## DIARY FOR MARCH.

1. Mon.. *St. David.* Last day for notice of trial for Co. Court York. Sub-Treasurers of school moneys to report to County Auditor.
7. SUN. *4th Sunday in Lent.*
9. Tues General Sessions and County Court sittings in County York.
14. SUN. *5th Sunday in Lent.*
17. Wed. *St. Patrick's Day.*
21. SUN. *6th Sunday in Lent.*
25. Thur. *Lady Day.*
26. Fri .. *Good Friday.*
28. SUN. *Easter Sunday.*
29. Mon.. *Easter Monday.*

THE

# Canada Law Journal.

MARCH, 1869.

## LAW REFORM ACT OF 1868.

As our readers are aware, it is enacted by one of the clauses of this Act, (section 18, subsection 2), that a party to a suit who desires his case to be tried by a jury must give notice in writing to that effect to the Court and to the opposite party, by filing the same with his last pleading, and serving a copy on his opponent. Now it very often happens, that a party does not know, and cannot know until issue is finally joined, what pleading will be his last. Must therefore a plaintiff, to make sure, serve this notice with his replication, or the defendant begin serving it with his plea, supposing the pleadings to go beyond these stages respectively; or, if he omits to give the notice with what eventually turns out to be his last pleading, has he lost his chance of having a jury? The affirmative was strongly urged in a late case in Chambers which we now propose to notice.

In the case referred to, however, *The Quebec Bank* v. *Grey* a different mode was adopted to meet the difficulty. The action was brought on a promissory note, to which the defendant pleaded a special equitable plea; to this, the plaintiff replied by taking issue on it. The defendant desired to have a jury, but had failed to give the necessary notice along with his plea. He therefore joined issue on the replication, and filed and served his notices with this his "last pleading;" thus galvanizing into life, as it were, the old similiter, which the plaintiff afterwards contended was done away with by the Common Law Procedure Act.

The plaintiff, thereupon, obtained a summons to strike out this pleading, joinder of issue, similiter—or whatever it might be called—and to set aside the notice for trial by jury. This summons was fully argued before the Chief Justice of the Common Pleas, who decided that the defendant had a right to use this similiter, which was held to be still in existence and in fact preserved by sec. 108 of the Common Law Procedure Act.

It may now, therefore, be considered as settled, until at least this decision is impugned, that a party to a suit, may, for the purpose of giving a notice for a jury under the section referred to, file and serve a similiter, or formal joinder of issue, whether or not, the previous pleading is one in denial, and though such joinder of issue, under the practice in force since the Common Law Procedure Act, is for the purpose of perfecting the issue on the Record, unnecessary. This decision, may perhaps, take some by surprise, but it is, we apprehend, the correct ruling, and as the practice it authorises is certainly the most convenient under the circumstances, it is likely to be followed.

On the other hand, the Chief Justice set aside a notice for a jury which had not been served with a "last pleading," but he allowed the party to withdraw and re-file, and reserve such pleading, so as to bring himself within the act, and enable him to give the necessary notice with his last pleading.

## PROFESSIONAL HUCKSTERING.

It is to be expected that those persons who, are, unfortunately, allowed in this Country to trespass on the domain of the profession in the way of conveyancing, &c., should attempt to attract customers by devices in the advertising line that would do credit to the genius of "Brown, Jones & Robinson," and should vie with each other in doing business on the most "cheap and nasty" scale. But it should be a matter of surprise and regret that a member of that very profession should follow their example, and put himself on a par with those who attempt to make a living out of the credulity or cupidity of the unwary.

We have been furnished with a copy of a printed circular, or "Tariff of conveyancing charges," distributed by a member of the Law Society in a city to the east of this, which is unique in its way, and whilst it evinces the

want of a proper feeling on the part of the compiler, leads one to suppose that if his capacity is to be taken at his own figures, it must be excessively limited; for example, this learned gentleman thinks that his searching or advising on a title is worth only "$1.25;" possibly that is enough for it, perhaps too much. But it is not the mere fact of his charging such sums as these for professional services that is so objectionable; the whole thing is foreign to the tradition of the profession, and to the rules and etiquette which should guide it. The individual would probably be gratified by an advertisement gratis, but it is best not to accommodate him. We trust that he will take the hint, and not continue his little effort to reduce the emoluments of a profession already miserably under paid.

