrs. Galt, Dow, Beck, Sheppard, Simpson, Anderson, Riordan, J. Hodgins, Brown, Doyle and Hardy were referred to the Committee on Legal Education.

The report of the Examiners on the Intermediate Examination was received and adopted.

The report of the committee appointed last Term to meet the Attorney-General on the subject of fees payable for shorthand writers' notes, was received and read, reporting that an Order in Council had issued, reducing the fees for shorthand writers' notes.

The report of the committee on the petition of Thomas G. Rothwell was read, recommending that its prayer be granted.

The petition of John Rowe was referred to the Finance Committee.

The petitions of Messrs. Glenn, McLean, McDonald, and Lefroy were referred to Committee on Legal Education.

Tuesday, 21st May, 1878.

The minutes of last meeting were read and approved.

The Legal Education Committee reported that Mr. Lefroy had been duly called to the English Bar, and had complied with the Rules of the Society, of June, 1876, and was entitled to be called to the Ontario Bar.

Ordered, that Mr. Lefroy be called to the Bar.

The petition of Mr. Theodore King, a member of the English Bar was referred to the Committee on Legal Education. The petition of Mr. Harcourt was referred to the same Committee.

The report of the Examiners for Call to the Bar was received.

Ordered, That Messrs. Meredith, Galt, Mackelcan, Christie, Simpson, Anderson, Worrell, Wells, Craig, Nicholls, Hardy, and VanNorman be called to the Bar.

The gentlemen named, and Mr. Lefroy were accordingly called to the Bar.

The report of the Committee on Legal Education on the Primary Examinations was received and read. The following gentlemen were admitted :—

Graduates.

Messrs. Cruickshank, Herald, Ballagh, Bell, Curry, Macdonald, Ritchie, the Hon. David Mills.

Matriculants.

Messrs. Yarnold, Howard, and Anderson.

Junior Class.

Messrs. Chapple, Leeming, Mills, Mulligan, Macrae, Fraser, Hamilton, H. C., McKenzie, Mahaffy, Lees, Monk, Werrett, Thurston, Morphy, Titus, Hearn, Murchison, Wallbridge, Walker, Kean, Beardmore, Fowlds, Mahoney, Garvin, Martin, Hammond, Ruttan, Haight, Atkinson, Stewart, Kilgour, Conacher, Mylne, O'Keeffe, Sorley, Greene, Reid, Menzies, Reynolds.

Articled Clerks.

Messrs. Wright, Holmes, Lawrence, Hawkesworth, Start.

The report of the Finance Committee on the case of John Rowe was adopted, directing his certificates to issue, on payment of arrears of fees.

The Balance Sheet for the first quarter of 1878 was laid before Convocation.

Saturday, May 25th, 1878.

The minutes of last meeting were read and approved.

The Hon. Stephen Richards, Q.C., was re-elected Treasurer of the Society for the coming year.

The following Standing Committees were appointed :—

Finance.—D. B. Read ; Hon. James Patton ; Hon. M. C. Cameron ; John Crickmore ; D. McCarthy ; E. Martin, F. Osler.

Reporting.—James Maclennan ; James Bethune ; B. M. Britton ; E. Martin ; J. Hoskin ; D. McCarthy ; F. McKelcan.

Library.—Æmilius Irving ; Thomas Hodgins ; F. Mackelcan ; H. Cameron ; D. McMichael ; Jas. Bethune ; Jas. Miller.

Legal Education.—Thos. Hodgins ; T. M. Benson ; T. Robertson ; Hon. A. Crooks ; F. Osler ; J. Crickmore ; A. Leith.

Discipline.—F. Osler ; J. Maclennan ; Thos. Hodgins ; T. M. Benson ; J. Hoskin ; D. McMichael ; Thos. Robertson.

The Legal Education Committee reported that Mr. Theodore King had been duly called to the English Bar, and had complied with the Rules of the Society, of June, 1876, and was entitled to be called to the Bar of this Province.

Ordered, That the Report be adopted, and that Mr. King be called to the Bar. Mr. King presented himself, and was called accordingly.

The same Committee recommended that Mr. Harcourt be allowed his second Intermediate Examination as of Hilary Term, 1878.

The same Committee recommended that Mr. Joseph Woodman may receive his Certificate of Fitness.

Ordered, That a Certificate of Fitness be granted to Mr. Woodman.

The same Committee recommended that Mr. W. J. Eyre be admitted as an Articled Clerk as of Hilary Term, 1878, and Mr. H. P. Drought as a Student-at-Law as of the same Term.

Ordered, that this Report be adopted.

The Report of the Examiners of the Law School was laid before Convocation and ordered to be considered in Trinity Term.

A communication was received from the Librarian relative to the abstraction of one of the books (Leake on Contracts) from the Library, and its retention for many months by a member of the Society.

Ordered, That the communication be referred to the Committee on Discipline.

Messrs. Ridout, McDougall and Murdoch were called to the Bar.

Mr. Hodgins' Rule for the establishment of a Fund, to be called, "The Law Benevolent Fund," was referred to a committee composed of the Treasurer, and Messrs. M. Cameron, Leith, Irving, Hodgins, Read, Maclennan, and Crickmore.

Ordered, that Mr. Beck receive a Certificate of Fitness, on furnishing proof that he has served three years from 8th June, 1875, under articles of clerkship.

Ordered, That Messrs. Evans and Kingsford be paid for conducting the Primary Examinations of this Term, and be appointed Examiners for next Term.

Ordered, That Mr. Michael J. Doyle receive his Certificate of Fitness.

Friday, 7th June, 1878.

Ordered that Mr. Henry Ryerson Hardy receive his Certificate of Fitness.

The chairman of the Reporting Committee presented two reports, one referring to the vacancy occasioned by the death of the Reporter of the Court of Queen's Bench, and the other stating the progress that had been made in the Reports of the various Courts.

Ordered, that these reports be received, read, and considered forthwith.

The reports were accordingly read, considered, and adopted.

Ordered, that the Secretary give notice under Rule 104, of the intention to appoint a Reporter for the Court of Queen's Bench at the meeting to be held on 25th June.

The petitions of Messrs. Crowther, Glenn, McLean, Bain, McKenzie, Riordan, and Dow, were referred to Legal Education Committee.

Saturday, June 8th, 1878.

The Reports of the Legal Education Committee on the petitions of Messrs. Harcourt, Brown, and Dow were adopted.

The petition of C. E. Macdonald, asking that his Intermediate Examination passed as a Student-at-Law be allowed him as an Articled Clerk, was granted.

Messrs. Black and Robertson were appointed Auditors for 1878.

Mr. Hodgins was appointed the Representative of the Law Society in the Senate of the University, from Easter Term, 1878, up to Easter Term, 1879.

The Report of the Examiners on the Law School Examinations was referred to the Legal Education Committee.

Tuesday, June 25th, 1878.

The Reports of the Legal Education Committee on the petitions of Messrs. Crowther, Bain, Riordan, Dow, McKenzie, and Rolph were adopted.

Mr. Wood's petition was referred to same Committee.

Mr. W. E. Hodgins' petition relative to new Ontario Law List and Legal Directory was referred to the Finance Committee.

The Report of the Finance Committee

recommending the investment of the Reserve Funds of the Society in Government securities was adopted.

The Treasurer laid before Convocation a letter from Robert G. Dalton, Esq., Clerk of the Crown and Pleas, Queen's Bench, dated 15th June, 1878, enclosing a Rule in the matter of the Hon. J. G. Currie, one of the Attorneys of the said Court of Queen's Bench, which Rule was made absolute on the 7th June, A. D. 1878.

Salter J. Vankoughnet, Esq. was appointed Reporter of the Court of Queen's Bench.

SELECTIONS.

OUR UNPAID MAGISTRACY.

In these days we are by no means in danger of setting too great store upon the "Wisdom of our Ancestors." The phrase itself, from an undue and foolish employment of it in the last generation, has been ridiculed in this; and we are much more likely in these days to fall into the error of denying due credit to the sagacity of our forefathers. If ancient institutions have become unsuited to modern requirements and modes of thought, it may be that this is owing in some cases not so much to the intrinsic crudeness of the institutions themselves, or to the quickened intelligence of a more enlightened age, as to a misconception of the designs of our ancestors and a neglect of the precautions which they were careful to observe.

If is often quoted as a great anomaly and even a great abuse in our elaborate civilization, that so large and important a share in the administration of justice should be confided to men of no legal training, and whose only qualification for the exercise of juridical functions is the possession of a certain social status. Coke speaks of the jurisdiction of Justices of the Peace as "such a form of subordinate government for the tranquillity and quiet of the realm as no part of the Christian world hath the like." And it would still be difficult to find a counterpart to this emphatically English institution. Year after year the Press is full of complaints of the incompetency of the "Great Unpaid," and yet year by year fresh judicial duties are imposed upon them. Large towns have found refuge from the ignorance of amateur tribunals in securing the services of trained lawyers as "Stipendiary Magistrates," and the Court of Quarter Sessions has been rendered to a great extent innocuous by the prevailing influence of the Recorder. But an enormous mass of judicial business is every day transacted by men who, ignorant of the elements of law, are almost at the mercy of noisy and unscrupulous solicitors. Making all allowance for misstatements and exaggerations, no one, who knows anything of the administration of the law in England, can doubt that serious miscarriages of justice are very frequent in our inferior tribunals. The main argument indeed in favour of the existing treatment is its cheapness. The work may be ill done, but it is done for nothing. And the general substitution of Stipendiary Magistrates for the ordinary Justice of the Peace would involve a heavy burden on the rates.

It is perhaps worth while to refer back to the origin of the commission of the peace, and observe how our legislators of five hundred years ago took pains to secure a magistracy at once trained and gratuitous.

Justices of the Peace were first appointed at the beginning of the reign of Edward the Third. The "Conservators of the Peace," who existed previously to that time do not appear to have exercised functions of a judicial nature. What should constitute the qualifications for the new office, early became a matter of legislative solicitude. A Statute passed in the eighteenth year of the reign of Edward the Third, says:—"Two or three of the best of reputation in the counties shall be assigned Keepers of the Peace by the King's Commission; and at what time need shall be, the same, with *other wise and learned in the law*, shall be assigned by the King's Commission to hear and determine felonies, &c." Whatever may have been its precise meaning, this Act does not appear to have been carried out very successfully; for three years later we find the Commons charged to advise the King what was the best way of keeping the peace of the kingdom; and they thereupon recommended that six persons in every county, of whom two should be "de plus grantz," two knights, and *two men of the law*, and so more or less as need should require, should have power and Commission out of Chancery to hear and determine the keeping of the peace. No further statute, however, seems to have been passed upon the subject, until the 34 Edward III., c. 1., which enacts that, "In every county of England shall be assigned for the keeping of the peace one lord, and with him three or four of the most worthy in the same county, *with some learned in the law*." Again, in the thirteenth year of Richard II., we find a similar provision: "Justices of the Peace shall be made of new

in all the counties of England, of the most sufficient knights, esquires, *and gentlemen of the law* of the said counties."

