DIARY FOR JULY.

1. Sat.... Dominion Day—Confederation 1867. Long vacation begins. Trinity College Easter Term ends. Real Property Limitation Act, 1874, in force ex. certain sec.
2. SUN.. *3rd Sunday after Trinity.*
3. Mon .. County Court Term begins. Heir and Devisee sittings begin.
6. Thur.. Last day for service of notice of Appeal for Court of Revision to County Judge.
7. Fri.... Gen. Simcoe, Lieut.-Gov., 1792.
8. Sat.... County Court Term ends.
9. SUN.. *4th Sunday after Trinity.*
16. SUN.. *5th Sunday after Trinity.*
18. Tues.. Heir and Devisee sittings end.
22. Sat.... Last day notice Primary Examination.
23. SUN.. *6th Sunday after Trinity.* Union of Upper and Lower Canada, 1840.
25. Tues.. Battle of Lundy's Lane, 1812.
30. SUN.. *7th Sunday after Trinity.* First English newspaper, 1588.
31. Mon .. Last day for determination of Appeals by County Judges.

CONTENTS.

THE

Canada Law Journal.

Toronto, July, 1876.

CONCERNING RETAINERS.

THE law upon the subject of retainers is in a state of considerable uncertainty, from the fact that the judges almost uniformly refuse to offer an opinion upon questions of disputed retainers. We had occasion in former numbers of this journal to collect what little was to be found in the books upon this subject, and we now advert to it again *apropos* of certain correspondence which is published in our English exchanges. A question was lately submitted to the Attorney-General as to the object and effect of a general retainer to counsel as follows:

"On June 6, 1874, Messrs. A. sent a general retainer to Mr. Q. C. 'in Chancery,' and on November 12 another general retainer 'in all courts' for the same client. Mr. Q. C's clerk contends that under these retainers Mr. Q. C. is entitled to a brief in every case which comes into Court in which that client is a party; and that otherwise (Mr. Q. C,'s general retainer being known) no brief would be offered on the other side, and Mr. Q. C. would thus be prevented from appearing for either party. Messrs. A. contend that the object of a general retainer is to prevent the counsel from being taken against the client without the solicitor first having notice from counsel that a brief has been tendered to him on the other side."

Whereupon the Attorney-General (Sir John Holker) gave his decision:

"Under the circumstances stated I decide that Mr. Q. C. is entitled to have briefs handed to him in all actions in which the client for whom the general retainer was given is a party (but not in mere interlocutory proceedings), in the courts in which Mr. Q. C. usually practises.

"The general retainer will not, however, entitle Mr. Q. C. to briefs in the House of Lords or Privy Council, for which tribunal separate retainers are necessary.

"If briefs are not delivered to Mr. Q. C., the general retainer will be invalidated."

The *Solicitor's Journal* animadverts upon this decision, but regards the matter only from the solicitor's point of view; that is to say, it advocates the view that the object of a general retainer is merely a device in the interests of solicitors to secure to them the first right of commanding the services of the barrister retained in each particular case, as it arises, wherein the client is concerned. The natural consequence of this theory of general retainers is, that it is not deemed obligatory to send a special retainer and brief in each case at the peril, upon failure so to do, of forfeiting the general retainer. The result of this is that it casts the onus upon the counsel, when a special retainer is offered "on the other side," of notifying that offer to the solicitor by whom he is retained generally, and giving him thereby the opportunity of obtaining priority over the other applicant in each particular case.

This, however, is not the English practice, nor do we deem it desirable to alter that practice in any country where the functions of barrister and solicitor are so distinct as in England. The counsel ought not to be put to the trouble of serving notices on the solicitor, or to the annoyance of a *quasi* application for the delivery of briefs. It is, in our judgment, preferable to have it understood that the general retainer fails if on any occasion an application is made in Court (not of a merely interlocutory nature) without giving a brief to the counsel who is under a general retainer. There has been no settled rule in this province on this point, but we think that the views of the Attorney-General are rather to be adopted than those advocated by the *Solicitor's Journal*, which in truth transfer to the solicitors the right to determine whether counsel shall be bound by his retainer, and to pick and choose the occasions on which they will favour him with a brief.

Upon another matter, as to the extent to which counsel may advise in a suit for both sides without being retained by either, there is much greater liberality—or perhaps, some will say, laxity—in England than obtains in this country. This point has been the subject of a judicial decision, which is but little known, but which is of great value as representing the views of so distinguished a judge as Sir Launcelot Shadwell, Vice-Chancellor of England. The matter was brought before him in an anonymous case reported in 3 Jurist, p. 603, and his opinion requested thereon. He is reported to have said, "I am of opinion that a counsel, unless he is retained by the plaintiff, has a perfect right to draw and sign the answers, though he may also have signed the bill. I remember a case of the same kind occurred to me when I was at the bar. I drew the bill, and not being retained by the plaintiff, I drew the answers. I then advised upon the evidence for the plaintiff, and then on that for the defendant. There was afterwards a motion in the cause, and I appeared on the motion, but on what side I do not recollect. I am clearly of opinion that unless a counsel is retained by the plaintiff, it is his duty, if required, to render his services to the other parties in the cause, although he may have drawn the bill."

One needs to remember the high character of the ideal counsel to understand how it was possible for this dual advisory system to originate. The counsel, like the judge, determined only on what was laid before him. He never imported into a case extraneous facts, the knowledge of which he had acquired elsewhere than from the papers submitted to him. The pleading once drawn, the advice once given, he made it a point to forget all about it, that his mind might be clear to undertake the next business to be disposed of. Nevertheless, whatever right counsel may in strictness have to advise on both sides, it is not well that such a privilege should

be much indulged in. Counsel's *honorarium* has degenerated into the fee fixed by tariff; his ancient dignity has undergone a somewhat mercenary change. It is not well that nowadays he should run counter to the views of common-sense laymen who do not understand how a lawyer can be on both sides of a case.

LEGAL EDUCATION.

Considerable attention has been given to the subject of legal education in the State of New York, arising out of a conflict between the Court of Appeals and Columbia College. In the year 1860 this college obtained the privilege from the Legislature—a privilege already granted to two other universities—of examining its own students for admission to the Bar. Recently the Courts have framed rules for admission, and desire to reduce the system, or rather want of system, of admission to a definite order. This invasion of their privileges is resented by the universities, and we have been favoured with a copy of a lecture delivered by Mr. Dwight, Warden of the Law School, upon education in law schools in the City of New York compared with that obtained in law offices. Mr. Dwight points out with great force the advantages of a regular and systematic training in a school under qualified professors, undisturbed by the routine and drudgery of an office.

Among these advantages he claims—

"Law schools make the student acquainted with reports of law cases, ancient as well as modern, and their comparative value; teach him how to study the cases reported, and to apply legal rules to them, and thus give him an invaluable key to the great mass and volume of legal knowledge, which from many who do not attend them is wholly hidden. Next to perfect familiarity with a legal rule is the knowledge where to find it speedily when wanted, and this acquisition of a lifetime is most satisfactorily begun in the precincts of a law school;"

Most of all, he claims that law schools tend to prevent students from becoming mere technical lawyers, inspire them with a love for broad principles, and an aversion to all modes of spending time and talents in begetting and abetting knavery.

While admitting the value of what Mr. Dwight advances in favour of this mode of teaching, we feel that he injures his cause by the sweeping denunciation of office training, where, as he himself points out, the two professions of solicitor and counsel are not simply permitted to be practised together as with us, but are united, and one examination is required for both. Mr. Dwight says with much truth, that

"Three years' attendance in a law office, particularly in this city, has little or no effect in giving the student that comprehensive knowledge and severe mental training which fit him to understand and comprehend the law as a science, or to practise it as an art. The student can have little if any personal attention from the lawyer in whose office he may be, and, where clerks are numerous, scarcely even enjoys his personal acquaintance. What the student gets he picks up in a hap-hazard way, while hurrying to chambers and answering to his principal's causes, or driving as a copyist through a mass of manuscript, or keeping a register of daily business. It is a notorious fact that many of the young men in offices do no more than this during the entire three years, and some of them not so much. Where they are not paid clerks, they spend a large portion of their time as they see fit. Some of them perhaps repeat the poet Cowper's experience, who attempted to obtain a legal education in this way, and who informs us that he 'spent his time in giggling and in making others giggle, instead of studying law.' A young gentleman once called upon me to commence his regular law-school duties, and mentioned that he had been for two or three years in the office of a prominent lawyer. I remarked that his attendance there must have been of great service to him; to which he replied, that he supposed so, but he had never been introduced to the great man, much less had any instruction from him. Matters in the offices being in this state, the law school is an indispensable requisite to a complete training for the functions of a lawyer."

But Mr. Dwight fails to see that the attorney or solicitor would begin practice at even greater disadvantages were he to rely exclusively on two years study in a law school. On this continent the practical union of the two professions necessitates a training which will give the advantages to be derived both from law schools and the routine of office work. These might be obtained either by a portion of time spent in office as a clerk and another portion as a student, or, as our practice has hitherto been, by attending lectures and examinations while under articles, and requiring a longer term of study than New York rules provide for. The question is one on which it is impossible to lay down any rules universally applicable, so much depending not only on the mode of admission, but on the ability of examiners and the uniform character of their attainments and fitness. We quite agree with Mr. Dwight that nothing could be worse than an examining committee chosen haphazard from among the Bar.

Whatever our faults may be, our method of teaching, examination, admission to, and most of all, retention in practice, both as solicitors and barristers, are worthy of study by our New York neighbours. We have our own faults; with the best intentions the round men are sometimes put into the square holes through friendship or accident. We are fortunately free from the greater evils which impair the uniform training of the profession in New York. Much may yet be done to raise the teaching of our law school, but it would be hardly fair to increase the assessment of the profession for this purpose. The Law Society must regulate the studies, not of the Toronto students only, but of those of the province at large. Anything more than this ought to be done by the Government.

No one who has attended lectures at the law school can fail to see the value of the remarks of Mr. Dwight with which we close:

"A question has been asked in some quarters whether the professional force in Columbia College Law School is adequate to the work to be performed. It is manifest that in such an institution either one of two theories may be adopted. One is, to have a small number of competent men who will devote their entire time to their duties; and the other, to have a larger number, who give only a portion of their time to the law school, and devote the rest of it to their profession. The choice between these methods may depend upon the question whether the institution prefers to educate its students by formal lectures, or by true teaching, including catechetical instruction, informal and oral exposition, and free and ample right on the student's part to ask questions, both in the class-room and in private. We have deliberately chosen the latter course. We believe that it is of the highest importance to inspire the student with love for his subject, and to beget in him a true and lively enthusiasm. This can best be done by a teacher on fire with his subject, who has no distracting thoughts, who has a deep interest in and affection for his students, with sufficient personal magnetism to cause his interest to be reciprocated. Moreover, he must be perfectly familiar with his subject from every aspect, so that his students will have entire confidence in his opinions, and must have his resources entirely at command, so as not to be entrapped by an ensnaring inquiry, which young men full of mischief delight to put to an easily embarrassed professor. He must be master of the art of teaching, which experienced persons know to be not within the reach of every one. He must have personal dignity, so as to inspire respect, and a serenity of temper not easily ruffled, and must hold his class bound to him with an unyielding cord, and yet all its strands must be made up of confidence, respect and affection. If these qualities are possessed in large measure, one man can do the work of a score of professors who are languid and dull of spirit, and whose idea of official duty is to drive with dispatch to the lecture-room, deliver a formal lecture, and conclude it with a hasty bow and a speedy exit, to devote themselves to other and more congenial duties."

EXTRADITION—THE WINSLOW CASE.