We have been requested to call attention to a circular issued to subscribers by Mr. Leggo, with reference to his work on "Chancery Practice." After speaking of what he at first proposed as to the size of the book, and accounting for the delay in producing it, he says:—

"I did, however, after receiving the late Consolidated Orders, prepare a large amount of matter based on Mr. Smith's book, but when I came to compare his work with the last edition of Daniell (1865), I felt that if I persisted in my first intention, I would be unable to do justice to the subject, for Daniell is so far before Smith, and in fact every other author on Chancery Report, that his work is in England an absolute necessity to every good practitioner; I therefore changed my plan, and I have nearly finished a work which embraces *all of Daniell applicable to this Province, besides all our own orders and decisions*, I have also paid especial attention to the practice in the Master's Office. You are of course aware that this portion of the machinery of the Court in England has been abolished in that country, and Daniell is now therefore no guide for us as to it; but I have taken care to reproduce such portions of the old practice as laid down in the earlier edition of Daniell, Smith, Grant and Bennett, as are now applicable, adding to them all the orders and decisions of our own court.

This has materially increased the size of the work. Daniell contains over 2000 pages of practice in [illegible] volumes, besides two volumes of forms the first containing about 1000—the other about 500. There are thus four volumes—the cost of which here is $42. I think I shall be able to prepare a complete work in three volumes—two of practice and one of forms; for there is a great deal of matter in the English work quite inapplicable to this Province, though I think the practice cannot bo condensed, in justice to the subject, into a smaller space than two volumes of 1000 pages each, with one volume of forms of about 500 pages.

A correspondent of the *Solicitors' Journal*, in writing of the difficulties and doubts attending the act respecting the registration of judgments to bind lands, asks, "Would it not be much more simple to empower the sheriff to sell lands as well as goods under the common law process, without recourse to another tribunal for assistance?" We are not sufficiently conversant with the English system to judge of its advantages or disadvantages, but registration of judgments has been done away with in this country for some years, much to the satisfaction of the public and the profession, and the course of procedure which the correspondent suggests has been the law in this country for more than half a century.

## SELECTIONS.

### THE HIGH SHERIFF.

The office of Sheriff is one of those institutions which, forming an essential part of the machinery of the English constitution, is at once a subject of popular interest and of daily importance to the legal practitioner.

In Serjeant Atkinson's well known work on "Sheriff Law,"—the fifth edition of which has just appeared*—we find described, in a very lucid style, the practical duties at this day of the High Sheriff and his subordinates, as returning officer in the election of members of Parliament and coroners—as judicial officer in the trial of writs of enquiry of damages, and compensation cases, &c.; as assisstant to the presiding judges at the assizes and quarter sessions; as chief executive officer in civil and criminal cases in carrying out the judgment and sentence of the law, and as chief conservator of the peace in suppressing riots or resistance to the law.

This short summary of the learned Serjeant's Sheriff law suffices to show how various and

* "Sheriff Law, a Treatise on the Office of Sheriff, Undersheriff, Bailiff, &c.," by George Atkinson. Serjeant-at-Law, B. A., Oxon; 5th edition. London: Sweet, 3, Chancery Lane. 1669.

important are the legal functions of the High Sheriff who, in the language of Sir Edward Coke, "is an officer of great antiquity, and of great trust and authortity, having from the Queen the custody, keeping, command, and government in some sort, of the whole country committed to his charge and care."

As to the antiquity of the office, learned writers somewhat differ in their speculations, and we may readily acquiesce in the observations of Mr. Serjeant Atkinson on the antiquarian aspect of the subject: "In England there are many good institutions whose beginnings, like the sources of great rivers, seem to b affle discovery. The office of Sheriff is of this kind."

It may suffice for all useful purposes to say that at every period of the English constitution the office of Sheriff appears as an integral part of its system, forming a feature which no power of the Crown, no resistance of the populace, no intrigues of the aristocracy, have ever been able to efface.