From these statutes there appears a proper jealousy of entrusting the decision of legal disputes entirely to the discretion of of unprofessional men, and from the language of the last statute cited, it is evident that at this early period there must have been a considerable number of educated lawyers resident in the counties, from amongst whom it was proposed to select some of the Justices. There are many proofs that soon after the Norman Conquest the study of law became popular amongst the ruling classes of the country. This taste developed itself in a remarkable degree during the Plantagenet period. It is impossible for the Londoner to traverse the innumerable courts and quadrangles associated with the names of ancient Inns, which abound in that great law territory lying between Drury Lane and the Old Bailey, and from the river northwards to Bedford Row and Smithfield, without reflecting that he is amidst the ruins of a great University. The quaint halls of the remaining Inns of Chancery, with their emblazoned windows looking out on trim parterres, the stately gardens of Gray's Inn, and the terraces of the Temple involuntarily remind the Oxford or Cambridge man of his undergraduate days, and the more classic sites upon the banks of the Isis and the Cam. Fortescue, writing in the reign of Henry the Sixth, tells us that there were at least 100 students in each of the ten then existing Inns of Chancery, and in some of them a greater number, and that in the smallest of the Inns of Court there were full 200 students. There must, therefore, have been about 2,000 Students of Law at that time in London. The number seems incredible when we consider the comparatively small population of the country in that age. Macaulay estimates the population of England, in the year 1685, at about five and a half millions, and two hundred years before that date, it must have been much smaller. At the present day, when London alone has a population of nearly four millions, and when, not only this country, but India and our vast Colonies, present wide fields for practice to members of the English bar, there are not more than 2,300 or 2,400 students at the four Inns of Court, and some of these are Irish gentlemen, who only keep four terms, and are called to the Irish Bar by the King's Inns of Dublin. Fortescue's figures are, however, somewhat misleading. According to a Commentary on his "De Laudibus," written in the reign of Henry the Eighth, it appears that, under the name of Students, the author included the Inner and Utter Barristers (or "Apprentices") of the Four Greater Inns. It appears also that the number of students was very much greater in the reign of Henry the Sixth than in that of his father. This increase was due, probably, not so much to a greater demand for barristers, as to a growing recognition of the utility of attorneys, a class of practitioners who, as yet comparatively few in number, had only recently begun to assume an independent existence, and who still pursued their studies along with the junior students of the Bar at the Inns of Chancery. We have a curious proof of the multiplication of attorneys, in the time of Henry the Sixth, in a statute of his reign, which recites that not long previously there were only six or eight attorneys in all Norfolk and Suffolk, "*quo tempore magna tranquillitas regnabat;*" but that they had recently increased to 24, and much strife and litigation was said to be the result.

Nevertheless, after taking everything into account, it remains certain that the proportion of Students of the Bar to the population of the country in early times was considerably greater that at present. It is not too much to say that, in the time of Fortescue, while Oxford and Cambridge were the Universities of the poor, the London Inns of Court and Chancery were the University of the rich. The former were wealthily endowed, and the students were for the most part pensioners; at the latter, the well-to-do youth of the country supported themselves at their own expense, and lived in considerable luxury. Oxford and Cambridge were the training schools for the Church, the London Inns were nurseries for the Bar and the Council. At the Inns of Chancery, at which the student passed a year or two of study before being admitted to one of the four great Inns of Court, the curriculum was by no means confined to Law; it embraced, as we learn from the "De Laudibus," sacred and profane history, music, dancing, singing, and other accomplishments. "All vice was discountenanced and banished," says Fortescue, "and everything good and virtuous was taught;" a rather overdrawn eulogium, or else, if we may accept Shakespearean allusions as trustworthy, degeneracy very soon set in. In course of time it became customary for a young man to graduate at Oxford or Cambridge before proceeding to his studies in London. In the time of Elizabeth, this was perhaps the general practice, and thus it happened that the general education afforded by the Inns of Chancery became unnecessary; those ancient institutions gradually broke off all connection with the Inns of Court, and fell wholly into the hands of the lower branches of the legal profession.

It is probable that only a small propor-

tion of those who, in early times, passed through the Inns, even actually practised, or intended to practise, at the Bar. Under the Feudal System, a knowledge of law was of vital importance to the landowning classes. The Hundred Courts and the Courts Baron were far from being mere registries of real property or tribunals for the exaction of manorial rights. They were invested with considerable civil and criminal jurisdiction. The lord of the manor prided himself upon his civil rule as well as upon his martial prowess, though we learn more from history of the latter than of the former. It was not only cadets, but the future heads of noble houses, who became students of the Common Law. The wealthy lords of many manors were compelled to employ stewards to perform, at least, a part of their judicial functions, and that a considerable amount of legal learning was considered a necessary qualification for presiding vicariously over the Feudal Courts, may be gathered from Chaucer's description of the Manciple of the Temple :

"Of masters had he more than thrice ten
That were of law expert and curious,
Of which there was a dozen in that house
Worthy to been stewards of rent and land
Of any lord that is in England."

It is not necessary to suppose that many of the aristocratic students of the Inns went through the formality of being "called" to the Utter Bar. Most of them, probably, contented themselves with such elementary learning as could be acquired at the Inns of Chancery, without proceeding to the Inns of Court at all. It may be conjectured, that the expressions "men of the law," and "the learned in the law," used in the statutes of Edward the Third and Richard the Second, which have been quoted, were intended to include all who had received their training at the London Inns, whether actually called to the Bar or not. Justice Shallow is represented by Shakespeare as having been educated at Clement's Inn, and it may be inferred that he never proceeded to one of the Inns of Court, or he would have bragged of it as he did of his doings at Clement's Inn. It is not unlikely that Lucy of Charlecote, who sat for Shallow's portrait, was himself an ex-student of Clement's Inn, or some other Inn of Chancery, and selected on that account as a member of the Commission of the Peace. The supposition, that the expressions "men of the law," and "the learned in the law," may receive the liberal interpretation here assigned to them, and that membership of an Inn of Chancery was deemed a qualification for the Magisterial Bench, derives some confirmation from the fact that this was exactly the qualification required in those days for the exercise of the profession of an attorney. The history of attorneys is somewhat singular. They were originally mere proxies, and before the thirteenth year of Edward the First, no one could be appointed to that office without letters patent. And for a considerable period after that date, the persons usually selected as attorneys were counsel below the degree of serjeant. By degrees the two professions became distinct, and attorneys were appointed exclusively from amongst members of the Inns of Chancery. For some time, indeed, this was the only qualification required ; and it was not until the reign of Henry the Fourth, that a test examination of learning and fitness was imposed upon candidates for the office of attorney. So late, indeed, as the reign of Queen Anne, a rule was made requiring all attorneys to come to Commons at the Inns of Chancery. This rule has long been obsolete, and now the Incorporated Law Society alone superintends the legal training of solicitors. Such of the Inns of Chancery, however, as remain are yet in the hands of small coteries of members of the profession, who, under the names of "Principals," "Ancients," "Chief Rulers," &c., maintain many curious customs and ceremonies in connexion with these ancient Institutions, and dine in their respective halls three times during every Law Term. There are several remaining traces of the common origin and educational connexion of barristers and attorneys. Until quite recently a limited number of attorneys were admitted as Students of the Inns of Court, and there is even now a venerable solicitor, the last surviving possessor of this privilege, who makes a point of dining once or twice during every term in Gray's Inn Hall, where he takes his place next below the junior barrister for the time being. The sleeveless gown which is used by solicitors who practise in the County Courts is no other than the ancient law tudent's gown, worn still during the dinner hour alikely candidates for the Bar at the Inns of Court, and by the remaining members of the Inns of Chancery.

It can hardly be doubted that attorneys were included amongst the "men of the law," upon whom it was thought desirable by our ancestors of the fourteenth century to confer a share in the duties of the magistracy. A statute, passed early in the present reign, and the propriety of which cannot be for a moment doubted, has, however, now virtually excluded practising solicitors from the Commission of the Peace.

The question is, perhaps worth mooting in our own days if it not feasible, as it certainly would be beneficial, to insist upon some degree of legal training as an essential qualification for the magistracy.

To become a J. P., ought to be an object of honourable ambition amongst county families. If a condition were imposed that none but barristers should be appointed to the commission, those socially eligible for the post would probably lose no time in qualifying themselves. The examination for call to the Bar is no longer merely nominal. Without entailing a very long or severe course of study, it secures at least a fair knowledge of general principles, and certainly any one who has passed it would be much better prepared to partake intelligently in the administration of justice, than one absolutely without legal education. He would have acquired, if little else, something of what is known as a "legal mind." —*Law Magazine.*

"DEVILS" OF THE ENGLISH BAR.

Considering the antipathy which any experience of the law excites among suitors, it is wonderful what fascination it seems to exercise over some of its exponents, or rather over its would be exponents. We refer to that numerous class of young barristers who pursue the avocation of "devils." To the uninitiated we will explain what is meant by a devil. The picture is not to the lay mind a very attractive one, and yet there are a good many young gentlemen at the Bar who would give one of their ears to be in the shoes of a more fortunate friend who occupies the proud position of devil to a leading junior. In the first place, a devil has no work of his own; if he had he could not properly exercise his demoniac functions. His duties consist in getting up masses of papers, and in holding the less interesting of the briefs of another barrister who has got more work than he can get through; in getting abused by the solicitor who does not approve of the work being done by a deputy, and who, if the case is lost, puts it down to the incapacity of the deputy aforesaid, and if it is won never dreams of awarding any thanks, still less briefs, to the winner. And the odd part of it all is that not one groat does the devil receive. He has to keep up chambers, a share of clerk, and himself, and to be constantly at the beck and call of his patron, for he knows if he is not, or if the work be carelessly done, there are seven, or, indeed, seventy others, worse or better than himself, as the case may be, ready to seize on the post with avidity. Another odd feature of the profession is, that the devil really enjoys his work until he gets tired of it. In no other profession that we know of is there presented the spectacle of one man doing another's work for nothing and really liking it. He is not always, to the non-legal mind, a very interesting person to meet in general society, for his conversation is apt to confine itself to recent cases, and the "points" taken or not taken therein, interspersed with choice legal anecdotes, which are about as suitable at an ordinary dinner party as Mr. Bob Sawyer's illustration of the removal of a tumor from a gentleman's head, by means of a quartern loaf and an oyster knife, was at Dingley Dell. Of all shop—and shop of any kind is wearisome—legal shop falls the flattest on the ordinary diner-out.