This case, unimportant in itself, though said by wonder-mongers to conceal something of greater interest, brings up, and it is to be hoped will effect a settlement with the United States Government upon an important question under the Extradition Treaty. The following remarks from the *Times* gives a compact statement of the case :

"Ezra Dyer Winslow, a citizen of the United States, having been arrested in this country on a charge of forgery in Boston, Massachusetts, and evidence having been produced which, in the opinion of the magistrate, would have justified the committal for trial of the prisoner if the crime of which he was accused had been committed in England, he was sent to prison on March 3, by Sir Thomas Henry. The forgeries were alleged to be extensive, but there was nothing extraordinary in the case itself. Under the Extradition Act fifteen days are allowed the prisoner after committal to apply for a writ of *habeas corpus*, and so test in a higher court the legality of the magistrate's decision ; but no discharge under such a writ was obtained in Winslow's case, and it is to be presumed that the committal was fully justified. Our Extradition Treaty with the United States is scandalously defective, but it does include the crime of forgery. Application was duly made by the Government of the United States for the surrender of Winslow under the extradition clause of the Ashburton Treaty. Nevertheless, the English Government have, under the advice of the law officers, refused to give him up to take his trial in the United States of America ; and when two months from his committal have elapsed—that is, in a month hence—he will be entitled to his discharge, unless the Judges hold that the events which have occurred constitute 'sufficient cause to the contrary' within the meaning of section 12 of the Extradition Act. The difficulty which has arisen is as follows : By section 3 of the Extradition Act a fugitive criminal is not to be surrendered to a foreign State unless provision is made by the law of that State, or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to her Majesty's dominions, be detained or tried in that foreign state for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded. The object of the clause is clear. It is to prevent the process of extradition from being abused by way of procuring the surrender of persons charged with vulgar crimes, against whom the real accusation is some political offence, from the consequences of which they ought to be protected by our usage of granting asylum to political refugees of all parties. We tie our own hands in the same way by section 19 of the Act, which provides that where a person has been surrendered to us, he shall not be tried for any offence prior to the surrender, other than such extradition offence as may be proved by the facts on which the surrender is grounded. A clause embodying this principle is contained in all our modern extradition treaties, concluded since 1870, with Germany, Belgium, Austria, Italy, Denmark, Brazil, Switzerland, Honduras, and Hayti ; but the American treaty belongs to 1842, and contains no such restrictions. Of course this omission cannot override an Act of Parliament. Any Secretary of State who authorised the surrender of a criminal, having notice that the foreign country to which he was surrendered made no provision for confining the charge against him to that grounded on the facts proved here, would commit a grave breach of the law. With such notice the British Government appears to be fixed in the Winslow case, by the declarations of the United States Government in the case of Lawrence, a criminal who recently was surrendered. Moreover, the decision in the matter of Richard B. Caldwell, argued in the Circuit Court of the Southern District of New York in January, 1871, shows what the view of the American Courts is likely to be. Caldwell was indicted for bribing an officer of the United States. He pleaded that he was brought from Canada under the Ashburton Treaty on a charge of forgery. Judge Benedict held that whether the prisoner had been surrendered in good faith was a question for the Governments concerned and not for the Courts of Law ; and the prisoner, being in fact within the jurisdiction of the Court, and charged with a crime committed within that jurisdiction, must be tried for such crime without regard to the matter of extradition at all. He cited an English case tried before the Extradition Act. Whether Winslow is to be given up or not must therefore depend whether the United States Government will or can make an arrangement as to restricting the charge upon which he is to be tried, so as to satisfy the Extradition Act. We can have no wish to give shelter to American criminals ; but,

of course, our law must be obeyed by our own Executive, and strong grounds would have to be shown before we should alter our law on a point where it has been solemnly recognised by many treaties. The truth is that our extradition treaty with the United States is, like our treaty with France, a very insufficient one. It omits, for instance, the crime of fraudulent bankruptcy, though a fraudulent bankrupt is precisely the kind of criminal who would make his calculations with a knowledge of the law and of the means of escape. Negotiations have long been going on for an improvement, and it is to be hoped the present complications will hasten them. Meanwhile, it will be remembered that all we ask is reciprocity; for already, by our Act, we could not try an English forger surrendered by the United States, except for an extradition crime which might be proved by the facts established in America. It is matter for wonder that this question has not arisen before; but, now it has been raised, our Government would appear to have no discretion in the matter."

It is said that England is ready to give up Winslow on a pledge that he will not be tried for any offence except that for which he should be extradited; and that this is necessary is abundantly evident from the article quoted above. This pledge has not it appears as yet been given. In the meantime it is said that the Cabinet at Washington has decided to give notice to Great Britain of the abrogation of the treaty as regards the extradition of criminals, on the ground of the refusal to give them Winslow. This may be a move in the national game of "bluff." Unfortunately this instructive game is not well known in England, though we who are more familiar with the eccentricities of a democracy and can, so to speak, look over the shoulder of our cousin to the south of us, know that his play is not generally warranted by his cards.

The English Government, after being hoodwinked by that of the United States for a century, is beginning to wake up to the fact, that whilst the former has a theory, we are proud to say generally carried into practice, about the inviolability of treaties and the spirit of treaties, the latter has a practice of breaking them and evading their provisions, on the theory that John Bull is so rich and respectable, and withal so stupid, that he will not notice their conduct or at least will not resent it. This is especially true in reference to the Alabama award. The United States improperly obtained an immense sum to cover certain specific claims; after paying all these claims there was a surplus of several millions, which in common decency they were bound to return. But the question with them now is not, whether they shall return it, but to what purposes of their own they shall apply it. In fact one is irresistibly reminded of a pack of thieves squabbling over stolen goods.

SELECTIONS.

LIABILITY OF BARRISTERS FOR NEGLIGENCE.

Last week, in the House of Commons, two votes of censure were proposed; one on Her Majesty's Government, the other on the Bar of England. The former motion was defeated by a majority of 108 votes, and the latter by a majority of 107 votes. It is highly satisfactory to find that the Bar is at least as strong as one of the strongest of modern Administrations; perhaps we ought to say that the division lists prove the superior influence of the bar, for, while 226 members voted against the Government, only 130 members voted against the bar. Pessimists, timid people and satirists of the profession may think that a body, which has 130 members of the House of Commons hostile to it, is in a bad way. But in all times the House has boasted of a goodly supply of persons ready to support an attack on, or a supposed reform of, any institution, and there is nothing remarkable in one fifth of the House approving Mr. Norwood's bill. Of the minority many must have been actuated by the feeling, which very naturally and properly predominates in a great commercial

country, that people ought to be paid for their work, and ought to work for their pay; and with this feeling all honest men must sympathise. Therefore, when the House has been told, and told with truth, that instances have occurred of leading counsel taking heavy fees, with the full knowledge that there was no prospect of their presence in Court to conduct the case, and that instances have also occurred of haggling for an increase of fees after the brief has been accepted, it is not a matter of surprise that business men should seek a remedy for such evils, and should vote for Mr. Norwood's bill as a means of cure. The bad luck in litigation of Mr. Norwood's colleague, which was supposed to be a remarkable example of the risks run by suitors, may also have augmented the number of votes; for, although the case was not mentioned in the debate, it has probably been plentifully discussed in the clubs and the tea-room. Then, again, the speech delivered by the member for Londonderry probably commanded several votes; for when a solicitor of some repute denounces professional misconduct, and declares that a measure before the House will put an end to it, it would be strange if the declaration were not believed by a large number of persons who have no personal knowledge of the question, but justly deem such evidence worthy of consideration.

Now, there is one point upon which no one seems inclined to offer any information, and upon which certainly nothing like precise information was afforded to the House, and it is this: How many barristers are open to the accusation of taking briefs when they know they cannot be present at the hearing of the case? Mr. Norwood says that the whole of the Chancery bar is immaculate, and that a verdict of not guilty must be recorded for that section. Next, as far as we can gather from all that has been said or written on the subject, no indictment is preferred against the junior counsel of the so-called Common Law bar. The question, therefore, narrows itself to the Queen's counsel and the serjeants who practice at Westminster. Then, how many of these are to be pronounced guilty? Shall we say a dozen, half a-dozen, three, or one? For our part we should be ready to make a challenge against the possibility of proof in the case even of half-a-dozen barristers. No doubt two or three counsel can, if they are recklessly indifferent to the honour of the profession, do enormous mischief. But, although a dozen righteous men may save a city, three wicked men ought not to involve the condemnation of a profession which boasts nearly two thousand persons in actual practice. Assuming that there are some few persons who come rightly under Mr. Norwood's lash—and he himself admitted that "the evils complained of were only committed by a small section of the profession"—cannot we see our way to a remedy without putting in force such a measure as Mr. Norwood proposed? Nobody is obliged to retain these barristers who are charged with this misconduct; and what is more, if their retainers were cut down to a reasonable number per annum, the evil would at once cure itself; for it is not pretended that these counsel take their fees, and then go off to Richmond Park or Ascot races. They are in Court hard at work—about that there is no mistake. Diminish their briefs, and away go their sins and their fees at once. Therefore, we are at a loss to understand how a solicitor can gravely get up in the House, and say that the disease is so bad as to require the drastic remedy proposed by Mr. Norwood. Clients, no doubt, will run after fashionable barristers, just as patients will run after "crack surgeons," and such suitors will grumble at the scanty attention they get, just as the patient does. In all cases where, for a moderate fee, expectations are entertained of securing very fashionable counsel, who have the reputation of taking briefs recklessly—that is, if there are such counsel—it is the duty of solicitors to warn the client of the risk of non-attendance.

We have spoken of this question as restricted to barristers who err from want of sufficient discretion and caution in taking briefs, for Mr. Norwood does not go so far as to say that a barrister who takes a brief is to be present at the hearing at all hazards and in all events. The most superficial acquaintance with Law Courts would prevent any man from falling into such an extravagance as that. It is no uncommon thing for a case in the

new trial paper to be imminent for a month or two at a time. Only last week it was announced in all the morning papers that the Exchequer Division would sit in Banco on Friday to proceed with the new trial paper. But when the morning came there were no judges to make a Court. Somebody had blundered in calculating the number of judges and in arranging the business. On other days announcements have been made that certain judges would sit for trial of actions with juries, but no judge has been forthcoming. No human being can tell within weeks when actions, motions and orders for new trials will come on in the Queen's Bench, Common Pleas and Exchequer Divisions; and, therefore, no barrister, however honest, careful and diligent he may be, can help being wanted in two or three places at once. Even the most exact followers of the doctrine that work must follow pay would hardly insist that, if a barrister took a ten-guinea brief to argue an order for a new trial, he was to take no other brief till that case was disposed of. The bar, as a whole, is not very highly paid; but ten guineas a month would be a dreary look-out. The fact is, the work of the profession differs from all other kinds of work in this respect, that the workers have no control over the order in which the work has to be done. One day is an idle one; the next presents a dreadful concurrence of work to be done in two or three different places at once. What is there in human experience similar to this? Death may not wait for the doctor; but he satisfies law and common sense by going as soon as he can. The clergyman finds that Sundays and feast-days recur with inevitable regularity. The author can forecast his labour with absolute accuracy. The artist knows the day on which his picture is to go to the Royal Academy. Manufacturers, colliery proprietors and tradesmen are sometimes afflicted with a great press of business; but the law, if it possibly can, rules in their favour that time is not of the essence of the contract. But the unfortunate barrister has to deal with quick judges and slow judges; with actions that settle themselves in ten minutes, and actions that drag on for days; with Courts which sit when they ought not, and Courts which do not sit when they ought; with Courts which give no notice of what they intend to do, and Courts which give notices and do not fulfil them; with Courts of First Instance and Courts of Appeal; and, worse than all, with clients who have staked their property and their hopes on one issue, to whom the result of one action means ruin or a good haul of money, and who are stung to madness on finding that thirty guineas has failed to secure the sole, undivided and matchless talent of one of the most fashionable counsel of Westminster Hall. Because even barristers fail to meet the emergencies thus presented to them, it is suggested as a reasonable proposition that the disappointed litigant should ask a jury to inquire whether the counsel used every foresight and care when he accepted the brief; whether he was guilty of negligence in undertaking the case, having regard to his other briefs, and the action of the several Courts; and to say, if the barrister is found to be in the wrong, that damages shall be assessed against him. Even if such a right were conceded to the suitor, the barrister would have the consolation of knowing that, *ex hypothesi*, the action was lost by his absence, and that because he was not there the judge and jury made fools of themselves. However, Mr. Norwood's bill is killed for this session, and we venture to predict that some years will elapse before a like measure is again subjected to the ordeal of a second reading in the House of Commons.—*Law Journal.*

Imprisonment for Debt.—The *Law Times* says:—Mr. Josiah Smith, Q.C., Judge of the County Courts of Shropshire and Herefordshire, has delivered an elaborate address upon the subject of imprisonment for debt. The learned judge admits that the system works well, and secures the payment of debts "without grievance." The picture which he draws of the life of a County Court Judge, who has to dispose of a large number of judgment summonses, is, however, harrowing in the extreme. His Honour himself has "groaned" under it for over ten years. He has frequently heard 100 in a single day, and once had before him no less than 450. "It has," he says, "been

the source of the greatest anxiety to me what to do for the best, particularly when the debtor had two or more judgments against him, as is frequently the case. And I believe few have exercised a greater amount of self-denial than the judges of county courts in upholding this painful jurisdiction." His Honour expresses the opinion that several committals should be allowed in respect of one debt, until the whole six weeks are exhausted. Another practical suggestion which he makes is, that notice should be given to absent debtors of the order of commitment made against them, and that it would be enforced unless the monthly instalments are regularly paid.