The office of High Sheriff really forms one of the most popular features of our constitution, carrying with it, as Blackstone observes, a strong trace of the democratical part of it. The common law, indeed, vested the whole power of election in the people, in order, as an old statute* expresses it, "that the commons might choose such as would not be a burthen to them." A statute passed under very bad auspices† deprived the people of this power, and the mode adopted ever since of assigning High Sheriffs has been by certain dignitaries holding office under the Crown, who annually nominate three sufficient persons in each county for the office, from whom the Crown selects usually the first on the list for actual service. Fortunately the practice has grown up of these duties wholly devolving on the Judges meeting at Westminster Hall; and thus a guarantee afforded at all events against men being improperly selected for the shrievalty, and the High Sheriff has little cause to fear a comparison between his own just title to office and that of some whom he has occasionally to proclaim on the hustings as "duly elected."

The office of High Sheriff is still a very important one, and so regarded not only in the letter of the law, but socially by all classes. The duties are rarely neglected, but it would perhaps be an advantage if those who are selected for the shrievalty regarded more their personal obligations on taking office.

The High Sheriff, as we are told by Serjeant Atkinson, "has a right of precedence within his county of every nobleman during the time he is in office,"‡ and his duties, already referred to, show on what various occasions he is called upon to act. We are among those who would gladly see the power and dignity of this ancient office fully vindicated, instead of the more active duties being so much delegated to others, the undersheriffs and their subalterns the Sheriffs' officers and the javelin men; and even the pomp and ceremony of the office being only observable during the parade and scramble of the commission day at the assizes; and its concommitants, the Sheriff's ordinary and the Sheriff's ball.

On the very many occasions in the course of his year of office on which public meetings of the various classes within his county are, or ought to be held, we would have the High Sheriff take his legitimate part; we would have the principal exercise more power, and the deputies less. It is not too much to ask of a gentleman selected for a single year for such an important office that he should give personal attention to its numerous duties.

Had High Sheriffs during their year of office generally been at the pains to personally inquire whether one important part of their functions, viz., the returning the jury panels, was conducted in a proper manner, whether abuses in the working of our system, lately shown to have grown up in almost every district, were or were not perceptible in the routine of business in their own several counties, the recent exposure of the abuses of our jury system might have been avoided.

If high Sheriffs, in whose name the unpopular work of executing legal process against the goods and persons of debtors, had during their year of office always deemed it a part of their duty, as gentlemen and men of honour, to see that the process so executed in their names was not made a medium of abuse and extortion, much private misery and wrong would have been saved.

If the Sheriff as returning officer at elections had, in days gone by, in the exercise of his common law power, duly inquired into glaring instances of bribery and corruption, before declaring at the hustings unscrupulous aspirants to the rank of M.P. *duly elected*, we should hardly have needed the costly machinery which from time to time has been called into existence with the vain design of suppressing bribery, intimidation, and other corrupt practices at elections. Not only would we have the High Sheriff now personally oversee the performance of his various duties by his subordinates, but we should be glad to find that high functionary hold his own on all public occasions—be something more than a mere attendant in the execution of the commissions of assize, &c., and act in every instance up to the station the law assigns to him—the chief official within his county, showing favour or subservience to none: poor or rich, noble or commoner, popular or unpopular.—*Law Magazine.*

* 28 Edward I., c. 8. † 9 Edward II., st. 2.
‡ Sheriff Law, 3.

## RECENT DECISIONS ON THE EQUITABLE DOCTRINE OF NOTICE.

We propose to consider in this article the equitable doctrine of notice, especially as affected by recent decisions. The branch of law illustrated by these decisions may be divided into two parts:—

1. Notice as affixing an equitable liability upon the party affected by such notice.

2. Notice to trustees as perfecting the title of assignees in an equitable chose in action.

Under the first of these heads the recent decisions recorded are those of *Stein* v. *Stein* (M. R. Ir.) 16 W. R. 69 (distinguished from *Jones* v. *Smith*, 1 Phil. 255) and *Re Eliza Smallman's Estate* (L. E. Ir.) 16 W. R. 419.