The advantages which are gained, or are supposed to be gained by deviling are, firstly, that the young barrister gets experience, and what is of most importance, something to do during the weary years of waiting which tail off so many; secondly, that he is supposed to have opportunities for making friends of the Mammon of Unrighteousness in the shape of solicitors who, when the leading junior to whose skirts the devil clings, passes into the smooth harbour of "silk," will bestow on him the briefs which they formerly showered on his patron. Too often the hope is a delusive one, and after having served so many years for the Rachel of practice, the legal Jacob sees her pass into the arms of a whiskerless stripling just out of his pupilage, who is the son or the nephew, or more often the son-in-law of a solicitor. It is no new discovery that there is a block in all professions, and that in no profession is there anything like the block that there is at the Bar. It is no exaggeration to say that there is work for ten and a hundred to do it. No man without interest should in these days dream of going to the Bar unless he is possessed of exceptional abilities, and even then he must be sure that they are the right sort of abilities.

Learning will not serve him without tact; and above all he must cultivate what is called a good manner both with judges and juries. We once heard a judge say of an eminent Queen's Counsel that there was something about his manner which made him *want* to give him the case whatever his own opinion might be as to the justice of his cause. But better far than the most transcendent abilities it is to have an uncle a solicitor. And now a word as to solicitors. There doubtless are many firms of solicitors who look after the interests of their clients in the matter of employment of counsel with scrupulous honour, and who only give their brief to those whom they think most likely to conduct the case to the best advantage; but there are an increasing number of solicitors who adhere too closely to the Scriptural doctrine that it is a man's duty to provide for his own family first, and who intrust the interests of their clients to the care of their barrister relations, regardless of their incapacity to do more than scramble through the work somehow. It is, perhaps, natural that they should do so, but it is the presence of so many barrister-solicitors, or solicitor-barristers, which crowds out an immense number of really capable men who come to the Bar provided with brains but unprovided with interest. Some twenty or thirty years ago a man coming to the Bar with a University reputation, and with the patience to let the profession see that he meant to stick to it, was certain to make a living, sometimes a fortune. Now it is very long odds that he will nat make either.

No doubt the prizes at the Bar are such as to make it worth while for a man to go through a good deal to gain them, and the excitement of a "talking" practice, when once obtained, seems to have a fascination which renders it impossible for him who has once experienced it ever to retire into private life again, whatever his personal means may be. Sir Edmund Beckett, the present leader at the Parliamentary Bar, who is supposed to have inherited two fortunes and to have made a third at the Bar, was once asked why he did not give up practice now that he was such a rich man, and he is said to have replied that "It was the cheapest amusement he could find." Probably there are many parliamentary barristers who wish Sir Edward would invent a more expensive one.

The as yet briefless one has, however, many reasons for thinking his own profession is not such a hard one after all, even if he does not rise through the successive gradations of leading junior and Queen's Counsel, and a seat in Parliament, to being Attorney-General and finally to the Bench; he knows that there are many little pickings in the shape of County Court Judgeships and Police Magistracies, which cannot go outside his own profession.—*London Week.*

BREACH OF PROMISE.

A bill introduced into the British Parliament by Mr. Herschell, Q.C., to abolish the action for breach of promise of marriage, has been received by the newspapers, according to the *Solicitors' Journal*, with "a chorus of approval." The *Law Times*, in a very able article on the subject, warns the framer of the bill that he must not expect to succeed without opposition, for, it says, the institution has many admirers and more readers. But, like other idols of a people or a class, this one stands condemned as an offence to good taste, and an exception to sound principles. As a tolerated custom, the action for breach of promise of marriage has long been extinct on the male side of the question. No well-advised man would venture to call a woman into court for not fulfilling her promise to marry him. Yet no difference can be pretended between the case of the woman and that of the man. There are, indeed, women who say that there is a difference—that a man can easily find a wife, and that his prospects are not blighted by a disappointment of this kind; but the women who say this are not the women to be listened to on such a question. These actions are confined not only to women, but to a peculiar class of women—scheming, enterprising, and anxious to hook a victim. For the woman has suffered no loss, but rather gain, by a man breaking his word, for her interest can be only the same as his; and if it is best he should not marry her, it is equally best that she should not marry him, which is really the question at issue.

The moral obligation to fulfil a promise to marry is so great, that there can be no doubt it often prevails over considerations that should decide the other way. If a

man finds on reflection that he was not justified in promising a happy home, for he had not the means of fulfilling that promise, or finds, on better acquaintance, that he was mistaken in his estimate of the lady, or that she was mistaken as to him, it certainly is advisable that he should not be held bound to what is more or less wrong. Even in the extreme case of a change of feeling, for no assignable reason but the merest caprice, or because the man has seen somebody else that he likes better, it has to be remembered that in the ceremony of marriage the man promises to love the woman, which, in this supposed case, he does not, and can not do. The woman who sues a man at law for breaking his promise, has to complain that he would not marry her, even when he had ceased to love her, and she, therefore, claims for a husband a man that does not love her, and tells her as much. Such a claim is almost revolting; but it really is the claim that is made in these cases. A lady of delicate feeling would rather die than make it, whether in private, or, still more, with all the glaring publicity of an assize court, amid the scowls and the sneers of an assembled county. When a promise is broken, both parties must feel that a great mistake has been made, and that now the less said or done about it the better. There will be more blame on one side than on the other, and society will award to each their due share. The offender, of whichever sex, does not go unpunished, for the broken word will never be forgotten, and nobody will ever listen to another promise made by such a person, without the reflection that he cannot quite answer for himself, and is not to be entirely relied on. Vacillation, caprice, unsteadiness of principle or feeling, are scarcely less contemptible than formal breach of promise, and any sensible man or woman will beware of those who can not depend on themselves, and, therefore, can not be depended on by others.

The existing state of the law making a promise to marry a legal contract, defeats its purposes by encouraging long engagements and endless delays. We cannot but be sorry to deprive people of one of their amusements. But good taste has put an end to many other amusements not more exceptionable. Cock-fighting, bull-baiting, and the prize ring are things of the past in respectable quarters in this country, and it is quite time that the action for breach of promise of marriage should follow them.—*Central Law Journal.*

CANADA REPORTS.

ONTARIO.

INSOLVENCY CASES.

COUNTY COURT OF MIDDLESEX.

RE SANBORN, AN INSOLVENT.

Right of an Insolvent to retain his watch fom the Assignee.

Held, that an insolvent has no right to retain a valuable and expensive watch from his assignee on the ground that it is necessary and ordinary wearing apparel. [London.

This was an application under the 143rd section of the Insolvent Act of 1875 for an order to require the insolvent to deliver up his watch to the assignee.

Bertram opposed the application.

E. Meredith, contra.

ELLIOTT, Co. J.—The 16th section of the Insolvent Act of 1875 vests in the assignee all the personal property of the insolvent, except such as is exempted from seizure and sale under execution.

By the 2nd section of chapter 66, Revised Statutes of Ontario, the necessary and ordinary wearing apparel of the debtor and his family is exempted from seizure under execution.

The question is, whether the watch of the insolvent, valued at $150, and which he has been in the habit of wearing on his person, comes under the head of necessary and ordinary wearing apparel. If it does not, then the insolvent has no right to withhold it from the assignee.

I am referred to the definition of the word "*apparel*" as given in Worcester's Dictionary and elsewhere, from which it appears that this word does not mean clothing alone, but comprises also such ornamental things as are usually worn. It is accordingly contended that a watch being an article which is usually worn on the person, not so much for ornament as for use, must be regarded as an article of necessary and ordinary apparel. This might lead to serious consequences. For instance, a person perceiving that insolvency was likely to overtake him, might invest a large portion of his funds, or indeed in some cases he might readily invest all his probable assets, in the purchase of a costly watch, set with costly jewels, and claim to have it exempted from the control of the assignee, and thus preserve his property from his creditors. Perhaps so gross a case might come within the domain of fraud, and in this way the insolvent might be reached. But it is easy to see how a very large expenditure could be incurred in the purchase of a valuable watch, and secured to the

insolvent, if in all cases a watch can be said to be a necessary and ordinary article of apparel. In this case the insolvent's estate will pay 20 cents in the dollar, and previous to his final collapse he compounded with his creditors for 60 cents in the dollar. Some eight months previous to the composition he became the purchaser of this watch, which he values at $150. Now was this watch such an article as in ordinary cases would be worn by a person in his condition? I think it is not reasonable that a man pecuniarily situated as he was, should have $150 invested in a watch. Neither is it shown that there was any necessity for his having a watch at all. Nothing more is urged than the usual convenience of a watch to any one. If this was a common inexpensive watch, I should feel disinclined to accede to this petition. But the words, necessary and ordinary, must be taken to have a relative signification. That is to say, this meaning must be governed by comparison and by circumstances. *Spitzen* v. *Chaffer*, 14 C.B., N.S., 714, shows that there is a substantial distinction between wearing apparel and necessary wearing apparel. In this case I feel myself compelled to look to the reasonableness of the thing, otherwise a man might, as I have said, invest a very large sum in a watch, or it might be in a diamond pin, or some such article, and claim to have the article exempted, thus opening the door to a fraud upon his creditors.

Eunbolf v. *Alfred*, 3 M & W., 249, is sufficient to show that the watch could not have been seized under an execution while on the person of the debtor, but that question is not important here, inasmuch as no seizure is in question. All that is asked for is an order for the insolvent to give up the watch. I think this order should under the 143rd section be allowed. The costs of the application to be paid out of the estate.

Order accordingly.

NOVA SCOTIA.

COUNTY COURT, YARMOUTH.

In Re Killam, Ex Parte.

Insolvent Acts—British North America Act—Local Legislation—Jurisdiction.