An indictment charging that the defendant *forged* a certain writing obligatory, by which A. is *bound*, is void for its manifest inconsistency and repugnancy. The Court:—"That is a wheel in a wheel, and can never be made good." *The King* v. *Neck*, 2 Show., 472, 3rd ed.

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law.)*

COURT OF APPEAL.

Muskoka Election Petition.

John C. Miller, *(Respondent)*, *Appellant*, v. Andrew Starratt, *(Petitioner)*, *Respondent.*

Undue Influence—General promises by ministerial candidate—Cumulative evidence.

Appeal from a decision of Mr. Justice Wilson, avoiding the election and disqualifying the respondent.

Both the respondent and his opponent claimed to be supporters of the Ministry of the day; but the respondent was the recognised ministerial candidate, and claimed that his opponent, having originally pledged himself to support him, and then come out in opposition, could not expect to retain the confidence of the Government, and that, as the ministerial candidate, whether elected or not, according to his ideas of constitutional practice, the patronage in the constituency would be in his hands. There was a grievance in the Riding that strangers were sent up to superintend the work on the roads, and the respondent was reported to have stated at a public meeting that he would endeavour to get the evil remedied, and that "he would have the patronage, as he was the choice of the Government—he would have it whether elected or not elected;" adding by way of explanation, "It was the laying out of money on the roads and appointment of overseers."

The Judge who tried the case held (1) that such language did not amount to an offer or promise of any place or employment, or a promise to procure, or to endeavour to procure any place or employment to or for any voter or other person, within the 1st sec. of 36 Vict., cap. 2; but he held (2) that it amounted to undue influence within the 72nd sec. of 32 Vict., cap. 21, or according to the common law.

Held, that the first finding of the learned Judge was correct, but that the second was incorrect.

The respondent was charged with several acts of corrupt practice. As to four of them he took time to consider, and subsequently found three proved. Each separate charge was supported by only one witness, and each was separately denied or explained away by the respondent. There was no corroborative testimony on either side. The Judge below thought that if each case stood by itself, oath against oath, each person equally credible, there being no collateral or accompanying circumstances either way, he should hold the charge not to be proved; but as the charges were severally sworn to by a credible witness, the united weight of their testimony overcame the effect of the respondent's oath; and he felt compelled to attach such a degree of importance to the combined testimony of these witnesses as to hold that the charges to which they severally spoke were sufficiently proved in law as against the opposing testimony of the respondent. *Held* that this view could not be sustained, and the appeal was allowed.

(January 22, 1876.)

Appeal from the judgment of Mr. Justice Wilson, before whom the case was heard on 20th to 23rd July, 1875; and who found the respondent guilty of corrupt practices.

At the close of the evidence, the petitioners confined themselves to fifteen cases, all of which, with the exception of four, the learned Judge then disposed of. Of these he subsequently held one disproved: and although in two of the other charges (which may be designated as the Hill and Sufferin cases) he would have been inclined to find in favour of the respondent upon the evidence affecting these two cases alone, he ultimately came to a conclusion adverse to the respondent in consequence of the effect upon his mind, and the view which he took of the remaining charge, viz: a speech made by the respondent in the course of his canvass at the Matthias Hall, and which the learned Judge held to be a violation of the 72nd sec. of 32 Vict., cap. 21; or if not within that section, to be undue influence under the common law of Parliament. The learned Judge came to this decision, as he stated in his judgment, with much doubt and hesitation, and adversely to the opinions of some of his brother Judges with whom he had consulted, and expressed a hope that the case would be carried to appeal.

It is important to give in full the argument of Mr. Justice Wilson as to the speech at Matthias Hall.

After reciting the evidence, he said :

"I must make out in the first place what Miller really said, as well as I can extract it from the above accounts of what he said.

"His own statement, especially when it is adverse to him, may be accepted as a genuine account of his language. The respondent says he used the words following : 'I was the recognised ministerial candidate, having been nominated by the Reform party. That I understood it to be the constitutional practice, here and in England, for the ministry to dispense, as far as reasonable and practicable, the patronage of the constituency on the recommendation of the individual who had contested the constituency in favour of the Government.' He said, 'I did not state I would have the patronage whether elected or not. I said I understood the constant practice was as above stated. I said the patronage would be in me, and I would redress the grievance complained of, that is,' as he expressed, 'if elected.' The respondent, although not now in words, in effect shows that he did say or gave those at the meeting to understand that he would have, as the Government or ministerial candidate, the influence or patronage of the Government in the district whether he was elected or not, because, he says, he told them he understood the practice was 'that the Ministry should dispense the patronage of the constituency on the recommendation of the individual who had contested it in favour of the Government—not on the recommendation of the person who had contested the constituency in favour of the Government, if that person were successful at the election, or were elected, or, in other words, on recommendation of the member if he were a Government supporter, but on the recommendation of the person who *contested* the constituency on the Government side, or in other words, whether he was successful or not.

"Dill, one of the respondent's witnesses, says : 'To a certain extent Miller said, as I understood him, that, being the supporter of the Government, he would have the patronage whether he was elected or not.' Meyers, also one of the witnesses, says: 'His speech was that, as he was the Government candidate, it was the interest of the people to support him whether he was elected or not ; that he would have the patronage and Mr. Long would not—he was not the Government candidate.' The petitioner's witnesses are quite sure that Miller declared he would have the patronage of the district whether he was elected or not, because he was the Government candidate, and Long would not, of course, have it although he were elected. Assuming, then, that the respondent did use such language, and on the occasion spoken of, is it an offence within the Election Act, or is it an act or the exercise of undue influence 'recognised by the common law of the Parliament of England,' according to 36 Vict. cap. 2, sec. 1 ? Is such language an offer or promise, directly or indirectly, of any place or employment, or a promise to procure, or endeavour to procure, any place or employment to or for any voter, or any other person, in order to induce such voter to vote or refrain from voting ? The language was, in effect, 'I am the Government candidate, and, because I am so, I shall have the patronage and influence of the Government as to appointments and in the laying out of money appropriations in the district roads, and in the appointment of overseers for such works, and I shall have such patronage and influence whether I am elected or not, and I shall take care that no outside persons, but residents only of the district, receive such appointments.' I think it is not an offer or promise of any place or employment, or a promise to procure, or to endeavour to procure, any place or employment to or for any voter or other person. I think it is not so, because the number of overseers in the district would be comparatively small for the expenditure to be made there, and the promise, if one were made, was not exclusively addressed to those present at Matthias Hall, but to the whole constituency. If the respondent had said the district was about to be formed into a county, and a sheriff would have to be appointed at once, and he would have the disposal of that office, and he would see that a resident of the district would get it, I think it could not properly be said that the respondent had offered or promised a place or employment, or had promised to procure, or had endeavoured to procure, a place or employment to or for any one within the meaning of that section of the act.

"The expectation that each one of the constituency would form or might form on such language, would be of the vaguest and most indefinite kind. But if the respondent had said that 100 or 500 men would be required for a particular work at good wages and for a good while, and he would have the selection of them, and he would take care they were taken from the district, and that no outsiders should be employed, and that he would have that patronage

whether he was elected or not, I am disposed to think that such a case might be brought within the operation of that section of the statute. For, although there was nothing addressed to any particular 100 or 500, and the persons to be selected could not then be known, yet the great number who were to be employed would afford and support a very strong ground for each person supposing that he might be one of so numerous a body; and in that way, although the offer or promise were not made to any specified body or number of persons, it was made to such a body and numbers that it operated practically in influencing a very great number of people, and raised just expectation that the promise so made would be or might be fulfilled to each in his own case. A promise to two to employ one, not naming which one, would, in my opinion, be within the act. A promise to one thousand to employ one of them, would, in my opinion, not be within the act. In this district there were at least 1400 voters polled. Those capable of being overseers, or who might probably look for or take the office, I only conjecture, perhaps there were several hundreds; and as the expenditure was not very large (I am not sure whether it was named or not), the number of overseers would not be very numerous. The data are not given to me to state them accurately; but I have no reason to believe that acting upon the rule which I have stated, the exact facts if I knew them, would establish a case, within the provision of the act, of an offer or promise of any kind respecting place or employment which could possibly be called an offer or promise having been made contrary to that enactment by the respondent. If it is a violation of the act, or of the common law of the Parliament of England, it must be by reason of its amounting to undue influence by the respondent.

"The 72nd section of the act defines what is undue influence under that act. 'Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of, or threaten to make use of any force, violence or restraint, or inflict or threaten the infliction by himself or by or through any other person of any injury, damage, harm or loss, or in any manner practise intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, &c., shall be deemed to have committed the offence of undue influence, and shall incur a penalty of £200.'

"Can the case be brought within the terms just quoted of that section? If it can it must be by the following words of the statute:—'Every person who shall directly or indirectly, &c., make use of, &c., any restraint, &c., or in any manner practise intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting &c., shall be deemed to have committed the offence of undue influence.' The word *restrained* is used, it will be seen, in connection with *force or violence*, and so may be said to mean some physical restraint. But *menace* has been held not to be confined to indicating only bodily injury. . . . . I think language may be addressed to a body of electors which, by a particular person, may constitute a restraint upon the free action of the electors.

"Now what I have to determine is, whether the language in question can be held to have been a *restraint* upon or against any person in order to induce or compel such person to vote or refrain from voting? or whether it can be said the respondent, by his language, in any manner practised intimidation upon or against any person for the like purposes, or whether it can be said to be an act or the exercise of undue influence recognised by the common law of the Parliament of England, within the meaning of the statute. Too much strictness must not be imposed upon election speeches. It is said 'a husting's speech has become almost a proverb for insincerity.'—'Freeman's Federal Government,' p. 83. But that will not sanction anything being said without any check or restraint. I do not pretend to define the limit or subjects of a candidate's speech to electors. He will be quite sure to remember his own qualifications in some form or other, and to present them to the electors as grounds as satisfactory to them as they are to himself, why they should prefer him to the other candidate or candidates. He will probably, if he follow the custom in such cases, promise much of what he will do, if he be elected, and he will probably also recount at their full value his former work and services, and devotion, and perhaps losses, in their interests and for the sake of the cause, whatever that may happen at the time to be.

"He may with great propriety refer to such services and show what he has accomplished or attempted to accomplish, and to his experience in and knowledge of the business of legislation and the general duties of a representative.

"He may contend he can do more for the welfare of the country and of his constituents in particular from such knowledge and experience and by reason of (what his friends say he *has*) his abilities.

"He may rely also upon his local position, his intimacy with public men, his wealth, &c., as advantages in his favour. He may perhaps say that, being a supporter of the ministry of the day, he hopes he may be able to do more for the locality he claims to represent than the other candidate or candidates can do, who are in opposition to the ministry or to the Government, according to the general mode of speaking of the administration; and he may say that he will get such a public work done in the locality, or the timber dues remitted, or the land reduced in its valuation, or other advantages granted to the settlers.

"And he may perhaps say, if in office, that by reason of it he will be able more effectually to have carried out what he may undertake to do than the other candidate or candidates who are not in office.