The case of *Jones* v. *Smith*, referred to by the Irish Master of the Rolls in his judgment in *Stein* v. *Stein* was as follows:—David Jones, on his marriage in 1820, conveyed a real estate (which was vested in him in fee, subject to a mortgage term of 500 years for securing £2,000 to Samuel Bennett) to the use of himself for life, with remainder to his first and other sons successively in tail In 1823, Thomas Smith took an assignment of the mortgage term, *on the faith of a representation by Jones that the mortgaged estate was not included in the marriage settlement*, and afterwards made further advances upon the same security, so that the entire debt amounted to £4,000. On bill filed by the eldest son of the marriage against Smith's representative it was held that Smith was not affected with notice of the settlement, as it appeared that he believed the representation so made to be true: and therefore Smith's representative was held entitled to hold the term as security for the entire £4,000.

In the recent case of *Stein* v. *Stein*, James Stein died in 1856, intestate possessed (*inter alia*) of a share in the business and premises of a distillery in which his two brothers were co-partners. Disputes arose between the widow of James Stein and the surviving partners, and in July, 1861, an award was made which determined that a sum of £4,900, due by the partnership to the widow as administratix of her husband, should be discharged by a transfer of their shares in the partnership property to her. These shares were conveyed to her by an indenture of October 14, 1861, which recited the proceedings in the suit and the award. The widow subsequently entered into partnership with her brother, Henry Lefroy, in conducting the same business. In July, 1863, the widow and Lefroy, by a deposit of title deeds created an equitable mortgage of the distillery premises to the Union Bank of Ireland. A memorandum of additional charge was made in February, 1864. The deed of October 14, 1861, was among the deeds deposited with the bank, and it was contended by the next of kin of Mr. Stein that the bank thereby became affected with constructive notice of the widow's representative character as administratrix to her late husband.

The bank contended that they were in the position of purchasers without notice, and *relied on certain letters and statements of Lefroy's to them*, as amounting to wilful concealment of the widow's representative character, and the assertion that the contrary was the case.

Walsh, Master of the Rolls, held that, giving the utmost weight to Lefroy's statements, the bank *was* affected with notice, and gave judgment for the next of kin, distinguishing the case from *Jones* v. *Smith* on two points:—

(1.) In *Jones* v. *Smith* the information which was held to justify abstaining from further inquiry, accompanied that which was sought to be used as constructive notice, whereas in the case before him the information relied on as constructive notice was contained in a deed handed to the purchaser, and that which was relied on as justifying the mortgagee in abstaining from further inquiry was contained in a long series of letters and communications. (2.) The suit and award referred to in the deed of 1861, all related to and materially affected the title. Whatever statement Lefroy might have made could not justify the bank in overlooking documents, which they were apprised affected the title.

The Irish Master of the Rolls referred also to *Peto* v. *Hammond*, 30 Beavan 495, in which case it was contended, that where a condition of sale precluded information, a purchaser had no notice of anything disclosed in the information which was withheld; a doctrine which received no countenance from the Court.*

In the case of *Eliza Smallman's estate*, 16 W. R. 419, the question was raised how far a person lending money on mortgage of a certain property already subject to an equitable mortgage had been affected by notice of that equitable mortgage in consequence of registry searches previously made by him in the capacity of solicitor to a certain society? The facts were as follows:—

In August, 1860, Smallman deposited with the Bank of Ireland the title deeds to certain premises, by way of equitable mortgage, to secure the repayment of £1,000, accompanied by a letter which was registered. In December, 1860, Smallman negotiated a loan with the Scottish Amicable Life Assurance Society, on the security of other lands. In this transaction a person colled Atkinson acted as the solicitor of the Society, and made registry searches against Smallman, which disclosed the existence of the equitable mortgage. In November, 1862, Smallman mortgaged to Atkinson certain lands, including those, the title deeds to which had been deposited with

* To comment at length on the decision in *Stein* v, *Stein* would be needless. If correctly reported, it is one of the most extraordinary decisions ever given by a Court of Equity; and violated one of the best established maxims of Equity Jurisprudence—that a person making any payment to an executor or administrator (except under very special circumstances) is never bound to see to the application of the money paid.

the bank of Ireland, to secure the repayment of £3,400.