Held, That an attachment against the insolvent under the local Statute of Nova Scotia relating to "Absent or Absconding Debtors" duly registered does not bind his lands as against an attachment under the Insolvent Act of Canada subsequently registered, the judgment under the Nova Scotia Statute not having been obtained or registered until after the registry of the attachment under the Insolvent Act.

J. W. Bingay, for the Claimant.

Pelton, Q. C., for the Assignee.

Savary, Co. Judge. By the "British North America Act," sec. 91, sub-sec. 21, the power of legislation on the subject of Bankruptcy and Insolvency is exclusively assigned to the Dominion Parliament. By sec. 92, sub-sec. 13, authority to legislate respecting property and civil rights generally, exclusively belongs to the Local Legislature. When the Dominion Parliament legislates upon any subject exclusively assigned to it, all local and civil rights must be subordinate, and all civil laws may be over-ridden by it; and so, conversely, when the exclusive right to legislate on any particular subject is conferred on the Local Legislature, such right carries with it a right to deal with matters so far incidental to the subject as to make the regulation of them essential to the completeness and effectiveness of the legislation; and the Local Legislature may therefore make provisions for enforcing and carrying out their enactments, although in doing so, they may similarly invade the domain of the General Parliament as defined by the strict language of sec. 91 of the Act. For instance, it has been laid down that the breach of a Statute is indictable as a misdemeanor at common law: Russell on Cr. p. 46. Yet the Local Legislature may impose penalties of fine or imprisonment for a breach of its enactments, so that proceedings to enforce such enactments, may be to all intents and purposes criminal proceedings; yet it would clearly seem that such proceedings ought to be prescribed by the same legislative authority that creates the offence and is alone interested in its punishment. If the Local Legislature can impose a penalty, it ought clearly to and most assuredly does possess the power to define the mode in which and terms on which, that penalty is to be enforced or remitted, as its policy on that particular subject may seem to dictate; and all this although the criminal law including criminal procedure is exclusively assigned to the Dominion Parliament. Were it otherwise the powers assigned to the Local Legislature in police and municipal matters would be illusory, and repressive and prohibitory enactments within their jurisdiction would be at the mercy of hostile or obstructive legislation by the higher Parliament. Thus the Local Legislature in exercising its functions on some subjects would seem to trench on those of the Dominion Parliament respecting criminal law and procedure; and so, but much more clearly, the Dominion Parliament in legislating on Bankruptcy and Insolvency may, in carrying out its policy on these subjects, override any local enactments, and assert its paramount authority throughout the whole field of the law of property and civil rights.

Now it is easily perceived that there may be statutes of either legislature perfectly valid so

long as they do not chance to conflict in any case with the provisions of a statute of the other legislature within its exclusive authority; but when they do so conflict and only then, the exclusive authority on the particular subject must prevail. Such for example would obviously be Chap. 137 Rev. Stat. 3rd Series. So long as the party seeking the benefit of that chapter has not become insolvent under the Dominion Statute, all the proceedings under it are valid and effectual, for they only relate to property and civil rights; but as soon as the Dominion Statute on insolvency is invoked that chapter has no more force as to him or his case, and the relief it contemplates can only be obtained under the Dominion Statute. He is then in Bankruptcy or Insolvency within the meaning of the British North America Act, and the Insolvent Act of Canada thereforth attaches with exclusive authority upon his person and property. When and where that chapter conflicts or operates inconsistently with the Dominion Insolvent Act of 1869 or 1875 it is superseded, and must be treated as repealed by the concluding clause of sec. 154 of the former Act, or 149 of the latter. In any instance where it does not so conflict, and its operation does not become inconsistent with either of those Acts, there is nothing to hinder its provisions being carried out, and *quoad* that case it is, as an act *intra vires*, unrepealed and by the Dominion Parliament unrepealable. Such seems to be the view held in the United States, a country that has like ours a federal constitution and distribution of legislative powers between local and federal legislatures; a view I think that indicates the only principle upon which the different powers of such legislatures can be harmonized. See Bump on the Law & Pr. of Bankruptcy, p. 293–4, where under the title "State Insolvent Laws," referring to Statutes for the relief of insolvents from civil imprisonment, it is said, "The State laws are not entirely abrogated (by the Federal Law. They exist and operate with full vigour until the insolvent law attaches upon the person and property of the debtor." Similarly this Statute of Nova Scotia, cap. 97, relating to absent or absconding debtors (which like cap. 137 and its amendments is not technically an Insolvent Act, although it deals with the case of persons presumed to be grammatically speaking insolvent,) is perfectly effectual and valid, so long as the debtor's property and rights and the relative rights of his creditors have not by proceedings under the Insolvent Act of the Dominion been drawn within the supreme influence and control of that Act. Then, and then only, the provisions of that Act exclusively apply, and those of the local Act are superseded in the particular case. The very fact of absconding is declared to be an act of insolvency; an act which warrants the creditors if they see fit, in putting the machinery of the Dominion Statute in motion, and getting the full benefit of its provisions. From that moment the debtor's estate is liable to liquidation, and all proceedings taken under any local Statute to prevent it, must give way. The local Act is in the language of the repealing clauses of the Insolvent Act, "inconsistent" with the Statute, in that it gives the first attaching creditor by virtue of the registry of his attachment a lien upon the real estate of the debtor over every incumbrancer; whereas the Dominion Statute acting in accordance with the general principle and object of Bankrupt laws, provides as a result of such an act of insolvency, for a general distribution of assets, real and personal, among all the creditors. Therefore the provisions of Ch. 97, and its corollary, sec. 24 of Ch. 79 (like those of Ch. 137 Rev. Stat. 3rd Series) in so far as they are in this manner inconsistent with the Insolvent Act of Canada, are *pro hac vice*, but only *pro hac vice*, repealed; and such Statutes wherever they are thus inconsistent, if passed after the Insolvent Act of Canada are *pro hac vice*, but only *pro hac vice*, inoperative. I say only *pro hac vice*, because the effect of the repealing clause in the Insolvent Act upon such Statutes, even if expressly named, could only be to render them inoperative as against proceedings under that Act, and as against creditors who, upon the commission of acts of insolvency by the debtor, seek to secure the equitable benefits of that Act. To abrogate them to any further intent, the most express language of repeal in a Dominion Statute would, I apprehend, be *ultra vires*. But if Parliament is within its powers when it says, as it does in section 3 of the Act of 1875, that a "debtor shall be deemed insolvent," if he "absconds" from "any Province with intent to defraud any creditor, or to defeat or delay the remedy of any creditor," and thereupon proceeds to prescribe certain consequences of that absconding in respect to the disposal of his property, and enacts that any local "Act or parts of Acts" which are "inconsistent with the provisions" of that Act are "repealed,"—then surely any local Statutes prescribing a totally opposite mode of dealing with such property are *pro tanto* invalid and nugatory as against any creditors, or the assignee on their behalf claiming the supervention of those consequences.

It must have been upon the ground of the implied repeal, *pro hac vice*, of inconsistent enactments that *Henry* v. *Douglass*, cited in Clarke on the Insolvent Act, p. 249, from the U. C. L. J. N. S., p. 108, was decided. It is stated to have been there held, altogether independently of sect's 59 of the Act of 1869, and 83 of the Act of 1875, avoiding liens on goods and on the proceeds of goods sold under execution,—before those

clauses in fact became part of the Insolvent Act in force in the old Province of Canada, and while the Act of 1864, which did not contain such provisions, was law,—that a writ of attachment levied upon the insolvent's goods, followed by executions in the Sheriff's hands, was ineffectual to prevent the estate levied on passing wholly to the Assignee. So it seems to have been held by one of the higher Courts of Lower Canada in the case of *Bacon* v. *Douglas*, 15 L. C. R., p.1 56, cited on p. 246, of Clarke. If without such provisions as are contained in sec. 83 a seizure under an execution could not prevail as against the Assignee, upon what principle should a levy under an attachment against an absconding debtor so prevail? The case of *Neal* v. *Smith*, decided by the learned Chief Justice of Nova Scotia and cited on p. 248 of Clarke and 112 of Edgar and Chrysler, would appear to conflict with the principle of these cases, but in addition to the fact that this seems to be the decision, not of the whole Court, but of a single, although eminent Judge, and therefore not so absolutely binding, it is to be noted that in that case the goods had been actually sold under the attachment, and the proceeds alone were the subject of controversy, bringing it within the case of *Whyte* v. *Treadwell*, cited on p. 247 of Clarke, from 17 Common Pleas U. C., p. 488. In view of those decisions of the Courts of Upper and Lower Canada, it is likely that the section 59 of the Act of 1869 and 83 of the Act of 1875 were passed with the sole object of avoiding the operation of the principle established in *Whyte* v. *Treadwell*, by giving the Assignee the right, not only to the goods after levy, but the right to their proceeds when sold until "the payment over to the plaintiff," thus extending instead of limiting his title as previously recognised. Hence, the absence of any reference in those sections to liens by attachments under local civil Statutes, or by their registry, does not affect this case. It were superfluous to specially avoid these liens when the courts had already decided that they must yield to a subsequent attachment in insolvency. It is further to be observed that the Canadian Act of 1864 contained no repealing clause whatever. The Court proceeded upon implication only.

The decision of the Supreme Court delivered by Judge McCully in the case of *Murdoch* v. *Walsh* referred to on p. 106 of Clarke on the Insolvent Act, and cited to me from the newspaper report, does not apply here. The reasoning of the Bench in that case fully commends itself to my judgment, independently of its binding authority upon an inferior Court. It was the case of a certificate of judgment, which when registered, by virtue of sec. 22, ch. 79, binds the lands "*as effectually as a mortgage*," and therefore, like a mortgage, can only be set aside as against the assignee in insolvency when given voluntarily as an undue preference. But undoubtedly the Dominion Parliament might have made such a security null and void if acquired within a period when it would seem to thwart the policy of the Insolvent Act looking to a general distribution of the estate, as the Supreme Court, in effect, intimated in the judgment in *Kinney* v. *Dudman*, 2 R. & C., p. 19, when they decided that sec. 59 of the Act of 1869 was *intra vires*. That it did not deal with these as it did with certain liens acquired by execution was probably *a casus omissus*; a judgment registered not binding real estate in the old Province of Canada as here. An attachment, moreover under our Provincial law is a *mesne process* only; and under sec. 24 of ch. 79, only binds the lands of the party until thirty days after judgment is obtained in the cause. It may never ripen into a judgment at all, for the suit may be successfully defended. Again, the lien acquired by it may be destroyed by the defendant putting in special bail, and no one can pretend that in the event of such bail being compelled to pay the debt they could have any preferential claim upon the estate. It would be exceedingly inconvenient if a lien of such a vague and uncertain character should bind the land as against the assignee in insolvency; and I hold these local Statutes to be exactly those to which the repealing clauses of the Dominion Act are intended to apply when "all Acts or parts of Acts" "inconsistent" with its provisions are referred to. The language of sec. 22, ch. 79, "as effectually as a mortgage," is not used in connection with the lien acquired by an attachment. The judgment here was not obtained until 5th July, 1877. Therefore, before the 5th August, 1877, the lien created by the attachment ceased. It would have merged in the judgment but for the *prior* issuing and registry of the attachment in insolvency; after which no registry or judgment can bind the property or have any force or effect whatever as against the Assignee.