"He will be quite sure not to recommend his opponents too much, for elections are not commonly gained by praise of the opponent. A rich man may say he spends largely in the neighbourhood, and he employs many men, and he employs only those who are residents: for he is speaking only of facts and of past matters; and I think he might add that he would continue to follow the same course. How much further he might go, or how much further a mill-owner or contractor might go, I do not conceive it to be necessary for me to work out.

"If a minister of the Crown were to say he had the patronage of his office which was very great, and he would distribute it or he would use his influence to have it distributed only among those of the constituency, he would be using his office, I conceive, improperly.

"There could be no legal objection to the Commissioner of Crown Lands, or of Public Works, declaring that he had the expenditure of a very large sum yearly. But I think he could not properly say he proposed to lay so much of it out in the constituency, and to employ only the residents of the electoral district or the electors. He might say he had the expenditure or the patronage referred to, if he states the fact simply to show the labour or duty of his office, but if it were stated for the purpose of influencing the electors it would be objectionable.

"It is the intent, of course, with which a thing is said that makes it either objectionable or not objectionable. It is manifest that if some one said that a particular officer had the expenditure and patronage, and the candidate were to say that was an error, for he had them both, there would be nothing wrong in that.

"But if a candidate were to ask another for his vote, and to say to him, I have a large sum of money to lay out here, or I have great influence in having it laid out here, and there will be work for the people about, it would be wrong in him to say so. Now addressing a body of electors is canvassing, the candidate speaks to the electors because he wants to secure their votes. It is canvassing often of the most effectual kind, and it is sometimes nearly all the canvassing in a comprehensive manner, and on a large scale, that is done; and what is said on these occasions must generally be judged of in the same manner as if said to a single elector. The question in all these cases is whether an inducement was held out improperly to influence the electors, and to control or subdue their free will and judgment. Was anything improperly done to prevent the electors from choosing fully which of the candidates they would support, and to induce or compel them as it were to vote for one, although not their choice, and to give up the other. The question is one of fact and intent. A landlord may legally give a notice to quit at the proper time to his tenants, but if he do so during an election because their politics are different from his, very little done or said at such a time may show it was done by or was an abuse of influence. So the like as to a master dismissing his workmen, and also as to the withdrawal of custom from a tradesman.

"When the respondent made the declaration he did, which is the subject of this charge, what was its nature, purpose and import? It was to show the electors that under any circumstances, he, the respondent, would have the influence and patronage of the Government in the electoral district, and that he would distribute them among the residents; and that under no circumstances would his opponent have any such favour or influence. The effect of that was to draw votes to himself, and to withdraw them or keep them from his opponent; and it is a fair conclusion that the respondent intended to bring about such a result, for it is the natural tendency of the language which he used. It must be assumed that it was his purpose so to do. I think that it is not a fair or warrantable course of argument to take. It does interfere with the free deliberation and choice of the electors of their candidates. It is made hopeless to struggle against the influence and patronage of the Crown so to be exercised, and useless to vote for a candidate who is in no case to have any voice or influence in such matters in the constituency. Whether such language will operate upon a large body of the electors, or upon what precise number it will operate, is

not so much the question. It will undoubtedly operate upon some of them, especially in this district, a newly settled, sparsely peopled, and what may be called a poor settlement. Poor, because newly settled, and because the labours of the people are turned to the clearing of their land and the establishment of a home for their families. They have not received and are not receiving the return as yet of their labour. Their effort is to live until they can make their land remunerative; and such language must have been designed to operate upon them prejudicially and unduly as affecting their choice of a candidate; for, of course, the candidate in dispensing his favours will prefer those who supported him to those who opposed him. I don't place any stress upon the respondent calling himself the Government candidate or the ministerial candidate. It is the common mode of speaking. All that is meant by it is, that he is the person that the party which supports the ministry has selected as its candidate. No one thinks that the Government or ministry has actually selected a candidate and put him forward as its nominee in the contest. I do not think either that the respondent saying that *it was the custom and by parliamentary practice* he would have the influence and patronage, whether he was elected or not, alters the character or the force or effect of the language.

"It is the fact that the minister in his department has the patronage of it, and that the contractor has the choice of his workmen. And it would not lessen the objection of their holding out what they could do, and what they meant to do in the district, and how they meant to spend their money and distribute their patronage among the electors, by telling them at the same time that they had the right and power to act on these matters as they pleased—the minister by custom of parliamentary practice, and the contractor because he may do as he pleases with his own.

"I have found in more than one of these election trials that the voters are often urged to support the Government candidates as a matter of duty. Perhaps that is by confounding the ministry with the Government. Perhaps all parties should support the Government of the country, that is, should maintain the honour, credit, independence, and stability of our institutions as established according to the constitution, or in the words and in its proper sense—the Government. But to say that all parties should maintain the ministry of the day, or his party in power, is an absurdity. It was said the late Dominion administration had become obnoxious to the people, but to contend that notwithstanding that, the people should support it, would be folly. It is said by the opponents of the present administration, that they should not be allowed to remain in office because of faults and failings and misconduct which one party can always make against another, and to say that the electors must support the present administration would also be an act of folly. When people are told they should support the Government candidate, it is because the person who so urges it is using unconsciously the word Government in its narrower sense, or is consciously using it as implying that the other candidate is hostile to the Government or constitution of the country, or as implying that it is more for the interest of the electors to stand by the party which has the power and patronage, than to aid a party which has nothing to give, and from which nothing can be got or expected.

"This latter argument is one closely trenching on forbidden ground. It may be presented in such a way as to be quite as objectionable as the language complained of against the respondent. What is it but a bid for electoral support by a promise of Government advantage in some material form or other? I put out of consideration all those arguments addressed to the electors by the candidates, the one saying he is in favour of a new road, or a canal, or a railway, or some other object, and that his opponent is not, and that he, the speaker, will press the performance of that work, and it will be a great advantage for the people of the constituency, because it is one of the duties of a representative to attend to matters of that kind, and he may as freely speak in that matter on such subjects as he may speak on changes in the school law, or in the tariff, or on any other matter not so peculiarly affecting the constituency. There is a difference between such a line of argument and the candidate saying he will have the patronage and influence of the Government in all the work and expenditure to be done or to be made in the constituency, and that he will have them whether he is elected or not, and that he will see that no outsiders participate in these benefits, even although he should add that he would have that power and patronage according to the custom of the parliamentary practice in such cases. I consider that, fairly interpreted, to be the exercise of undue influence, not of Government influence, but of influence in the name of the Government by the respondent, and if it be not that, or do not mean that, it means nothing. But I have no

doubt it was meant for a purpose, and that purpose could only have been, and in his case it was, I think, unduly to influence the electors in their free choice and deliberate judgment of a candidate.

"The conclusion I come to with reference to this charge is, that I am inclined to think the respondent did make use of restraint or practise intimidation upon the occasion in question upon or against the electors present at the meeting at Matthias Hall, and perhaps upon or against those who were not present, in order to induce or compel such persons to vote, or refrain from voting, at that election. Or if the case do not come within that section of the statute, I am of opinion it must be undue influence according to the common law of the Parliament of England. New modes of undue influence must or may be practised from time to time which may not be covered by the written law, but the principle of the law itself, written or unwritten, is, that the election must be *free:* Inst. 169; 1 W. & M. Sess. 2, cap. 2, secs. 1, 2; 2 W. & M., Sess. 1, cap. 7. That the electors must be allowed freely and indifferently to exercise their franchise, and it is for that cause an election is vacated by riot or other serious disturbance, or by general drunkenness, or by general bribery, although neither the sitting member nor any one for him had anything to do with such acts: *Lichfield case,* 1 O. & H., page 26; *Bradford case,* 1 O. & H., 40; *Beverley case,* 1 O. & H., at page 147; *Stafford case,* 1 O. & H., at page 234; *Tamworth case,* 1 O. & H., at page 85. However varied or novel the acts or conduct of those may be who proceed in such a manner as to violate the freedom of the election, can make no difference in the law. If the law itself be broken, if the whole election be rendered in any manner or by any persons, not free, the result must be that it will be vacated as a void election. If the whole election be not so affected, but the sitting member or any of his agents is or are chargeable with certain acts of violation of such freedom, the return of the election of that candidate will be avoided.

"But if the candidate is in no way chargeable with any individual case of violating the principle of a free election, his seat will not be affected; the vote or votes which may be affected by it will be deemed to be illegal. There is a resolution of the Commons of December, 1779, Journals 507, against the interference in elections by ministers of the Crown—'That it is highly criminal in any minister or ministers or other servants under the Crown in Great Britain, directly or indirectly, to use the powers of office in the election of representatives to serve in Parliament, and an attempt at such influence will at all times be resented by the house as aimed at its own honour, dignity, and independence, as an infringement of the dearest rights of every subject throughout the empire, and to sap the basis of this free and happy constitution.' —Rogers on Elections, 9th ed. In Chambers' Election Law, p. 374, it is said the interference of ministers was made a principal ground of avoiding the election in the *Dublin case,* 1831. That case I have not seen. The only one I have seen, where a charge was made against the interference of ministers of the Crown, is the *Dover case,* Wolf & Br., 121.

"If it is highly criminal in a minister of the Crown to use the power of office in electoral contests, it must be objectionable for a candidate to assert that he has and will have those powers, although he is not in office, because he is the Government or ministerial candidate, whatever may be the result of the election. The powers of office are not to be used in the contest, and whether they are used by a minister or a friend, ally or supporter of the minister, must be alike vicious and objectionable. Of course, in all of these cases I am assuming that such a course of proceeding is adopted with the intent mainly to influence the election: for, as I have already said, the intent is everything in such a case. These powers of office are the patronage and influence which that office confers. The exercise of that patronage and influence by delegation to a ministerial supporter is quite as effectual to operate perniciously on the freedom of elections as if the powers were exercised by the principal himself. I see no difference between a minister saying to the electors in an electoral district in which there are Crown lands to be valued for the settlers, 'I have the power and patronage of the valuation of all your lands'—or, 'I will have the valuation of them' —if said with the intent unduly to influence the election in which he is a candidate, or the supporter of a candidate, and another person (not a minister, but the friend and supporter) saying the same thing by reason of his being such supporter, and of his contesting the constituency in favour of the Government, if such person say it with the like intent; and the same thing applies to language of the like kind addressed to lumbermen with respect to lumber dues in their imposition, omission or otherwise, and to the expenditure of Government appropriations in the opening of roads or in the performance of other public works. I am

obliged to find the fifth charge has been sustained."

The argument of the learned Judge on that branch of the case which was especially referred to by the Court of Appeal, namely, as to effect of answers to charges, each one supported by a different witness, but severally denied by the respondent, without any corroboratory testimony, fully appears in the following judgment, where Mr. Justice Wilson's language on that point is fully quoted.

James Bethune, for appellant.

Boultbee, contra.

Draper, C.J.—I agree in the conclusion arrived at by my brother Burton, that the appeal should be allowed and the petition dismissed.

But a principle as to the law of evidence was laid down in the *North Renfrew case* (not reported), which was referred to and acted upon in the present case, with regard to which I entertain some doubts; and I do not wish, by passing it over in silence, to be supposed to concur in it, or to have been influenced by it in being a party to the judgment now given. I am not deciding one way or the other.

It has been distinctly enough held that on a petition charging any corrupt practice, the respondent is, in a case of even and fully counterbalanced testimony, entitled to the presumption of innocency, to turn the scale in his favour. Now the question presented in the present case is, whether the evidence can be said to be so equally balanced as to render it necessary for this respondent to invoke the aid of that presumption, or, on the other hand, to entitle him to it. It is put in the judgment in the following shape: "The question is, whether the evidence can, on this record, be said to be equally balanced, so as to give him the right and benefit of all just presumptions of law and of fact. That will depend upon the other charges which are still to be considered; for if in the other cases I find that they are respectively balanced by the evidence of the respondent, the same witness in all of them as against several witnesses—one, however, only in each case—I should then feel obliged to rely more on the impartiality and truth of the greater number who testified against the respondent, and whose evidence and characters were respectively for reliability and veracity, as much to be depended on as those of the respondent. I have already stated my opinion on this point in the *North Renfrew case*."