Held, that under these circumstances the dealings of Atkinson as solicitor to the Scottish Amicable Life Assurance Society did not, as against the Bank of Ireland, affect him with notice of the equitable mortgage.

But the greater number of recent decisions have reference to the subject of notice to trustees as constituting a title in an assignee or an incumbrance to an equitable chose in action. Since the cases of *Dearle* v. *Hall* and *Loveridge* v. *Cooper* (reported together) 3 Russell 1, it has been an established principle in equity jurisprudence that a second incumbrancer upon equitable property, who has given notice of his title to the trustees of the property, is preferred to a prior incumbrancer who has omitted to give the like notice of his title to the trustees, for the notice is an effectual protection against any subsequent dealing on the part of the trustees. This rule applies to personal property only, and not to real property, *Rooper* v. *Harrison*, 2 K. and J. 86; nor to trust stock which is in equity of the nature of real estate, *Re Carew's Estate*, 16 W. R. 1077.

But in what manner and to whom ought notice to be given in order to be sufficient for the purpose we are considering? The following cases will assist us in giving an answer to these questions.

In *Ex parte Richardson*, 1 Mont. and Ch. 43, which was decided in 1839, Miss Anne Richardson lent her brother, Mr. Richardson, £1,800, upon the security of two shares in a German mining company, which he deposited with Miss Richardson as a security for the £1,800 advanced, with a memorandum in writing in the following words: "Shares in Germam mines, the property of Miss Richardson." Mr. Richardson afterwards became bankrupt, and Miss Richardson filed a petition praying that she might be declared equitable mortgagee of the shares. It appeared from the evidence that the bankrupt had in conversation mentioned the fact of the deposit to Mr. Barnard Hebeler, one of the directors of the company; and, on a subsequent day, at a meeting of the directors, the fact of the deposit was mentioned by Mr. Hebeler. The declaration of insolvency was filed the same evening.

It was held that the conversation with Mr. Hebeler was sufficient notice to the company, and the petitioner was accordingly declared equitable mortgagee of the shares in question.

In the *North British Insurance Company* v. *Hallet*, 7 Jur. N. S. 1263, 9 W. R., 830 (decided in 1861), a Mr. F. H. Thompson in 1834, insured his life with the North British Insurance Company for £2,500, and subsequently on his marriage assigned the policy of insurance to the trustees of his marriage settlement for the benefit of his wife and children. Prior to and at the time of the settlement and marriage, and down to the year 1849, Mr. Mark Boyd (an intimate friend of Mr F. H. Thomson) was the resident director of the London Board of the above-named company, and as such resident director it was part of his duty to receive notices in respect of the assignment of policies. More than once before 1849, Mr. F. H. Thomson had informed Mr. Boyd of the assignment of the policy to trustees for the benefit of his wife and family. Mr. Boyd, however, did not communicate the circumstance to any other member of the direction or society, nor did he make any entry in writing of such notice in the books of the company. In June 1853, Mr. Thompson became bankrupt, and in July 1853, the then trustees of his marriage settlement gave formal notice to the company of the assignment of the policy. On Mr. Thomson's death in 1860, the question arose, who was entitled to the payment of the policy monies? The assignees in bankruptcy claimed the payment, on the ground that no effectual notice had been given to the office of the assignment of the policy to the trustees. The trustees on the other hand contended that the notice given to Mr. Boyd by Mr. Thomson was sufficient to give them (the trustees) priority. The question turned upon Mr. Boyd's evidence, which was to the effect that he considered the notice given to him by Mr. Thomson as given to him in his official character as resident director of the company. He could not remember why he did not send notice of it to the head office.