Therefore, I am clearly of opinion that the levy made on the eleventh day of May, 1876, under the writ of attachment issued by the claimant under the Provincial Statute, and the registry of the copy thereof, and of the appraisement, do not constitute a lien upon the real estate so levied upon as against the assignee in insolvency, and the said claimant is not entitled to be paid his claim in full. But I think he is entitled to be paid his costs of the attachment *bona fide* incurred under the Provincial Act, but which the subsequent proceedings in insolvency under the higher authority of the Dominion Statute have, in my opinion, superseded.—*Digby Courier.*

NOTES OF CASES.

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

QUEEN'S BENCH.

IN BANCO.

DENISON v. SMITH.

Insolvency– Transfer of Stock.

The defendant was, by their Act of incorporation, named as one of the provisional directors of the Toronto, Grey & Bruce Railway Company. and was afterwards elected and acted as a director thereof, having subscribed for $1000 stock therein, on which he paid partly in money and partly by certain allowances made for his services as such director and otherwise, the sum of $400. Subsequently to this defendant made an assignment under the Insolvent Act of 1869. Before doing so, however, he had procured the execution by the required majority of his creditors of a deed of composition and discharge, apparently under sec. 94 of the Act in question.

The plaintiff, as a *fi. fa.* creditor of the same company, sued out a writ of *sci. fa.* against the defendant to compel payment to him of the balance due upon the said stock.

The defendant pleaded that he was not a shareholder in the said company, his contention being that the property in the said stock had passed to the assignee. It did not appear whether or not the assignee had accepted or rejected this stock, or had done any act other than accepted the assignment made to him. The defendant had obtained his discharge in the usual way, the unpaid balance on the stock, however, not having been scheduled as a liability of the defendant, and no claim having been proved in respect of it.

Held, that plaintiff was entitled to recover, and that the property in the said stock had not passed to the assignee.

Rule discharged.

Kennedy, for the plaintiff.
Ferguson, Q.C., contra.

CAMERON v. GILCHRIST ET AL.

Dower—Action against three defendants—Claim of damages against one—Averment of seisin—Pleading.

To a declaration in dower against three defendants, and suggesting that while one defendant had not, another had appeared, acknowledging the tenancy of the freehold and consenting to the demandant having judgment, and going on to declare against the third defendant claiming damages for detention of dower, the third defendant demurred, on the ground that as the action was against three defendants, the plaintiff could not recover damages for detention of dower against him alone.

Held, affirming the judgment of Gwynne, J., that the declaration was good, and that the objection was not the subject of demurrer, but, if a good objection, only a ground for moving to set aside the declaration for irregularity.

Held, also, that it was not necessary to allege that the demandant's husband had died seised of the land.

Judgment for demandant.

Bethune, Q.C., for defendant.
Hector Cameron, Q.C., contra.

COMMON PLEAS.

IN BANCO—SEPTEMBER 5.

FIELDS v. RUTHERFORD.

Surgeon—Malpractice—Evidence—Non-suit.

In an action against a surgeon for malpractice the evidence shewed that, though some of the medical men called for the plaintiff stated that they would have pursued a different treatment, the treatment was such as would have been pursued by medical men of competent skill and of good standing in the profession.

Held, that there was no evidence of malpractice to go to the jury, and a non-suit was entered.

M. C. Cameron, Q.C., for the plaintiff.
Robinson, Q.C., for the defendant.

PARSONS v. VICTORIA MUTUAL INSURANCE COMPANY.

Insurance—Paid agreement for—Interim Receipts—Warehouse receipts—Insurable interest—Wool—Prior Insurance.

The plaintiff, a hardware merchant, as also a large wool buyer, discounted paper at a bank for his wool purchases on the security of warehouse receipts therefor. At the same time he signed and handed to the defendants' local agent, who was also the bank agent, applications for insurances on the wool, the insurance to be held by the bank as further security. The application stated that the insurance was on the usual terms, and conditions of the company. One of the con-

ditions of defendants' policies provided that no receipt or acknowledgment of insurance should be binding unless made by or on one of defendants' printed forms, and signed by their authorized agent. When the application was made the agent did not fill in and sign the defendants' printed form of interim receipts, nor did he sign a written receipt or contract of any kind, stating that he was too busy then to do so, but subsequently, and after the goods had been destroyed by fire, he wrote out a receipt, copying an old printed form. In an action on equitable grounds, setting up an insurance by interim receipt.

Held, that the cause of action was not proved.

Held, also, that a plea denying the insured's interest in the goods is not proved, by means of the goods having been transferred by warehouse receipts to a bank as collateral security on discounts, for that the insured had still an insurable interest in the wool.

An insurance was effected on large quantities of wool purchased during the wool season, and kept separate from plaintiff's other stock in a warehouse called the wool-house. A prior insurance, in another company, was on a general stock of goods, including wool, which meant small quantities purchased out of the wool season, and stored in a distinct storehouse from the wool-house.

Held, that this could not be deemed to cover wool purchased during the wool season.

Ferguson, Q.C., for the plaintiff.

M. C. Cameron, Q.C., and *J. T. Small* for the defendants.

Re Minister of Education and the Public School Board of Macaulay, and Public School Board of Bracebridge.

Public Schools—Township By-law for forming Public School Board—Effect on portion of Township united to a Village—Two-thirds majority.

On 1st January, 1875, Bracebridge, which had hitherto formed part of the township of Macaulay was incorporated as a village. At the time of incorporation Bracebridge and a portion of the township formed a school section, known as section No. 1, Macaulay, which, on the incorporation became the Bracebridge section, the school-house being in Bracebridge. In October, 1875, the township of Macaulay, on a petition of two-thirds majority of the township sections, not counting the portion attached to Bracebridge, passed a by-law under sec. 48 of 37 Vic. ch. 28. O., to abolish the division of the township into school sections, and to form a Public School Board for the township. In November, 1876, a meeting of the County Inspector and the reeves of Bracebridge and Macaulay with a representation from each School Board was held at Bracebridge for the purpose of altering the boundaries of the Bracebridge section, when a portion of the territory in dispute was set off to Macaulay and the other portion retained by Bracebridge.

Held, on a case submitted by the Minister of Education, that after the passing of the township by-law, the portion of Macaulay which had been united to Bracebridge became detached therefrom, and came under the control of the Township School Board, and continued under such control, notwithstanding what took place in November, 1876; at all events, under the Act of 1877, sec. 6, sub-sec. 7, it clearly became so detached on the 1st January, 1878.

Held also, that the portion of the township which had been attached to Bracebridge was not necessary to be reckoned in ascertaining the above two-thirds majority.

T. G. Scott, Q. C., for the Minister of Education.

Bethune, Q. C., for the Village of Bracebridge.

McCarthy, Q.C., for the township of Macaulay.

In Re McArthur and Township of Southwold.

By-law—Closing up road—Ingress and Egress—Compensation.

Where a by-law was passed by a township corporation for closing up a public road, whereby the plaintiff was excluded from ingress and egress to and from his land which abutted thereon, and did not provide any compensation to the plaintiff.

Held, that the by-law must be quashed.

Hodgins, Q.C., for the plaintiff.

Street (London) for the defendants.

Petrolia Crude Oil Company v. Englehart.

Agreement—Reformation—Evidence.

This was an action against defendant for breach of a covenant made by him with the plaintiffs, on consideration of the premises not to use crude petroleum oil in Canada; and claiming $29,000 agreed upon as liquidated damages for a breach thereof. The defendant set up an equitable defence that his covenant was conditional on certain arrangements making between the plaintiffs and a company called the London Oil Refining Company being renewed: that such arrangement had terminated, and that the breaches complained of were after such termination; and that such stipulations or conditions had been omitted from the deed of covenant without defendant's knowledge or consent, and praying a reformation of its covenant.

Held, on the facts and documents in the case that the plea was proved; and that the deed

must be read as containing such stipulations or a reformation if necessary, made therein.

Robinson, Q.C., for the plaintiffs.

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

WRIGHT v. SUN MUTUAL LIFE INS. CO.
WRIGHT v. LONDON LIFE INS. CO.

Insurance—Seals—Equitable Replication—Reformation—Estoppel—Suicide—Exposure to obvious danger—Nature of accident—Evidence.

The Acts of incorporation of the Sun Mutual and London Life Insurance Companies required their policies to be under seal. The policies issued by the above companies were on the printed forms of policies issued respectively by these companies, and which they had been accustomed to and had been using for some time previously, and which were signed and countersigned as required by the Acts, but were not under the corporate seals of the companies, but in the attestation clause in the Sun company, though not in the London company, the policy purported to be so sealed. To the claims on their policies the defendants pleaded respectively non est factum, and that defendants did not insure or promise, &c.

The Court under the circumstances of the cases directed equitable replications to be added, setting up the facts entitling the plaintiff to equitable relief; and either for a reformation of the policies by the addition of the companies' seals, or that they should be debarred from setting up such defence.

The defendants also set up as grounds of defence, that the death of the insured was occasioned by suicide, or by exposure to obvious or unnecessary danger by walking on a railway track, or that the manner of death was unknown or incapable of direct or positive proof, which under the terms of the policy avoided defendants' liabilities.

Held, that the defence of suicide or exposure was not established; and the cause of death sufficiently appeared.

M. C. Cameron, Q. C., for the plaintiff.

Bethune, Q.C., for the defendants.

O'CONNOR v. MCNAMEE.

Bill of costs—Action on—Agreement not to exceed fixed amount—New trial.

In this case, which was an action on a bill of of costs, the question was whether an agreement had been made by an attorney that the costs of certain chancery proceedings should not exceed a certain amount which had been paid. The jury found the agreement to have been made, and entered a verdict for the defendant. A new trial was moved on the ground that a discussion which had been allowed to take place at the trial as to the magnitude of the bill had influenced the jury in their finding.