In another part of the same judgment it is said: "If this stood by itself, as before stated, oath against oath, and each side equally credible and no collateral or accompanying circumstances to aid me either way, I should hold the charge not to be proved. But the other charges, if severally sworn to by a credible witness, and the united weight of their testimony is to overcome the effect of the respondent's word (second oath), I may be obliged to attach such a degree of importance to the combined testimony of these witnesses as to hold the charges to which they severally speak as sufficiently proved in law against the opposing testimony of the respondent."

In the *North Renfrew case* there were nine independent charges of corrupt practices committed by Thomas Murray, the brother and agent of the respondent. Each charge was proved by one witness only, and was based upon offers or promises, not upon any act of the agent. Admitting the general circumstances and much of the conversation, and in the very words of each witness, Thomas Murray gave a different colour to the language and a different turn to the expression used, which altered the meaning of the conversations detailed by the witnesses, and so constituted in effect a complete substantial denial of the character of the charge attempted to be proved, and in many respects he directly contradicted the witnesses. The learned Judge discussed at some length the question as to whose testimony he should act upon, and observed: "It is impossible to avoid seeing and feeling that the more frequently a witness is contradicted by others—although such opposing witnesses contradict him on a separate point—the more is our confidence in that single witness affected, until at length, by the number of contradictory witnesses, we may be induced in effect to disbelieve him altogether. It is difficult to believe that so many are wrong; it is easier to believe that one is wrong so many times; and the more there are who speak against him, the more we are led to believe that he is the one who is in the wrong. . . The question of veracity does not depend only upon the strength of numbers, nor in some cases does it so at all. Its true basis is character. It is upon the quality of the evidence, and the point is to determine that quality." In the application of these observations in several cases, the determination was against the respondent, although it was expressly stated that if that case stood alone it would have been decided the other way. In one case the learned Judge said: "I would, as I have already said of other charges, decide this against the petitioner if this were the only charge; but as it is one of a series of charges, each one of which is sup-

ported by a different witness, I do not know what I can do, even in so small, I may say so trivial a matter, unless I give effect to the accumulated weight of testimony, when I have no reason whatever to doubt the truth of the respective witnesses who maintain these charges."

I have found no reported case which deals with this question. On an indictment for perjury, the oath of the defendant, which is charged to be false, is nevertheless, for certain purposes, assumed by the law to be true; that is, to warrant a conviction it is held necessary to have the evidence of two witnesses, or if only one, that "there be some documentary evidence, or some admission, or some circumstances to supply the place of a second witness" (per Tindal, C.J., *Reg.* v. *Parker*, Car. & M. 646). In *Reg.* v. *Yates*, Coleridge, J., held that one witness was not sufficient to sustain an indictment for perjury; that this is not a mere technical rule, but a rule founded on substantial justice (Car. & M., 139). The facts in *Reg.* v. *Parker* are worth noting: A debtor had made affidavit that he had paid all the debts proved under his bankruptcy except two, and in support of an indictment for perjury on that affidavit, several creditors were called, each of whom proved the non-payment of a debt due by the debtor to himself, and this was held insufficient. The distinction between a criminal prosecution and the present case is not to be overlooked, but considering the respondent's position as a defendant in this proceeding, there is not only the presumption of innocence of an offence charged against him in his favour, but also the maxim, applicable in civil as in criminal cases, "*semper presumitur pro negante*" (See 10 Cl. & Fin., 534).

The respondent is charged with corrupt practices. There were four cases on which the learned Judge took time to consider, and the second, fifth and sixth were held to be sustained, and the election was declared void. He was in the position of a defendant accused of an offence before a competent tribunal. The presumption of innocence, until his guilt was proved, was in his favour—having denied the charge; the maxim above quoted was in his favour also. The case as put is one of even and fully balanced testimony; each separate charge is supported by only one witness, and is contradicted by the respondent on oath; and, as I understand from the judgment delivered, would have been found against the petitioner if it had been the sole charge, for though the proof adduced by the petitioner sustained it, it was answered and displaced by the respondent's evidence. It is not asserted that this evidence in rebuttal was untrue, or that the respondent was a man not worthy of belief. I cannot follow the reasoning which makes the fact that several independent charges were, *prima facie*, proved—each by one witness only, and were rebutted, though by him alone—a ground for convicting him of all, for no distinction can be drawn between them. And yet I cannot to my own satisfaction answer the arguments on which the judgments in this and the *North Renfrew case* were founded, and I am relieved from the necessity of so doing, as on the other grounds taken, I fully concur in the judgment of my brother Burton.

Burton, J.—We are fortunately, in this case, not embarrassed with any difficulty as to the credibility of the witnesses, in which event we should probably find ourselves concluded by the finding of the learned Judge who had them before him, and was therefore afforded an opportunity of observing their demeanour and manner of giving their testimony, which we do not possess. Here, however, the learned Judge finds expressly that there was nothing in the evidence of the respondent, nor in the manner of giving it, which could or did excite any suspicion whatever against its perfect truthfulness, whilst in commenting upon the evidence both of Hill and Sufferin, it is clear that he had not formed an equally favourable opinion of their manner of giving their testimony or of their conduct as disclosed by themselves, remarking that the behaviour of the latter, even on his own version of what occurred in conversation with Atkins when going to vote, and his voting against the respondent after voluntarily engaging to support him, had not been altogether creditable; whilst Hill had shewn some feeling against the respondent in giving his evidence.

We have before us, therefore, the learned Judge's views of the way in which the witnesses impressed him, and we have to draw such inference from the whole evidence set out on the record as we think he should have drawn, and find accordingly.

It must, in the first place, be borne in mind that no acts of bribery were established; what is alleged in the two cases of Hill and Sufferin (assuming them for the present to constitute corrupt practices within the meaning of the statute) consists merely of offers or proposals to bribe. It ought also to be made out beyond all doubt that the words imputed to the respondent were actually used, because, as has been remarked in one of the decided cases, when two

people are talking of a thing which is not carried out, it may be that they honestly give their evidence, but one person understands what is said by another differently from what he intends it. Still more should that be the case when the adverse finding is attended with such highly penal consequences as the Legislature has declared shall follow the infraction of several clauses of the Election Act.

The learned Judge reports that he should have found both these charges disproved if there were no collateral or accompanying circumstances to aid him either way. He finds all the other charges, with the exception of the fifth (to which I shall presently refer), disproved, which should, I venture to think, have some weight.

The collateral circumstance which turned the scale and induced the learned Judge to arrive at a different conclusion, was what occurred at Matthias Hall. The speech there delivered induced him to adopt the case of the petitioners with respect to these two charges also; partly, as he says, "because of the weight of testimony by their united force, and partly because they are to some extent of a like nature with the Matthias Hall charges, resting upon the influence or upon the alleged interest and influence of the respondent with the Government or ministry of the day, which it is," he adds, "not improbable the respondent used as an argument on these occasions, as he unquestionably did on the occasion of the speech."

I can quite understand that a judge or a jury may find their confidence considerably shaken in a witness, whom they were at first inclined to credit, by his being contradicted by a number of witnesses, although each witness speaks of a different subject. Still, after all, it comes back to the question of what credit is to be given to the witnesses.

The judge or jury, under such circumstances, would scrutinise the evidence of the witness with greater care. The maxim of law is, "*ponderantur testes non numerantur*," and, as laid down by Mr. Starkie, no definite degree of probability can in practice be assigned to the testimony of witnesses; their credibility usually depends upon the special circumstances attending each particular case; upon their connection with the parties and the subject matter of litigation, and many other circumstances, by a careful consideration of which the value of their testimony is usually so well ascertained as to leave no room for mere numerical comparison.

I do not understand that there is any conflict of evidence as to what occurred at Matthias Hall; the speech, as proved on both sides, is substantially the same.

The weight of the evidence, then, so far as it is increased by what the learned Judge calls its united force, is confined to the two charges in respect of Hill and Sufferin.

There is a peculiarity about these election cases, that each charge constitutes in effect a separate indictment. It seems to me, therefore, that if, in the opinion of the Judge, there is no sufficient evidence to support the charge, or, in other words, if evidence is given on both sides, and the Judge gives credit to the respondent, and so dismisses the charge, the respondent cannot be placed in a worse position, because a number of charges are submitted, in each of which the Judge arrives at a similar conclusion, or that a limit could eventually be reached where, although his conclusion upon the particular charge in addition to the others would in itself be favourable to him, the Judge should feel called upon by reason of the multiplicity of the charges, in which the respondent's evidence and that of the witnesses opposed to him have been in conflict, to come to an adverse decision by reason of the cumulative testimony which he has previously discredited. To my mind, an accumulation of such acquittals should, if any weight is to be given to it at all, be thrown into the scale in favour of the respondent.

The only two charges in which there is a conflict of evidence are those of Hill and Sufferin. The learned Judge, in the first of these cases—a case dependent altogether upon the witness' precise recollection of the words used and the way in which they were understood—reports his conviction of the perfect truthfulness of the respondent, and that Hill's evidence was given with a manifest bias, and he comes to the conclusion at first to believe the respondent—a conclusion which, from a perusal of the evidence, I should also have arrived at, but in the correctness of which I am further confirmed by two circumstances not referred to by the learned Judge, viz, : (1.) That Hill himself states that he did not regard it as a bribe at the time, but only awoke to the consciousness of there being anything corrupt in it some six weeks afterwards, when it was deemed necessary to bind him down by a statement under oath. (2.) That it was deemed necessary so to fetter him. These two circumstances, apart altogether from the explicit denial by the respondent, carry conviction to my mind that the learned Judge's first impression was the correct one.

In the Sufferin case it is clear that when the alleged conversation occurred Sufferin had avowed his intention to support the respondent, who was aware of the fact, and any promise thus

made could not have been made in order to nduce him to vote or refrain from voting; and this renders Sufferin's version of it highly improbable. He is, moreover, contradicted by two witnesses besides the respondent. Sufferin himself admits, "I was not induced to support him by this offer of the $3,000(that is, as to the laying out of $3,000 on the roads in his township); it made no definite impression on my mind at the time;" and the conduct of this witness was such as not unnaturally to call forth the remark from the Judge, that it was not straightforward dealing, and was calculated, and perhaps purposely so, to deceive. This also, subject to the investigation of the two other charges, he held to be not proved. "But," adds the learned judge, "the other charges, if severally sworn to by a credible witness, and the united effect of their testimony is to overcome the effect of the respondent's unsupported word, I may be obliged to attach such a degree of importance to the combined testimony of these witnesses as to hold the charges to which they severally speak as sufficiently proved in law against the opposing testimony of the respondent."

The learned Judge then proceeded to investigate the remaining charges, holding one of them not proved, and the other, viz., the Matthias Hall speech, is one about which there is no conflict of evidence.

We may assume, therefore, that but for the learned judge's view of that speech he would have disregarded the united force of the adverse testimony; and had he taken the same view of that speech which we are inclined to do, he would not have varied his first decision upon the other charges.

It would seem that both the respondent and his opponent claimed to be supporters of the ministry of the day; but that the respondent claimed to be the recognised ministerial candidate, having been nominated by the Reform party. He claimed further, that his opponent, having originally pledged himself to support him and then come out in opposition, could not expect to retain the confidence of the Government, and that according to his ideas of constitutional practice, the patronage in the constituency would be in his hands, as the ministerial candidate, whether elected or not.

It seems to be admitted on all sides that it was felt to be a grievance of some standing, that strangers were sent up to superintend the work on the roads, and the respondent is said to have stated that whether elected or not he would endeavour to get it remedied. Taken in the most unfavourable view for the respondent, what he did say, according to Mr. Teviotdale's evidence, was, "He would have the patronage, as he was the choice of the Government, he would have it whether elected or not elected;" adding by way of explanation, as I understand it, "It was the laying out of money on the roads and appointment of overseers."

There is a slight difference between the respondent's version of this speech and that of some of the witnesses; but, taking them in the strongest way against him, I have been unable to convince myself that they constitute a corrupt practice or that they differ substantially from what is constantly done by candidates, in impressing upon electors the importance to themselves of being represented by a ministerial candidate.