It was argued on the part of the assignees in bankruptcy that the notice given by Mr. Thomson was insufficient on the following grounds:—(1.) It ought to have been given by the trustees, not by the settlor. (2.) It was given to an officer of the Company whose office was temporary. (3.) The notice was not communicated to any other officer of the company, and would therefore cease to be operative when Mr. Boyd retired. (4.) The notice ought to have been entered in the books of the Company. (5.) The uncorroborated evidence of one witness as to what took place so long ago ought to be received with suspicion.

The Master of the Rolls, however, was of opinion that, (1.) assuming the notice to be a good notice, no misconduct or laches on the part of the resident director could affect the rights of the person giving the notice; (2.) that the notice was in fact sufficient, seeing that, though not in writing it was made formally to the person appointed by the company to receive such notices. Had Mr Boyd been interested in the assignment of the policy; or again, had the notice been made in casual conversation, it appears that the Master of the Rolls would have held it to be ineffectual.

In *Edwards* v. *Martin*, L. R., 1 Eq., 121, a person named Glenn assured his own life in two insurance companies, the Victoria Life Assurance Company and the Britannia Company; and afterwards deposited the policies with the defendants, who were bankers in Lombard Street, in order to secure a debt due from him. He afterwards became bankrupt

and died, and the plaintiffs were his assignees. The Secretary of the Victoria Company gave evidence that a verbal notice would not be recognized by the Company; that a notice to be recognized, and to be of any avail or protection, must be in writing; that up to, and for a long time after, the bankruptcy, Glenn appeared by the books of the Company to be the absolute owner of the policy. He recollected however, having heard Glenn mention, in conversation, that the policy was in the hands of his bankers; but the statement was a merely casual one in the course of conversation. The secretary of the Britannia Company gave similar evidence.

Under these circumstance V. C. Stuart held that no sufficient notice of the deposit had been given to the Companies concerned, and that therefore the right of the bankrupt's assignees to the proceeds of the policies had not been displaced.

In *Ex parte the Agra Bank (limited) re Worcester*, L. R. 3 Ch. App. 555, 16 W. R. 879, Mr. J. R. Worcester deposited with the Agra Bank the certificates of various shares, among which were 400 fully paid up shares in a company called the San Pedro del Monte Silver Mining Company, by way of security for the repayment of £1,300 advanced by the bank. At the same time he handed over a blank transfer of the shares. On August 26, 1867, Mr. Worcester became bankrupt. At that time the shares in question still stood in Mr. Worcester's name in the books of the company, the transfer not having been registered therein, nor any notice of the transaction given by the bank to the company. It appeared, however, that in the year 1867, before the bankruptcy, the directors of the company were engaged in making inquiries as to the shares of persons who were defaulters to the company. In the course of those inquiries it came to the knowledge of the directors, through the verbal information of Mr. Worcester, that the 400 shares in question had been pledged to to the Agra Bank. Was this information then sufficient to affect the Company with notice? Under these circumstances Mr. Commissioner Winslow held that the shares in question were in the order and disposition of the bankrupt at the time of the bankruptcy, and therefore belonged to the assignees.

But on appeal from this decision the Lords Justices held it to be immaterial in what manner the directors became acquainted with the fact of the transfer, provided they did so become acquainted; and accordingly held that they had effectual notice of the transfer, on the ground that the directors would not, with the knowledge which they had, have been safe in permitting any dealing with the shares.

In *Lloyd* v. *Banks*, L. R. 3 Ch. App. 488, Mr. T. Lloyd, being entitled to a certain interest in a trust fund of which R. W. Banks was trustee, presented his petition in insolvency on January 19, 1859, and on the 22nd the usual vesting order was made. In November, 1861, he mortgaged his interest to Mark Shephard, and in March following the usual notice of the mortgage was given by Mr. Shephard to Mr Banks. No formal notice of the proceedings in insolvency was given to Mr. Banks until February, 1864; but he stated that he had read in a newspaper of February 16, 1859, a notice that Mr. Lloyd's petition in insolvency for discharge would come on to be heard on the 4th of March. From that time he had dwelt with Mr. Lloyd on the footing of the insolvency being a fact, and had not paid him his annuity.