The court refused to interfere, Gwynne, J., doubting that the discussion had not the effect contended for, the jury having been expressly told that the fact of the making of the agreement was the only question for their decision.

Ferguson, Q.C., and *T. Arnoldi* for the plaintiff.

Monkman for the defendant.

CHANCERY.

The Chancellor.] [Sept. 4th.

CURRY v. CURRY.

Statute of Frauds—Parol Evidence.

The father of the plaintiffs and the defendant were brothers, and the defendant obtained a deed in his own name of 100 acres of land. It was shown distinctly that the defendant had at one time made a deed to his brother of some land, although the defendant, after his brother's death, denied having given any deed, but on the hearing he admitted giving a deed of an adjoining property for which no patent had issued, although the defendant's name had been entered in the books of the Crown Lands Department as an applicant for purchase. It was shown that a box containing the deeds in reference to the property had been stolen, and the deeds had never been seen since. The Court, under the circumstances, notwithstanding the denial of the defendant, *held* that the plaintiffs were entitled to an account of the purchase money received by the defendant upon a sale of the property, and ordered the defendant to pay the costs to the hearing.

The Chancellor.] [Sept. 4th.

FORRESTER v. CAMPBELL.

Mortgages.

The plaintiff was the holder of two mortgages, and in June, 1870, obtained a decree of foreclosure, whereby he was declared entitled to priority over one F., who was the holder of a fourth mortgage thereon, and after the decree the plaintiff bought up the third mortgage, which was, prior to that, held by F.; and he had also, before the date of the decree, procured from the mortgagor a release of the equity of redemption.

Held, on appeal from the Master, following the decisions of *Barker* v. *Eccles*, 18 Gr. 440—523, and *Hart* v. *McQuesten*, 22 Gr. 133, that the Master had correctly found the plaintiff entitled to priority over F. in respect of all the three mortgages.

The Chancellor.] [Sept. 4th.

CAMPBELL v. CHAPMAN.

Fraudulent Conveyance.

A man who had been carrying on business in partnership agreed to buy out the interest of his co-partner, for the purpose of continuing the business on his own account, and subsequently made a purchase of property and took the conveyances thereof in the name of his wife, the husband swearing that at that time he did not owe a dollar, and that the money expended in the purchase of the property belonged to his wife, having been obtained on the sale of lands belonging to her. This statement, however, was shown to be incorrect; and a judgment having been recovered against the husband, upon which nothing could be realized under execution, the Court, on a bill filed by the judgment creditor, following the decision in *Buckland* v. *Rose*, 7 Gr. 440, declared the transaction fraudulent as against creditors, and ordered a sale of the lands in the usual manner, and payment of the proceeds to creditors.

The Chancellor.] [Sept. 4th.

SMITH v. MCLANDRESS.

Sale for taxes—Registration.

One H., being indebted to a bank, mortgaged his lands thereto as security for his indebtedness, and the bank subsequently foreclosed his interest, but still continued to allow H. to negotiate the sales of the lands and consulted him respecting sales effected by the bank. Some of the lands were specifically given as a security of a certain indorser, and the notes upon which his name appeared had all been retired. One of the lots so mortgaged was afterwards sold for taxes, but the purchaser omitted to register his deed for more than eighteen months after the sale: Meanwhile H., the mortgagor, sold and conveyed the land to a *bona fide* purchaser, without notice, which sale was subsequently ratified and confirmed by the bank, and the conveyances duly registered, before the purchaser at the tax sale registered his deed.

Held, that the purchaser at the tax sale had thus lost his priority; and a bill filed by him impeaching the sale by the mortgagor was dismissed with costs.

The Chancellor.] [Sept. 4th.

MUNRO v. SMART.

Married Women—Wills Act.

Quære, whether a married woman, under the Revis. St. O, ch. 106, s. 6, can devise or bequeath her separate property to one of several children to the exclusion of the others.

The Chancellor, in disposing of a case in which this point was raised, remarked upon the words of the Act devise or bequeath "to or among her child or children, issue of any marriage" that "the language is not very clear, it may be read to her child or among her children, or to her child or children or among her children. Either way it seems to be implied, where the word child is used, that it is an only child; it is not a child or children issue of any marriage, but to *her* child I do not think the point by any means clear.

Full Court.] [Sept. 5th.

ST. MICHAEL'S COLLEGE v. MERRICK.

Fraudulent Assignment—Pleading.

Held, affirming the judgment of Blake, V. C., that the plaintiffs were not at liberty to rely on a judgment at law recovered since the filing of the bill, for the purpose of setting aside an assignment of a claim as fraudulent, but must stand on their position as creditors when the proceedings were instituted in this court.

Held also, that the debt alleged in the bill being under a bond to Merrick's wife and not to Merrick himself, was not such a claim as could be garnished under the C. L. P. Act.

The CHANCELLOR, in disposing of the case, observed, "It is to be regretted that such a case of fraud as is disclosed in this bill, cannot, from the terms of the Common Law Procedure Act, as interpreted in the cases of *Gilbert* v. *Jarvis* and *Horsley* v. *Cox*, be reached in this Court. It may be that the case is incapable of being established in evidence, but as the law stands, were it established ever so clearly, the creditor is without remedy.

Full Court.] [Sept. 5th.

MEIGHEN v. BUELL.

Trustee—Solicitor—Costs.

On re-hearing the order as reported 24 Grant, 503, disallowing to a solicitor trustee costs other than costs out of pocket in suits to which he was a party was reversed [SPRAGGE, C., *dubitante*, who thought that that rule should be applied to all suits *brought by* solicitor trustees, and to all costs in those suits.]

U. S. REPORTS.

SUPREME COURT OF RHODE ISLAND.

WAKEFIELD v. NEWELL, Town Treasurer, &c.

Liability of Municipality for injury by surface water from streets.

No action lies against a municipal corporation for allowing the ordinary and natural flow of surface water to escape from a highway on to adjacent land. Nor will an action lie for the results of such usual changes of

grade as must be presumed to have been contemplated and paid for at the lay out of the highway.

A municipal corporation has the same powers over its highways in respect to surface water as an individual has over his land. *Inman* v. *Tripp*, 11 R. I. 520, explained and affirmed.

[February 23, 1878.

Trespass on the case. Demurrer to the declaration.

Beach & Osfield and *Stephen A. Cooke, Jr.*, for plaintiff.

Pardon E. Tillinghast for defendant.

DURFEE, C. J.—This is an action on the case to recover damages from the Town of Pawtucket, for suffering water to flow from a highway in the town upon adjoining land belonging to the plaintiff. The declaration sets forth :—

"The plaintiff was and still is the owner in his own right of certain real estate, situate in said town, on and adjoining a certain street and public highway in said town, called Pleasant street, and which street said town were bound to keep in good and suitable repair, for travelling in and upon the same, and to keep certain gutters and sluiceways running in and along said highway, so and in such good repair that the water that usually and of right should run therein should not overflow and run out and upon the said land of the said plaintiff; but the said town, by themselves, their officers, agents, and employees, so negligently and wrongfully kept the said street and public highway, and the sluiceways thereof in such bad repair, that the water which they ought and should have carried in and along said street overflowed on and over the land of the plaintiff, so that the said land was by said water overflowing thereon greatly damaged, and the crops growing thereon were greatly injured," &c.

The defendant demurs to the declaration upon the ground that it does not properly set forth any cause of action. The plaintiff relies in support of the action upon *Inman* v. *Tripp*, 11 R. I. 520. In that case the plaintiff owned an estate in the city of Providence, on Public street, at the lowest point thereof, and the city so changed the grade of several streets as to allow surface water which formerly flowed in other streets, and surface water which was formerly ponded in another street at some distance from the plaintiff's estate, to run down Public street, and thence on to his estate and into his cellar and well, and the court held that the plaintiff was entitled to an action against the city for the injury. The declaration in the case at bar does not show any such case. It merely shows that water escaping from the highway upon the plaintiff's land injured it, and the crops growing upon it. It is true the declaration alleges that the water *ought* to have been kept or carried by the town in the guttters or sluiceways of the street. The question of duty, however, is a question of law, and the defendant is entitled to have the facts alleged on which the duty is predicated. For anything that appears, the injury to the plaintiff was the result of the ordinary and natural flow of the surface water, which the defendant would be under no obligation to confine in gutters or sluiceways for the plaintiff's protection, or of such changes near at hand as are usually made, and must, therefore, be presumed to have been contemplated, and paid for in the lay out. *Flagg* v. *City of Worcester*, 13 Gray, 601. In *Inman* v. *Tripp*, 11 R. I. 520, we did not mean to decide that a town or city has any less power over its streets or highways, in respect of surface water, than an individual has over his own land, but only that it has no greater power; or, in other words, that it is liable for discharging the surface water accumulating in its streets and highways, to the same or very much the same extent, as an individual is liable for discharging such water from his own upon his neighbour's land. If this action were against an individual instead of a town, we do not think the declaration, similar in form, would be sufficient; for mere neglect by an individual to retain on his own land water which, falling there, would naturally flow on to his neighbour's land, is no cause of action, unless he first accumulates it by artificial means so as considerably to increase the volume and detrimental effect with which it would flow on his neighbour's land. *Pettigrew* v. *Evansville*, 25 Wis. 223, 229; *Livingston* v. *McDonald*, 21 Iowa, 160; *Gannon* v. *Hargadon*, 10 Allen, 106; *Butler* v. *Peck*, 16 Ohio St. 334; *Goodale* v. *Tuttle*, 29 N. Y. 459, 467; Washburn on Easements, &c., 450 *seq.*

We think, therefore, that as the declaration now stands, the demurrer must be sustained.

Demurrer sustained.

—*Albany Law Journal.*

SUPREME COURT OF TENNESSEE.

Colburn et al. v. Mayor of Chattanooga.

Municipal Law.

Where the authorities of a municipal corporation are proceeding to do an act which is *ultra vires* and which will impose on a taxpayer an unlawful increase of tax, he may file a bill in equity, in his own name, to enjoin the act. The concurrence of the Attorney-General, or other representative of the public, is not indispensable.

In such a case a Court of Equity has power to enjoin the issue of illegal evidences of debt by the corporate officers.

Corporate powers are to be strictly construed, and unless clearly given in the charter or by statute, no authority exists in a municipal corporation to issue scrip or warrants on the treasurer, in the form of promises to pay at a future day, for the purpose of paying the ordinary expenses of the municipality.