The learned Judge holds that such language cannot amount to an offer or promise of any place or employment, or a promise to procure, or to endeavour to procure, any place or employment to or for any voter or other person, within the 1st sec. of 36 Vict., cap. 2, and therein we agree with him; but he holds that it amounts to undue influence within the 72nd section of 32 Vict., cap. 21, or according to the common law.

To prove an offence within that section, it must be shown, either that physical force was used or threatened, or that loss or damage was caused or threatened upon or against some person in order to induce or compel such person to vote or refrain from voting. This was not a threat, nor does it come within the definition of physical force or violence, or doing any loss or harm to any one. Can it then be brought within the remaining words, "in any manner practise intimidation?" To bring the case within this branch of the section, it would, I presume, be necessary to show that some one had been intimidated, but it appears to me to be quite impossible to hold that it comes within this section at all. There was no attempt to work upon the fears of any one; it was rather upon their hopes or expectations; and would come more properly, if an offence at all, within the bribery clauses, but the learned Judge has himself given the answer to that.

Baron Bramwell, in reference to the evidence necessary to bring a case within this clause, is reported to have said: "When the language of the act is examined it will be found that intimidation, to be within the statute, must be intimidation practised upon an individual. I do not mean to say upon one person only, so that it would not do if practised upon two or a dozen, but there must be an identification of

some or more specific individuals affected by the intimidation, I will not say influenced by it, but to whom the intimidation was addressed, before it could be intimidation within the statute, otherwise it comes under the head of general intimidation."

The suggestion that the offence was one at common law was perhaps sufficiently answered by the statement that no such charge was made in the petition, and that the respondent should not be called upon to meet it. But apart from that, I apprehend it would be necessary to go much farther to sustain such a charge, and to prove that the intimidation is of such a character, so general and extensive in its operation, that people were actually intimidated to such an extent as to satisfy the Court that freedom of election had ceased to exist in consequence; just such evidence, in fact, as would be required to avoid an election on account of an organised system of treating or bribery.

Great latitude is necessarily allowed in speeches of this kind, and to hold an election illegal because of the use of such language as is attributed to the respondent in this case would be to render a law, harsh enough admittedly in many of its provisions, intolerable. What the respondent is alleged to have said was an argument or reason for the electors supporting him rather than his opponent, if they believed his statement that he would be more influential with the Government in securing local benefits, and in redressing the particular grievances of which they complained; but it would be going, in my opinion, far beyond what the Legislature ever contemplated to hold that self-recommendation of that kind on the part of a candidate was to subject the electors to have the election avoided, and to expose him to the disgrace of disqualification for any office in the gift of the Crown, or any municipal office, for eight years.

I think the evidence fails to establish either of the two first charges, and that the remaining charge is not a corrupt practice within the act; and adopting the language of Mr. Justice Willes in the *Lichfield case*,—considering the extreme solemnity and weight which ought to be attributed to an election that has, so far as one can judge, in all its substantials been regularly and properly conducted,—and looking to the amount and weight of evidence which ought justly to be required to disturb a proceeding of that description,—and looking, I may add, to the highly penal consequences resulting to the respondent, and finding no evidence which, in my opinion, ought to outweigh the denial of the respondent, and justify me in finding him guilty of the offences charged;—I think we ought not to arrive at a conclusion adverse to him, and that the appeal should be allowed and the petition dismissed.

Patterson and Moss, J.J., concurred.

Appeal allowed and petition dismissed.

CHANCERY.

Rivet v. Desourdi.

Partition—Co-tenants—Occupation rent.

Held, that although one tenant-in-common who has been in sole possession of land owned by him and another is not *prima facie* chargeable with an occupation rent, yet if he claims to be repaid sums paid by him on account of incumbrances, he must give credit for a proportion of the rents and profits.

(May 17, 1876—Blake, V.C.)

This was a suit for partition. The bill charged that two of the adult defendants had been in sole possession, and claimed that they should be charged with an occupation rent.

The answer of these defendants admitted that they had been in possession, but denied any ouster of their co-tenants, and claimed by way of cross relief that an allowance should be made to them for incumbrances paid off by them.

McCarthy, Q.C., for plaintiffs, moved for a decree in accordance with the prayer of the bill. He admitted that he was not entitled to charge the adult defendants with an occupation rent if they on their part abandoned their claim to be paid for the incumbrances discharged by them, but he insisted that if they persisted in that claim, he was entitled to a decree as prayed.

Loant, Q.C., for adult defendants. These two claims are entirely distinct; it is not like the case of a claim for improvements made on the land itself. There the tenant in possession has the benefit of those improvements, and it is to be presumed has made them for his own convenience. His right to be repaid for them is a purely equitable right. The payment of the incumbrances is not connected in any way with the possession of the land.

Blake, V.C., *held* that although the defendant would not *prima facie* under *Rice v. George*, 20 Gr. 221, be chargeable with an occupation rent, yet, if they insisted on their claim to be repaid the payments made by them in discharge of incumbrances, they must give credit for a proportion of the profits derived by them from the estate.

Decree accordingly.

Anonymous.

Solicitor—Order to pay over—Striking off roll—37 Vict., cap. 7, sec. 89 (O).

A solicitor included in his bill of costs rendered to his client, the fees of a commissioner appointed to take evidence, and received payment of such bill, but neglected to pay the commissioner's fees. On the summary application of the commissioner he was ordered to pay over the fees within a month, and in default to be struck off the rolls.

(May 17, 1876—Blake, V.C.)

A petition was presented in this matter by one G. G., against a solicitor, to compel payment of a sum of $450, and in default praying that he might be struck off the rolls.

It appeared from the petition and affidavits that the petitioner had been employed by the solicitor to take evidence in Scotland to be used in a suit pending in Ontario; that his fees as such commissioner amounted to $450, of which a bill had been rendered to the solicitor; that the latter had drawn upon his client and received payment of a sum sufficient to cover all his costs of the suit in question, including the fees of the petitioner.

W. R. Mulock for petitioner. The application is made under 37 Vict., cap. 7, sec. 89 (O); and see *Re Carroll*, 2 Chy. Cham. 323; *Re Walker*, 2 Chy. Cham. 324; *Re Toms and Moore*, 3 Chy. Cham. 41; *Re Aitkin*, 4 B. & Ald. 47; *Ex p. Bodenham*, 8 Ad. & E. 959; *Re Knight*, 1 Bing. 91; *Re Hill*, L. R. 3 Q. B. 543.

Bethune, Q.C., for respondent. The respondent has not received the fees in question in privity with the petitioner. It is the case of an ordinary debt, and there is no jurisdiction in this court to enforce payment by summary process of this kind. The matter stands in the same position as the ordinary case of Sheriff's fees, which are included in an attorney's bill, and of which he has obtained payment. It could never be intended to bring such cases within the act referred to.

Blake, V.C.—It appears on the affidavits, and is not denied, that the respondent has received from his client sufficient money to pay the costs of the suit referred to in the petition, including the petitioner's fees; here the client was liable for the payment of these fees, and he has placed in the solicitor's hands money for the purpose of enabling him to pay them, and instead of paying them, the solicitor has put the money in his pocket. I have no doubt that such a case is a non-payment of money within the meaning of the act. The money must be paid within a month, and in default the respondent must be struck off the rolls. The respondent must pay the costs of the petitioner.

Order accordingly.

CHANCERY CHAMBERS.

Cox v. Keating.

Replication—Introduction into replication of matter by way of confession and avoidance—Order 151.

Replication held irregular which contained new matter by way of confession and avoidance of the defence set up by defendant's answer. Such matter should be introduced by way of amendment to the bill.

(February 15, 1876—Referee.)

This was a suit for specific performance by a vendee against his vendor. By the third paragraph of the defendant's answer, it was alleged that by the terms of the contract the plaintiff covenanted to pay the purchase money on the 1st October, 1875, and that the same had not been paid. The plaintiff, in his replication, admitted this allegation, and set up certain facts in excuse for his default. He alleged in effect that he attended the defendant and was prepared to pay the purchase money, and that he did not do so because he found an incumbrance outstanding on the property, which the defendant refused to remove. The defendant in his answer alleged that the petitioner had executed and registered a mortgage on the property, and he claimed, by way of cross relief, that in the event of the sale not being carried out, the plaintiff might be ordered to release the lands from the mortgage so executed by him. In his replication, the plaintiff admitted the making of the mortgage, but he set up that he afterwards procured it to be discharged.

Hoyles, for the defendant, now applied to take the replication off the files for irregularity, or to strike out the new matter thus introduced by way of confession and avoidance of the facts alleged in the answer.

Perkins (Beatty, Miller & Lash) for the plaintiff. The matter objected to is within the meaning of Order 151, which provides that admissions in the replication may be made, "with such qualifications as may be necessary or proper for protecting the interests of the party making the admissions."

Mr. Holmested.—I do not think that this replication complies with, or is within the spirit of Order 151. The system of pleading which prevails in this court aims at producing an issue between the litigants, in the course of at

most three pleadings, viz., bill, answer and replication, or in certain cases, in bill and answer or demurrer alone. There is no provision in our procedure for any fourth pleading after replication, as there is at law: consequently the result of alleging new facts by way of replication would be to deprive the defendant of any opportunity to answer them or even to take issue upon them. It has always been the practice heretofore, where it was desired to meet the defence set up by an answer by the allegation of facts in confession and avoidance, to introduce such facts by way of amendment to the bill. The defendant has then an opportunity of answering the facts so introduced.

The qualifications with which admissions may be made in the replication are not such as introduce new matter, but are only such as may be thought necessary for restricting the admission within certain limits, *e.g.*, that the admission is made for the purpose of the suit only, or that it is made with reference only to a certain specified part of any given paragraph of the defendant's answer.

This replication must be set aside with costs, the plaintiff to have leave to file a new replication within ten days.

NOTES OF CASES

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

COURT OF APPEAL.

Wyld v. Liverpool, London & Globe Insurance Company.

(May 6, 1876.)

Appeal to Supreme Court—Allowance of bond—Practice.

Appeal to the Supreme Court from the Court of Appeal.

The appellants, on a two days' notice of motion, moved for the allowance of the appeal bond and the settlement of the case on appeal. The motion came on to be heard within thirty days after the pronouncing of the judgment appealed from. The execution of the bond was proved by affidavit and the sureties justified in the usual manner. The notice of motion informed the respondent of what the proposed case in appeal would consist. It was objected that the case itself had not been served; that no information as to the bond was given in the notice, and that the notice had not been given early enough under sections 23 and 28 of the Supreme Court Act.

Moss, J., allowed the bond and case, as stated, as sufficient, but said that the respondent might have an enlargement if necessary to inquire into the sufficiency of the sureties.

Osler for appellant.

J. A. Boyd contra.

COMMON LAW CHAMBERS.

In Re McKenzie and Ryan.

(April 18).

Division Courts—Jurisdiction—Splitting cause of Action—Unsettled account over $200, but under $400—39 Vict., cap. 15, sec. 2.

The plaintiff, in a suit in a Division Court, brought before the passing of 39 Vict., cap. 15, sued for $30 due as a balance of an account for board for self and horse, which appeared at the trial to be a balance of an unsettled account exceeding $200. He also sued for $82 for board for self and horse for a subsequent period, and abandoned the excess of $12 over $100. On objection being taken to the jurisdiction of the Division Court, the Judge allowed an amendment; and the plaintiff then altered his claim, reducing it to the $82 only, and the case was again tried and judgment reserved, whereupon application was made for probition.

Harrison, C. J., *held*, 1. That the Division Court had not, independently of the 39 Vict., cap. 15, sec. 2, jurisdiction; but

2. That under that Act the claim might have been investigated, as the subsequent proceedings took place after its passing, and there was therefore no necessity for any amendment.

W. R. Meloch shewed cause.

Meyers supported the summons.

In Re Hurst, an Insolvent.

(April 18).

Insolvent Act of 1875, sections 125, 128, 130, 133—Appeal—Fraudulent preference.

Appeal, under section 128 of Insolvent Act of 1875, from decision of County Judge of Halton.