Under these circumstances Lord Chancellor Cairns, reversing the decision of the Master of the Rolls (reported L. R. 4 Eq. 225), held that the trustees' knowledge of the insolvency from the advertisement of the newspaper, especially when coupled with the fact that he had practically acted upon the information so gained, constituted notice sufficient to give the assignee in insolvency priority over the subsequent mortgagee.

In giving judgment in this case Lord Cairns observed (p. 490.)—

"There is no doubt, with regard to property of the kind in question here, that an equitable incumbrancer, if he has any regard for his own interests—any desire to make his position secure—will take very good care himself to give direct and distinct notice, and that in writing, to the trustees of the property on which he has obtained his incumbrance; and if he does not do that, he will be at very great peril, because he will have to encounter, first, the danger of the trustee being left in entire ignorance of the security, and next, if he attempts to prove knowledge of the trustee *aliunde*, the difficulty which this Court will always feel in attending to what are called casual conversations, or in attending to any kind of intimation which will put the trustee in a less favourable position as regards his mode of action than he would have been in if he had got clear and distinct notice from the incumbrancer. At the same time I am bound to say that I do not think it would be consistent with the principles upon which this Court has always proceeded, or with the authorities which have been referred to, if I were to hold that under no circumstances could a trustee, without express notice from the incumbrancer, be fixed with knowledge of an incumbrance upon the fund of which he is the trustee so as to give the incumbrancer the same benefit which he would have had if he had himself given notice to the trustee. It must depend upon the facts of the case; but I am quite prepared to say that I think the Court would expect to find that those who alleged that the trustee had knowledge of the incumbrance had made it out, not by any evidence of casual conversations, much less by any proof of what would only be constructive notice—*but by proof that the mind of the trustee has in some way been brought to an intelligent apprehension of the nature of the incumbrance which has come upon the preperty, so that a reasonable man, or an ordinary man of business, would act upon the information and would regulate his conduct by it in the execution of the trust.*"

In *Re Brown's Trusts*, L. R. 5 Eq. 88, decided November 15, 1867, William Brocklebank, being entitled to a certain interest in a trust fund, became insolvent in 1838. In the schedule of his assets filed under the insolvency he inserted such interest. No formal notice of the insolvency was given to the trustees of the fund, but the solicitor to the trustees, as being one of the creditors of the insolvent, knew of the insolvency. In 1844, William Brocklebank assigned his interest in the trust fund to Mr. Burkitt, and in 1849 mortgaged it to Mr. Boston, the petitioner in the case. Formal notice of these deeds was given to the trustees of the fund. The question was, whether the indirect notice to the trustees of the fund through their solicitor was sufficient to give priority to the assignee in insolvency.

Held by Sir R. Malins that it was not.

"The true principal," said His Honour, "on which questions of priority depend is, that it is incumbent on all persons dealing with *choses in action* to do all that is in their power to perfect their title, and they do not do so unless they give notice to the persons in whose hands such property is. I think these questions of notice should not be left open to speculation, but that formal notice should be required, otherwise indirect notice might be alleged, raising most embarrassing questions, which should be avoided."

And His Honour quoted with approval the decision of the Master of the Rolls in *Lloyd* v. *Banks*, L. R. 4 Eq. 222, 15 W. R., 1006 (since reversed on appeal L. R., 3 Ch., App. 488, 16 W. R., 988).

However sound in themselves may be the grounds of the Vice-Chancellor's decision, it is hardly likely that it would be upheld now that the decision in *Lloyd* v. *Banks* has been reversed on appeal.

On the question, then, as to the *manner* in which notice ought to be given in order to protect an incumbrancer, the principle which appears to be established by the general tendency of recent decisions is that enunciated by Lord Cairns in *Lloyd* v. *Banks*, that notice will be held to have been given to a trustee, if it be proved that the mind of the trustee has been brought to an intelligent apprehension of the incumbrance which has come upon the property, so that a reasonable man, or an ordinary man of business, would act upon the information, and would regulate his conduct by it in the execution of his trust.