This was a bill filed by complainants in behalf of themselves and other taxpayers of the City of Chattanooga, to enjoin the mayor and aldermen from issuing any scrip, treasury warrants, currency note, bill or other evidence of debt, until legal authority should be first obtained for so doing.

The bill alleged that by an Act of the General Assembly of March 20th, 1873, entitled "An Act to provide for the issuance of bonds by the cities," it is provided that in no case shall the authorities of cities, having more than eight thousand and less than twenty thousand inhabitants, issue bonds or other evidences of debt until authorized by a two-thirds vote of the qualified voters of such city, at an election held for that purpose; and when duly authorized so to do, by an election held as aforesaid, such authorities are empowered to issue bonds or evidences of debt not exceeding $100,000 in addition to the debts outstanding at the time of the passage of said Act; that in violation of the said Act the defendants were issuing evidences of debt, consisting of warrants on the treasurer, drawn by the mayor and countersigned by the recorder, currency warrants, due in one and three years, which are promissory notes, having the form and general appearance of bank bills; that the treasury warrants are payable in city scrip; that by this creation of debts the defendant has greatly depreciated the credit of the city, &c., and praying that defendants be required to state the amount of such evidences of debt issued, &c., and be enjoined from further issue without lawful authority.

The defendants, after a motion to dismiss for want of jurisdiction of subject matter and parties, which was overruled by the Court, answered, stating the amount of the city debt; the amount of scrip issued; that they had issued the scrip under the authority of and for the purpose specified in the municipal charter, and to accomplish the objects of their incorporation, and for providing for the payment of the debts and expenses of the city; that upon the coming into office of the present board, they found no money in the treasury and a large outstanding indebtedness, and being deprived by the action of the General Assembly of the State, of the power to enforce the collection of taxes for the years 1874–75, they issued warrants and scrip, believing such a course to be necessary to the maintenance of the city government, and for the best interests of the people; that they have the right to issue warrants upon their treasury, whether they have money therein or not, and the right to issue scrip, and that the credit of the city is depreciated, not by any illegal creation of debt, but by the action of the Legislature suspending the collection of taxes.

The form of the scrip issued was as follows:—

"State of Tennessee [1].

One year after date the Board of Mayor and Aldermen of the city of Chattanooga will pay one dollar to bearer.

Thomas Taylor, Mayor.

"————, Auditor."

And endorsed: "This note is receivable for all taxes and other dues of the city on presentation."

The cause was heard upon the bill, answer and exhibits, and an injunction granted, and defendants appealed to this court.

The opinion of the Court was delivered by

Lea, Special J.—The first question presented by the case for our determination is, had the Chancery Court jurisdiction of the subject and of the municipal conduct of the defendant by bill filed by a taxpayer? It is insisted for the defendants that illegal acts, such as defendants are charged with, affect the whole public, and the public must, by its authorized officers, institute the proceeding to prevent or redress the illegal act, and that therefore the Attorney-General was the proper person to file this bill; and we are referred to the reports of several States thus holding. The better and more universal doctrine is that any taxpayer may bring his bill in equity to prevent the corporate authorities from acting *ultra vires*, where the effect will be to impose on him an unlawful tax, or to increase his burden of taxation: 2 Dillon on Mun. Corp., sect. 731, says: "In this country the right of *property holders* or *taxable inhabitants* to resort to equity to restrain municipal corporations and their officers from transcending their lawful powers, or violating their legal duties in any mode which will injuriously affect the taxpayers, such as making an unauthorized appropriation of the corporate funds, or an illegal disposition of the

corporate body, or levying and collecting void and illegal taxes and assessments upon real property * * * has been affirmed or recognised in numerous cases in many of the States. It can, perhaps, be vindicated upon principle, in view of the nature of the powers exercised by municipal corporations and the necessity of affording easy, direct and adequate preventive relief against their abuse. It is better that those immediately affected by corporate abuses should be armed with the power to interfere directly in their own names, than to compel them to rely upon the actions of a distant State officer."

The action of the Chancellor, therefore, in overruling the motion to dismiss the bill for want of jurisdiction was proper. The charter of the City of Chattanooga provides that the corporation "shall have full power to borrow money on its bonds for any object that its authorities may determine to be important for the promotion of its welfare, and is not made improper by existing law, provided that the sum borrowed under the provisions of this section shall not exceed the sum of $50,000, without being specially authorized to do so by a majority of the qualified votes of said city."

The unconstitutionality of the Act of March 20th, 1873, has been argued with great earnestness, because the caption of the Act does not state the subject of the Act, and because it repeals the section just quoted from the charter of incorporation of the City of Chattanooga. In the view we have taken of this case, it is immaterial whether said act is constitutional or unconstitutional, or whether it repeals any part of the charter or not. Neither by the Act of March 20th, 1873, nor by the charter has the corporation any power to issue warrants on the treasurer, or city scrip, for the purpose of raising money for the ordinary expenses of the corporation. Warrants on the treasurer may be given by an authorized officer to pay money, but only as evidences to him that the debts had been audited by the properly authorized officers of the body, and serve as vouchers to him for his disbursements: *Mayor and Council of Nashville* v. *Fisher et al.*, Supreme Court of Tennessee, not yet reported. If there be not money in the treasury, then the corporation should borrow, as provided in the charter or by existing law, or they should levy and collect such tax as to raise whatever sum is needed, and if they can neither borrow nor raise the money by taxation to meet their expenditures, then they should cease their expenditure until they can thus realize according to law.

But for no purpose had the corporate authorities the right to issue warrants on the treasury payable in city scrip, or to issue the city scrip. Their action was illegal and contrary to law and public policy. This city scrip is about the size, and upon the same kind of paper, and in every respect very much like national bank notes, and was doubtless designed to circulate as currency.

The Court will strictly construe municipal charters, and require clear authority for the powers assumed to be exercised under them. While these defendants aver that they have acted in the utmost good faith, yet so much abuse of power, not to say corruption, has been found in some municipalities, and such onerous and ruinous burdens placed upon the taxpayers, that to use the language of a distinguished author, "it is the part of true wisdom to keep the corporate wings clipped down to the lawful standard."

Let the decree be modified as indicated in this opinion, and the injunction be made perpetual.—*American Law Register.*

LAW STUDENTS' DEPARTMENT.

EXAMINATION QUESTIONS.

INTERMEDIATE EXAMINATIONS: EASTER TERM, 1878.

Equity.

1. A promissory note made by A payable to B or order is endorsed by B for A's accommodation, whereupon A negotiates the note, and before its maturity B purchases it at less than its face amount, and upon its maturity calls on A for payment. What amount is B entitled to recover from A? Explain the principle.

2. A demises a house to B for five years at an annual rent. B in the lease covenants to pay this rent, and at the expiration of the term to deliver up the premises in good repair. During the first year of the term the house is absolutely destroyed by fire, the result of accident. Is B obliged to pay any, and if so, what rent, or to rebuild? Give reasons for your answer in each case.

3. A, the owner of a freehold estate, contracted with B, whereby B becomes entitled at any time within five years to purchase or not to purchase this estate, as he alone should determine. A dies within the five years, and before B has elected, and thereafter B within the five years elects to purchase the land. Are the heirs or next of kin of A entitled to this purchase money? Give your reasons.

4. What jurisdiction has our Court of Chancery to grant relief in a suit which could have been brought at law, and in which, if so brought, full and adequate relief would have been given?

5. To what extent will this Court decree

an account at the instance of one partner as against his co-partner, the partnership still subsisting, and no dissolution being asked or ordered?

6. What obligation, if any, is there upon a mortgagee in possession to keep the mortgaged premises in repair?

7. What is the reason for the rule that equity will not marshal assets in favour of a legacy given to charities?

Broom's Common Law and A. J. Acts.

1. What is meant by the expression *damnum sine injuriâ?* Is such damage actionable by law? Explain.

2. What is an action of Trover? What are the two things necessary to be proved to entitle plaintiff to recover in this kind of action?

3. Under what circumstances, if any, is a private person justified in abating a public nuisance?

4. What is the effect of a drawee of a bill of exchange accepting the bill (*a*) *generally;* (*b*) *payable at a bank;* (*c*) *payable at a bank and not otherwise or elsewhere;*

5. Define an *estoppel in pais.*

6. What are the various degrees of homicide recognised by the law of England? Give examples of each.

7. What provisions are made by the Administration of Justice Act for the trial of common law cases without a jury besides trial at *Nisi Prius?*

Law School.

Equity.

1. State the order in which partnership assets are administered.

2. What interests have the legal representatives of a deceased partner in the goods and chattels of the partnership?

3. How has the doctrine of liability to third persons, by reason of a party sharing in the profits, been settled by the case of *Cox* v. *Hickman.*

4. A partner purports to mortgage, for his separate benefit, his interest in certain partnership lands. What does the mortgagee take under this mortgage?

5. What effect (if any) on the partnership relation has the lunacy of one partner?

6. To what extent has a partner a lien on the partnership property?

7. State under what circumstances the Court will grant relief to one partner as against his co-partner in respect of partnership matters without decreeing a dissolution.

8. When does the Statute of Limitations begin to run in favour of one partner as against his co-partner in respect to partnership rights?

9. A, having given his personal continuing guarantee to a firm, securing them against loss by reason of any credit they might give to B. A new credit is so given, and an additional partner is admitted into the firm, and thereafter further credit is given to B. on the security of this guarantee. What is the extent of A.'s liability?

10. Point out some distinctions between the rights of partners in partnership lands and of co-owners in lands owned by them in common.

11. What effect, if any, on the partnership has the sale under execution of one partner's whole interest in the partnership? Explain.

12. Trace the changes in the practice whereby a partner's interest in partnership chattels could be realized for the benefit of his separate creditor.

13. What prudential steps should a partner adopt on a dissolution of partnership in order that his co-partner may not thereafter render him liable on new contracts?

14. How can a creditor of a firm obtain relief against the separate estate of a deceased partner? Who are necessary parties to such procedure?

15. A deceased partner, by his will directed his executors to carry on the partnership business. To what extent are the executors entitled to embark the deceased partner's property in such business?

Junior Class.

Witnesses and Evidence in Criminal Cases.

1. What was the common law rule as to the admissibility in evidence of convicted felons? and what statutory change has been made in this respect?