On the 11th September Martha Hurst, and Richard Hurst, her husband, made a chattel mortgage to the Dominion Bank to secure a previous indebtedness of Richard Hurst to the Bank. No future day was named for the payment, and the proviso to hold possession till default was struck out. A writ of attachment in insolvency was issued against Richard Hurst on the 4th October, 1875, and the assignee took possession of the mortgaged chattels then in the debtor's possession. The Bank claimed the chattels under the mortgage, which the assignee contended was void as against the creditors. The Bank thereupon petitioned for an order directing the assignee to deliver up the goods. It appeared also that the debtor had long previously been embarrassed; that most of his paper was under protest; that his real estate was also mortgaged to the Bank and others, and no pressure was shown to obtain the mortgage, and no promise of any future advance. The Judge in Insolvency declined to grant the order petitioned for, holding the mortgage void under sections 130 and 133.

Harrison, C.J., under these circumstances, after an elaborate review of the English and Canadian authorities bearing on the subject, *held*, that the chattel mortgage was fraudulent and void as against creditors, and dismissed the appeal with costs.

A. Campbell for appellant.
E. G. Patterson contra.

In re Dixon v. Snarr et al. executors.

(April 21, 1876.)

County Court Jurisdiction—Prohibition.

The plaintiff endorsed his writ in a County Court suit for the amount of account rendered, $611.90, less credit by contra account of $561.97, and claimed a balance of $49.93. The defendant applied for a prohibition on the ground that the County Court had no jurisdiction. It was sworn by the plaintiff, but denied by the defendants, that there had been a settlement of accounts from time to time.

Harrison, C.J.—Until the Judge of the County Court has heard the evidence and decided as to the facts involving the question of jurisdiction, prohibition cannot be granted. If, on the trial, he should find in favour of defendant's contention, the plaintiff might accept a verdict of $200 in settlement of his account of $611.90; but that would not prevent the defendant from suing for his account of $585.37, and the plaintiff could then only set off his judgment for $200.

Bigelow & Hagle for plaintiff.
Osler contra.

Schneider v. Agnew et al.

(May 2, 1876.)

Con. Stat. U. C., cap. 24, section 41—Examination of debtor—Refusal to answer—Committal.

Harrison, C.J., ordered the defendant, a judgment debtor, to be committed to the common gaol of his county for three months, for not making satisfactory answers on an examination, under above statute, respecting property which was liable to satisfy the judgment.

Osler for execution creditor.
Ritchie contra.

UNITED STATES REPORTS.

DISTRICT COURT, DAKOTA.

Russell B. Gress v. James W. Evans et al.

Purchaser in good faith—Unrecorded quit-claim deed Subsequent quit-claim deed—What title it conveys.

1. Purchaser in Good Faith—That in order to defeat a title under a prior unrecorded deed, the subsequent purchase must be in good faith, without notice, and for a valuable consideration.

2. Title by Subsequent Quit-Claim Deed.—The owner of a lot of land executed a quit-claim deed of it to a party in good faith: after the execution and delivery of this deed, and before it was recorded, he made another quit-claim deed of the same land to another party, conveying all his interest in the land, with covenants against the acts of the grantor, which deed was recorded first. *Held*, that the grantor by the first deed as between the parties passed all the interest he had in the land, and this, although it was not recorded; that the grantee in the second deed only took the interest which the grantor had in the land at the time of the execution of the deed, and having conveyed it away, he had no interest in the land to pass by the second deed; that the covenant against the acts of the grantor in the second deed did not affect the result in this particular.—

[*Chicago Legal News*, 1876, p. 333.]

The opinion of the Court was delivered by Bennett, J.

This action is brought by plaintiff to quiet his title in and to the following described real estate, situated in the county of Minnehaha, Dakota territory, to wit: The south-east quarter of section nine (9), in township one hundred and one (101), of range forty-nine (49), and to

remove a cloud from its title caused by certain deeds executed and delivered to defendants for said real estate, and which were by them placed on record.

The land in controversy was entered by what is known as Indian half-breed scrip, in the name of Jane L. Titus.

Plaintiff claims title under deed, quit-claim in form, executed by Moses S. Titus and Jane L. Titus, his wife, to Byron M. Smith, dated March 21st, 1869, filed for record in Minnehaha county, May 14, 1872, and deed from Byron M. Smith and wife to plaintiff, dated April 7, 1870, and filed for record in Minnehaha county, May 18, 1875.

Defendants claim title under two certain deeds executed by Jane L. Titus and Moses S. Titus, her husband, in form quit-claim, with special covenants, one dated May 17, 1871, and filed for record May 23, 1871, and the other bearing date August 11, 1871, and filed for record September 18, 1871, and deed from Defendant Evans to Defendant Burbank, warranty, for the north half of said tract, executed September 2, 1871, and filed for record in Minnehaha county, October 4, 1871. * * *

The deeds from Jane L. Titus and Moses S. Titus to Evans, and from Evans to Burbank, were executed and delivered subsequent to, but recorded before, the deeds to Smith, and from Smith to plaintiff, and defendants in their answers allege that they purchased for a valuable consideration, and without notice, either actual or constructive, of plaintiff's rights, and claim that they should be protected.

The deed from Jane L. and M. S. Titus to Evans, dated May 17, 1871, as before stated, is in form of a quit-claim: "By these presents, grant, bargain, sell, release and quit-claim, all their right, title, interest, claim or demand * * * to have and to hold the above quit-claimed premises, so that they, the said party of the first part, their heirs or assigns,, shall not have any right, title or interest, in and to the aforesaid premises."

The second deed to Evans, dated August 11, 1871, is the same in form, with the exception of the covenants, which are as follows: "And the said party of the first part, doth covenant with the said party of the second part that they have not made, done, executed, or suffered any act or thing, whatsoever, whereby the above premises, or any part thereof, now, or at any time thereafter, shall or may be imperilled, charged or incumbered in any manner whatsoever." For what purpose was this second deed obtained? The evidence furnishes no explanation; it certainly was not for the purpose of correcting any mistake in the names of the grantors or grantee, or description, or in the certificate of acknowledgement. The only apparent purpose seems to have been to obtain different covenants, such as would rebut any presumption of notice that might be implied from a quit-claim deed, and clothe the transaction in the garb of good faith, but it falls far short of accomplishing that end, and is in itself a very suspicious circumstance.

In order to defeat a title under a prior unrecorded deed, the subsequent purchase must be in good faith, without notice and for a valuable consideration.

* * * * *

One other point in connection with these deeds to Evans remains to be noticed. Being in form quit-claims, what right, if any, did Evans acquire under them as against the prior unrecorded deed of Smith? It is well settled that a quit-claim deed is sufficient to pass whatever right or title the grantor may have in the land. But it is insisted by counsel for plaintiff that if the grantor has parted with his title, then the grantee in a subsequent quit-claim deed can not be regarded as a purchaser of the same premises, in good faith and without notice, although the prior deed is unrecorded, and he has no other notice of it than that presumed from the form of his deed. The first intimation we have of this doctrine, so far as my examination extends, is as far back as 1818, in the case of *Brown* v. *Jackson*, 3 Wheaton, 450, in which the Court says: "A conveyance of the right, title and interest in land is certainly sufficient to pass the land itself, if the party conveying has an estate therein at the time of the conveyance; but it passes no estate which was not then possessed by the party." The doctrine which seems to be evolved from this decision is stated in the syllabus: "But as the earliest deed was operative between the parties if the second deed purports to convey only the right, title and interest which the grantor had at the time of its execution, it does not convey anything to the grantee."

Following this is the case of *Oliver* v. *Piatt*, decided by the same Court in 1844, and reported in 3 Howard, 396. On page 410 the Court uses this language: "Another significant circumstance is, that this very agreement contained a stipulation that Oliver should give a quit-claim deed only for the tracts; and the subsequent deeds given by Oliver to him accordingly were drawn up without any covenants of warranty, except againat persons claiming under Oliver, or

his heirs and assigns. In legal effect, therefore, they did convey no more than Oliver's right, title and interest in the property; and under such circumstances it is difficult to conceive how he can claim protection as a *bona fide* purchaser for a valuable consideration, without notice, against any title paramount to that of Oliver, which attached itself as an unextinguished trust to the tracts." As late as 1870 the same Court, in the case of *May* v. *Le Claire*, 11 Wallace, 232, uses the following language. "On the 27th of July, 1859, Dessaint conveyed by a deed of quit-claim to Ebenezer Cook. The evidence satisfies us that Cook had full notice of the frauds of Powers, and of the infirmities of Dessaint's title. Whether this was so or not, having acquired his title by a quit-claim deed, he cannot be regarded as a *bona fide* purchaser without notice. In such cases the conveyance passes the title as the grantor held it, and the grantee takes only what the grantor could lawfully convey," and cite in support of this doctrine, in a foot note the case of *Oliver* v. *Piatt*. These cases have been assailed, and it is urged that the case of *Oliver* v. *Ptatt*, when properly understood and construed, holds no such doctrine. But it will be observed that the U. S. Supreme Court so construes it, and it is also understood and cited as authority on this point by the Supreme Court of the State of Alabama, which says: "The case of *Oliver* v. *Piatt*, 3 Howard. (U. S.) 410, which is cited with approval in 11 Alabama, 1067, fully sustains us in the position that the bank, holding a mere quit-claim deed, cannot be regarded as a *bona fide* purchaser for a valuable consideration without notice."

Smith heirs v. *Bank of Mobile*, 21 Alabama, 124. This Alabama case is cited with approval in support of the same point, by the Supreme Court of Texas, in the case of *Rogers* v. *Burchard*, 34 Ter., 441.

The Supreme Court of Maine, in the case of *Bragg* v. *Paulk*, 42 Maine, 502, lays down the doctrine that "a deed which simply purports to pass the right, title and interest of the grantor will not exclude the operation of a prior unregistered mortgage." "By a deed which, from its terms, conveys only the right, title and interest of the grantor, the grantee does not obtain anything which the grantor had previously parted with, although the subsequent deed was first recorded."

This doctrine is clearly laid down by the Supreme Court of Minnesota, in the cases of *Martin* v. *Brown*, 4 Minn., 282; *Everest* v. *Ferris*, 16 Minn., 26; *Marshall* v. *Roberts*, 18 Minn., 405, and other cases to which I have not access. It is contended by counsel for defendants that the Court bases these decisions on a particular statute of that state, which reads as follows: "A deed of quit-claim and release, of the form in common use, shall be sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale." It is true that the Court seems to hold that this statute is a limitation upon the estate passed by a quit-claim deed, and yet it is but virtually the embodiment of the principle laid down by other courts in the cases above cited. If, indeed, it conveys all that a party could lawfully convey by a deed of bargain and sale, what more could possibly be claimed for it independent of any statute? This view seems to be borne out by section 479 of our civil code.

But it is further contended that this view is in conflict with the provisions of our recording act, and definition of a conveyance, which are substantially the same as the Minnesota statute.

This objection is satisfactorily answered by the Court in the case of *Marshall* v. *Roberts*. supra: "These provisions, as will appear upon a moment's reflection, so far from militating against the views expressed in the cases cited, come to their aid, since it is only the purchaser of the same real estate, or any portion thereof, who, by his priority of record cuts out the title of a prior purchaser. For when the second purchaser obtains by his quit-claim deed only what his grantor had (his right, title and interest) at the time when such deed was made, he is not a purchaser of the same real estate, (or any part thereof,) which his grantor had previously conveyed away, and therefore no longer has."

I am therefore inclined to hold to the doctrine laid down in these cases. My attention has not been called to any conflicting opinion where the point has been fairly raised and passed upon. And I am further of the opinion that the special covenants in these deeds to Evans do not change their character or vary the rule * * * Burbank cannot stand as a *bona fide* purchaser without notice. But be this as it may, if we apply the doctrine laid down in the case of *Marshall* v. *Roberts*, *supra*, Burbank took nothing under his deed from Evans, as Evans had nothing to convey, and the terms of the quit-claim deed to Evans was notice to Burbank of the rights which had been conferred on Smith, Titus' prior grantee. The Court therefore finds the equities of this cause with plaintiff, and that the deeds to defendants are fraudulent and void, as against him.

CORRESPONDENCE.

Assimilation of the Law of Real and Personal Property.

To the Editor of the Canada Law Journal.

Sir,—Although I agree with you that the assimilation of the law of real and personal property in every particular is impossible, I cannot help thinking that a much greater difference exists between these two branches of law than either the nature of things, or the exigencies of modern society require.

The principal cause of the dissimilarity lies in the different law of succession applicable to the two classes of property, and this difference of succession again appears to arise from the fact that, as regards personal estate, we have adopted the principles of the civil law; while as regards realty, we have adopted and perpetuated the principles of the ancient feudal law.

Now, I do not think it can be said that there is anything in the nature of either personal property or land which of itself necessitates a different mode of succession. In ancient times the exigencies of society were considered such as to require the application of different principles of succession. But the state of society now-a-days is so essentially changed, and its needs and obligations are so widely different from what they were when feudal principles first took root in our jurisprudence, that the perpetuation of those principles in this age strikes one with a sense of incongruity, somewhat similar to that with which we behold the man in armour at a Lord Mayor's show.

The feudal principle, for all practical purposes, is dead, and is no longer applicable to the state of society in which we live, and in perpetuating this diversity of descent or succession, which is the product of feudalism, are we not running counter to the spirit and necessities of the times?

I think it must be admitted that, according to modern principles of morality, a law of succession must of necessity provide for the due application of the property of a deceased person in the first place for the satisfaction of the claims of creditors upon his estate. This principle the feudal law practically ignored, and it is only by a species of patch-work legislation of comparatively recent date that this obvious defect has been to some extent remedied. With regard to personal estate, on the other hand, this fundamental principle has always been recognised. And all the patch-work that real property law has undergone has failed to make it as efficient or as consonant with common sense as the simple rules by which personal estate is regulated.

Let us examine for a moment some of the many difficulties and anomalies which this adherence to the feudal principle of succession occasions.

1. The fact that land descends to the heir instead of the personal representative to be administered, leads to this anomaly: that the person who is charged by the law with the payment of the debts of the deceased has no power to deal with one of the chief assets of the deceased's estate, the result frequently being that estates cannot be administered to the best advantage.

2. Then we have this illogical result: a creditor recovers judgment against the personal representative, and upon this judgment issues execution against the lands of the deceased, notwithstanding the fact that the person against whom the judgment is recovered has nothing whatever to do with those lands, and notwithstanding that the person who, in the eye of the law, is the real owner of them, is no party to the proceedings.

3. The difference in the mode of succession necessitates a different rule of construction being applied to instruments affecting lands to that applied to instruments affecting personalty. The result of this has been, that great injustice in the name of law has been frequently done, and the intention of devisors has been over and over again defeated.

4. Then, again, it gives rise to many difficult questions in the administration of estates, which would otherwise rarely, if at all, arise, *e.g.*, questions as to which class of property is the primary fund for payment of debts, &c.; whether there has been a conversion of goods into land, or *vice versa*; whether a fund is pure or impure personalty or realty. If the persons entitled to both funds were identical it is needless to say that these questions

would, for the most part, cease to be material.

5. It keeps alive the law of entail. The only useful (?) result of which is to serve as a sort of pit-fall for unwary conveyancers.

6. It leads to great and unreasonable trouble and expense, where a man, having contracted to sell lands, or being a trustee thereof, dies intestate without having conveyed, and leaving numerous heirs, or when such heirs are unknown or infants, &c. If lands devolved in the same way as personalty all these difficulties would be obviated.

7. It tends to keep alive the anomalous estates of dower and curtesy—I call them anomalous because they place the right of husband and wife—without there being any express contract—paramount to the claims of creditors; a principle wholly at variance, I conceive, with the fundamental rule with which we set out.

8. Then it gives rise to infinite trouble and expense in proving the intestacy and heirship of persons through whom a title is derived, and this trouble and expense frequently falls upon some unfortunate vendor, long after the event has happened, which he is called on to prove.

9. By reason of the silent operation of the law of descent of realty, *i.e.*, without the intervention of any formal act of the law, such as is the grant of administration to personalty, heirs-at-law are enabled to sell the land of an ancestor in fraud of his creditors.

I do not pretend to have exhausted the topic. I think, however, I have said enough to show that the difference in the law of succession involves serious and practical evils, which would be to a great extent, if not altogether, removed by assimilation.

G. S. H.

Con. Stat. U. C., cap. 88, Sec. 24.—Judgments—Limitations.

To the Editor of The Canada Law Journal.

Dear Sir,—Would you kindly give me a little information on the subject of judgments?

C. S. U. C., cap. 88, sec. 24, is as follows: No action, &c., shall be brought to recover any sum of money secured by mortgage, *judgment* or lien, or otherwise charged upon, or payable out of land, &c., but within twenty years, &c.

At the time of the passing of this Act judgments were not a charge on land unless registered. Would this Act then have applied to any judgment not registered, or would such a judgment not have remained good after twenty years?

The late Ontario stat., 38 Vict., cap. 16, sec. 11, uses the same words. As judgments are not a charge on land, would this Act affect any judgment whatever?—Yours truly,

A Law Student.

[Perhaps some of the many enterprising students in Ontario will give their brother the benefit of their research in this matter.—Eds. L. J.]

FLOTSAM AND JETSAM.

The Empress of India.—The following is the much discussed proclamation on this subject. It may be interesting to inquire whether writs and documents in this Dominion should not run under the new title:

"Victoria R.

Whereas an Act has been passed in the present session of Parliament, entituled "An Act to enable Her Most Gracious Majesty to maker an Addition to the Royal Style and Titles appertaining to the Imperial Crown of the United Kingdom and its Dependencies," which Act recites that, by the Act for the Union of Great Britain and Ireland, it was provided that after such Union the royal style and titles appertaining to the Imperial Crown of the United Kingdom and its dependencies, should be such as His Majesty by his royal proclamation under the Great Seal of the United Kingdom should be pleased to appoint: and which Act also recites that, by virtue of the said Act, and of a royal proclamation under the Great Seal, dated January 1, 1801, our present style and titles are "Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith;" and which Act also recites that, by the Act for the better government of India, it was enacted that the Government of India, theretofore invested in the East

India Company in trust for us, should become vested in us; and that India should thenceforth be governed by us and in our name, and that it is expedient that there should be a recognition of the transfer of the Government so made by means of an addition to be made to our style and titles; and which Act, after the said recitals, enacts that it shall be lawful for us, with a view to such recognition as aforesaid of the transfer of the Government of India, by our royal proclamation under the Great Seal of the United Kingdom, to make such addition to the style and titles at present appertaining to the Imperial Crown of the United Kingdom and its dependencies, as to us may seem meet; we have thought fit, by and with the advice of our Privy Council, to appoint and declare, and we do hereby, by and with the said advice, appoint and declare that henceforth, so far as conveniently may be, on all occasions and in all instruments wherein our style and titles are used, save and except all charters, commissions, letters patent, grants, writs, appointments, and other like instruments, not extending in their operation beyond the United Kingdom, the following addition shall be made to the style and titles at present appertaining to the Imperial Crown of the United Kingdom and its dependencies; that is to say, in the Latin tongue, in the words: "Indiæ Imperatrix;" and in the English tongue in these words: "Empress of India."

And our will and pleasure further is, that the said addition shall not be made in the commissions, charters, letters patent, grants, writs, appointments, and other like instruments, hereinbefore specially excepted.

And our will and pleasure further is, that all gold, silver and copper moneys now current, and lawful moneys of the United Kingdom, and all gold, silver and copper moneys which shall, on and after this day, be coined by our authority, and with the like impressions, shall, notwithstanding such addition to our style and titles, be deemed and taken to be current and lawful moneys of the said United Kingdom; and, further, that all moneys coined for and issued in any of the dependencies of the said United Kingdom, and declared by our proclamation to be current and lawful money of such dependencies, respectively bearing our style or titles, or any part or parts thereof, and all moneys which shall hereafter be coined and issued according to such proclamation, shall, notwithstanding such addition, continue to be lawful and current money of such dependencies respectively, until our pleasure shall be further declared thereupon.

Given at our Court at Windsor, the twenty-eighth day of April, one thousand eight hundred and seventy-six, in the thirty-ninth year of our reign.

God save the Queen."

Dr. Kenealy is now elaborating a scheme for combining in his own person the functions of all the law courts, local, national and international. "Before long," he modestly says, he will establish a "High Court of Arbitration," to which all persons who have differences may resort "if they think proper." The persons who thus think proper will "simply have to enter into an agreement to abide by the award of Dr. Kenealy, the judge." He observes very pointedly that "this award will be legally binding on both parties." Although the costs are to be almost nominal, "justice will be fairly and honestly administered." Parties may argue their own case, but "counsel will not be allowed to appear." We would recommend the learned Doctor to read and perpend the case of *The Queen* v. *O'Connell and others.*—*Ex.*

Scotch Law Courts.—Most people know the irreverent and slovenly way in which the oath is administered to English witnesses. The witness hurries into the box, and while judge and jury and the spectators are chatting and rustling in a pause of the business, the clerk of the court hands him a small Bible, which he holds in his right hand. The officer then recites his mumbled formula—"The evidence you shall give to the court and jury, touching the matter in question, shall be the truth, the whole truth, and nothing but the truth. So help you, God!" The witness, without uttering a word, ducks his head and puts his lips to the Bible cover—unless he is cunning and ignorant enough to evade the ceremony by kissing his thumb. Now in Scotch courts the procedure is far more dignified and impressive. When the witness appears, the Judge himself rises from his seat, and raising high his right hand, looks fixedly on the offerer of the evidence, who, as instructed, also raises high his right arm, and looks the Judge in the face. The Judge then, amid general silence, calls the witness to say aloud after him—"I swear by Almighty God to speak the truth, the whole truth, and nothing but the truth!" No paltry symbol is added to the simple solemnity of this declaration, which appears likely to be far more binding on the conscience of him who makes it before the Judge and in the silence of the crowded court.—*Leisure Hour.*

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Hilary Term, 39th Victoria

DURING this Term, the following gentlemen were called to the Degree of Barrister-at-Law :

The names are given in the order in which the candidates entered the Society, and not in the order of merit.

No. 1350.—John William Frost.
Herbert Charles Gwyn.
Josias Richey Metcalf.
Arthur Godfrey Molson Sprague.
Robert Gregory Cox.
Edward Douglas Armour.
No. 1356.—Albert Romaine Lewis.

And the following gentlemen received Certificates of Fitness :

E. George Patterson.
Robert Pearson.
James Leitch.
Robert Gregory Cox.
Thomas Cooke Johnstone.
Edwin Perry Clements.
William Myddleton Hall.
Edward Douglas Armour.
Albert Ernest Smythe.
Heber Archibald.
James Carruthers Hegler.
George Atwell Cooke.
David Lennox.

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

Graduates.

William Egerton Perdue.
John Morrow.

Junior Class.

Samuel John Weir.
Frank Egerton Hodgins.
William White.
Daniel Erastus Sheppard.
Wallace Nesbitt.
James B. McKillop.
James Morrison Glenn.
J. Stanley Huff.
Michael A. McHugh.
Ernest V. D. Bodwell.
Hugh D. Sinclair.
James William Elliott.
Robert Cassidy.
Duncan Charles Plumb.
William Avery Bishop.
Francis Arthur Eddis.
James Garbutt.
John Charles Coffee.
James Riddell.
Howard Jennings Duncan.

Articled Clerk.

John A. Stewart.

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

That a graduate in the Faculty of Arts in any University in Her Majesty's 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.

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

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

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

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

That the books for the final examination for Students-at-Law shall be as follows :—

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

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

That the subjects for the final examination of Articled Clerks shall be as follows :—Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

Candidates for the final examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining certificates of fitness and for call are continued.

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

1*st year*.—Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Griffith's Institutes of Equity, C. S. U. C. c. 12, C. S. U. C. c. 42, and amending Acts.

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

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

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

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

J. HILLYARD CAMERON,
Treasurer.