2. Is a criminal under sentence of death admissible to give evidence now, or formerly? Give reasons.

3. Discuss the question of the admissibility and effect of the evidence of an accomplice in a criminal case.

4. State briefly the rule, giving exceptions, as to the admissibility of the evidence of a wife for and against her husband in criminal law. A and B are jointly indicted, can the wife of A be called in evidence for or against B?

5. Distinguish between *privilege* and *incompetency* of witnesses, giving examples of each, arising out of the relation of husband and wife.

6. In how far is evidence of the so called second wife admissible in bigamy cases?

7. How is the question of admissibility of the evidence of a witness objected to on the ground of lunacy usually determined?

8. What are the facts relied on for the purpose of deciding whether or not an infant of tender years is admissible as a witness? Trace briefly the history of the changes in our law in this respect.

9. In how far is a solicitor privileged from giving evidence in regard to confidential communications between his client and himself.

10. State briefly the chief facts on which the credibility of a witness depends.

11. In how far may the credibility of a witness be attacked by the party calling him?

12. Discuss fully the question as to whether a defendant may be convicted of perjury on the evidence of one witness.

13. What methods, statutory or otherwise, are provided for enforcing the attendance of witnesses in criminal cases?

14. Give exceptions to the rule that counsel is not allowed to put leading questions to a witness called by himself.

15. Give cases in which burden of proof is on the defendant in criminal cases.

CORRESPONDENCE.

Precedents.

To the Editor of CANADA LAW JOURNAL.

SIR,—Among the recent decisions noticed by you in your number for August is the judgment of the Queen's Bench in *McEdwards* v. *McLean*, in which it was held that the Insolvent Act does not take away the landlord's right to distrain for rent. The opposite was decided by Mr. Justice Gwynne after an exhaustive review of the law in *Munro* v. *Commercial Building and Savings Society*, 36 Q. B., U. C. 464. This decision is not even referred to in the judgment of the Court in *McEdwards* v. *McLean*, and it is fair to assume that the Court would have felt bound to follow it had their attention been directed to the report, especially as Mr. Justice Armour appears to have been keenly alive to the injustice that must result from the law as he lays it down, the blame for which he considers attaches to the Legislature. It is most unfortunate that there should be this conflict of judicial authority on so important a point.

Again, in reporting *Ontario Bank* v. *Wilcox*, you give the same Court credit for deciding "(3) a chattel mortgage valid between the parties at common law is valid against Assignee in insolvency." In *Re Andrews*, 2 Appeal Reports, 24, the Court of Appeal (Patterson, J. A., and Moss, C. J.) decided, after a review of the cases, that "under section 39 of the Insolvent Act of 1875, the Assignee represents the creditor for the purpose of avoiding a mortgage for want of compliance with the Chattel Mortgage Act." Does the Court below refuse to follow this decision, or was it overlooked by the eminent counsel who argued the case? Does the Court of Queen's Bench wish it understood that it is not governed by that "slavish adherence to precedent" for which Courts are so often blamed? If so it would be well to bear in mind that if there is anything worse than a bad law it is an un certain one.

Yours &c.,

W.

Toronto, August, 1878.

REVIEWS.

SHORT STUDIES OF GREAT LAWYERS. By Irving Browne. Published by the Albany *Law Journal*—Weed, Parsons & Co., Albany, U. S.

A reviewer hardly knows after reading the preface why this little book is sent for review. The author very cleverly anticipates many things we might probably

have said if he had not said them for us. We will wonder, he says, why he left out this man and put in that man and so on, whilst, last of all, one censor will, he adds, be found who will wonder why he wrote it at all. The writer gives his answer with infantile simplicity and confiding helplessness saying, "I am sure, I don't know, I promise never to do so again." We trust he may break that promise, in some sort at least, for a pleasanter bit of reading of its kind during a few of the dog days could not be found. The stories he tells are not altogether new, in fact many of them rather the reverse, but there is a refreshing crispness in the way of telling them which is all his own. The articles originally appeared in the Albany *Law Journal*.

A Practical Treatise on the Office and Duties of Coroners in Ontario, with an Appendix of Forms. 2nd Edition. By W. F. A. Boys, LL.B., of Osgoode Hall, Barrister at Law, Toronto. Hart & Rawlinson, 1878.

The first edition of this very useful little book was published in 1864. The present is more complete. The principal addition is a chapter on antidotes, which doubtless, will be useful to those Coroners who are not medical men, as most of them are at present. Whether or not it is wise to entrust duties, which are mainly of a judicial character, and which require for their proper discharge a legal training and some knowledge of the law of evidence, to medical men is a question of some importance, and has heretofore been discussed in these pages. Mr. Boys gives information for both classes, and a careful reading of this book would lessen the number of "good things" we see occasionally in the public prints touching many of those who belong to this venerable body.

We recently came across in that repertoire of light legal literature, the Albany *Law Journal*, a reference to a case reported in Plowden, in the time of Queen Elizabeth, which we shall cite for the benefit of those interested in "Crowner's Quest Law." Sir James Hales committed suicide by throwing himself into a water course. The Coroner having duly sat upon him, presented that, "passing thro' ways and streets of the said City of Canterbury, he the said James Hales did voluntarily enter the same and did himself therein voluntarily and feloniously drown." Suicide being a felony, his estates were in consequence forfeited. But it was pleaded that Sir James did not commit suicide; he only threw himself into the water, and suicide, implying death, as he did not die during his life he did not commit suicide. Then did Sir James commit suicide during his life? He only threw himself into the water in his lifetime, but that was no felony, and the suicide not being complete until his death—and he did not die during his life—he therefore had not, it was argued, committed felony. This question might be a standing one for discussion when the time arrives for competitive examinations for would-be coroners.

FLOTSAM AND JETSAM.

Judge Freedman, in charging the jury in a case tried last week in the New York Superior Court, made some pertinent remarks upon the interesting subject of the value of a lawyer's services. Litigants, and those who have occasion to apply to the profession for service or advice, are too apt to estimate the worth of what is done for them by the time occupied in doing it, and, therefore, are very much dissatisfied, when a charge of a considerable amount is made for what apparently occupied only a few hours or a few days of the counsel's time. But as Judge Freedman says:

"To become proficient in the necessary knowledge relating to all these matters involves years of self-denial, close application and devotion, and a study of almost a lifetime. A lawyer's compensation is, therefore, not to be measured merely by the time he actually spends in the discharge of his duties. An advice given in a short interval, but founded upon years of previous acquaintance with the question involved, may, in an important case involving large interests, be worth quite a sum of money."

The popular feeling in reference to lawyer's charges is, however, to some extent encouraged by the action of certain members of the bar who, to secure business, underbid their brethren, and certain others who habitually make no charge for advice even to those able and willing to pay.—*Albany Law Journal.*

Law Society of Upper Canada.

OSGOODE HALL,

EASTER TERM, 41ST VICTORIA.

During this Term, the following gentlemen were called to the Bar; the names are given in the order of merit:—

THOMAS GRAVES MEREDITH.
THOMAS PERCIVAL GALT.
OLIVER R. MACKLEM.
DONALD MALCOLM CHRISTIE.
TREVELYAN RIDOUT.
DAVID BURKE SIMPSON.
PETER JAMES MILLS ANDERSON.
JOHN AUSTIN WORRELL.
GEORGE WASHINGTON WELLS.
JAMES CRAIG.
JOHN NICHOLLS.
WILLIAM GEORGE MURDOCK.
ALFRED MCDOUGALL.
HENRY RYERSON HARDY.
FREDERICK VAN NORMAN.

The following gentlemen, members of the English Bar, were called to the Bar of this Province:

AUGUSTUS HENRY FRAZER LEFROY.
THEODORE KING.

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

Graduates.

ALEXANDER DOWNIE CRUICKSHANK.
JOHN HERALD.
JAMES HENRY BALLAGH.
GEORGE BELL.
JAMES WALTER CURRY.
GEORGE MACDONALD.
GEORGE RITCHIE,
THE HON. DAVID MILLS.

Matriculants.

F. M. YARNOLD.
ALFRED D. HOWARD.
THOMAS D. ANDERSON.

Juniors.

THOMAS CHAPPLE.
R. W. LEEMING.
ALEXANDER MILLS.
J. A. MULLIGAN.
N. H. MACRAE.
D. MCF. FRASER.
H. C HAMILTON.
M. MCKENZIE.
A. A. MAHAFFY.
W. LEES.
H. C. MONK.
W. A. WERRETT.
W. G. THURSTON.
A. W. MORPHY.
F. E. TITUS.
E. J. HEARN.
D. C. MURCHISON.
F. S. WALLBRIDGE.
J. A. WALKER.
A. D. KEAN.
A. O. BEARDMORE.
F. W. FOWLDS.
C. L. MAHONY.
F. W. GARVIN.
W. J. MARTIN,
J. H. HAMMOND.
G. F. RUTTAN.
W. L. J. HAIGHT.
F. C. ATKINSON,
J. STEWART.
R. O. KILGOUR.
J. J. CONACHER.
E. H. MYLNE.
D. J. O'KEEFFE.
W. F. SORLEY.
H. V. GREENE.
A. J. REID.
R. MCF. MENZIES.
E. R. REYNOLDS.

Articled Clerks.

W. J. WRIGHT.
R. HOLMES.
C. M. B. LAWRENCE.
B. HAWKESWORTH.
C. E. START.

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

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

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

CLASSICS.

Xenophon, Anabasis, B. I.; Homer, Iliad, B. I.; Cicero, for the Manilian Law; Ovid, Fasti, B. I., vv. 1-300; Virgil, Æneid, B. II., vv. 1-317; Translations from English into Latin; Paper on Latin Grammar.

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar; Composition; an examination upon "The Lady of the Lake," with special reference to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek:

FRENCH.

A Paper on Grammar. Translation of Simple Sentences into French Prose. Corneille, Horace, Acts I. and II.

Or GERMAN.

A Paper on Grammar. Museaus, Stumme Liebe. Schiller, Lied von der Glocke.

Candidates for Admission as Articled Clerks (except Graduates of Universities and Students-at-Law), are required to pass a satisfactory Examination in the following subjects:—

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

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

All examinations of students-at-law or articled clerks shall be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

INTERMEDIATE EXAMINATIONS.

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. C. caps. 42 and 44, and Amending Acts.

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

FINAL EXAMINATIONS.

FOR CALL.

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

FOR CALL, WITH HONOURS.

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

FOR CERTIFICATE OF FITNESS.

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

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

SCHOLARSHIPS.

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

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

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

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