With regard to the question "To whom ought notice to be given?" in addition to the cases above cited, we may refer to *Ex parte Boulton in re Sketchley*, 1 De Gex and Jones 163, decided by the Lords Justices in 1857. In that case a holder of shares in a railway company was one of the secretaries of the company. He borrowed money on a deposit of the certificates of the shares, but no further notice of the deposit was given to the company. He afterwads became bankrupt. The Lords Justices reversing the decision of the Commissioner in Bankruptcy, held, in spite of the official position of the bankrupt in the company, that sufficient notice of the transaction had not been given to the company, the notice which the bankrupt had, not being notice to him in his character of secretary, but in his character of shareholder only.

In giving judgment Lord Justice Turner observed:—

"It is the duty of the person by whom or on whose behalf the notice was given, to take care that it reaches the person who has the control of the property which it affects; and this, I think, cannot be said to be done where, there being other and more effectual means of giving the notice, it has been given only to a person who has an interest in withholding it."

The shares in question were, therefore, held to be in the order and disposition of the bankrupt with the consent of the lender. See also *Brown* v. *Savage*, 4 Drewry, 635.

It appears, however, from the cases of *Ex parte Richardson*, and the *North British Insurance Company* v. *Hallett*, that the mere fact that the person to whom the notice is given is a private friend of the assignor or assignee will not invalidate the effect of the notice; nor, after notice has been effectually given, will the laches of the person to whom it is given operate to avoid its effect.

Where a company is ordered to be wound up by the Court, a creditor of the company who assigns his debt completes the equitable title of his assignee by giving notice of the assignment to the official liquidator of the company, although the assignee be ignorant of the assignment, provided the assignment be made in good faith. *In re Breech-loading Armoury Company*, Wragge's case, L. R., 5 Eq., 284.

Notice to any one of several trustees is suffi- (V. C. K. in *Brown* v. *Savage*, 4 Dr. 640). But, as we have seen, no notice can be of any avail which is given to a person who has an interest in withholding it.—*Law Magazine.*

## 'MISERA SERVITUS.'

A striking instance of what foreigners justly consider an opprobrium in our law, is afforded by the decision of the Exchequer Chamber in the recent case of *Ryder* v. *Wombwell*. We refer to the mischievous propensity for avoiding the decision of points which the public welfare really require to be settled. To a certain extent no doubt prudence justifies a tribunal in confining itself to the decision of the questions before it in the cause. But where a mere rule of evidence, which has been left in doubt by antecedent conflicting opinions, is fairly raised and elaborately argued on appeal, it is lamentable that it should be left still as a stumbling-block in the path of justice, because the judges find it possible to decide the case without determining the disputed question.

It will be remembered that in that case the judges of the Exchequer were divided in opi-

nion on two points: 1st, whether the issue raised by a replication of 'necessaries' to a plea of infancy, in an action for goods sold, must in all cases be submitted to a jury; and 2nd, whether evidence is admissible to show that the infant was, at the time of his purchase, already furnished with an abundant supply of the articles bought, no proof being offered that the vendor knew him to be so supplied. On the first point, the Exchequer Chamber decided that the question of 'necessaries' was one of fact, to be submitted to a jury like all others, but that the modern rule, unlike the former practice, does not require the judge to submit to the jury a question of fact, merely because there may be a scintilla of evidence, but only where there is such evidence as might reasonably satisfy the jury that the fact sought to be proved is established. Applying this rule, the Court held that there was no evidence in the case to show that a pair of diamond sleeve buttons, costing £25, were 'necessaries' for the infant purchaser, and that the plaintiff should therefore have been nonsuited.

So far the judgment will readily commend itself to the bar as a satisfactory settlement of an open question. But on the second point, which is a mere rule of evidence, which had been fully argued, and had been the subject of divided opinion in the lower Court, the Exchequer Chamber deliberately refused to give an opinion, with the avowed purpose of leaving it open for future dispute at the costs of some unfortunate litigant, and to the annoyance and perplexity of every dealer in England. Nothing but an habitual narrowing of the mind to the technicalities of the profession could possibly shut the eyes of the Bench or the Bar to the really monstrous injustice which is thus created by a too rigid system of adherence to rules established in a bygone age. Reason indicates that the duty of judges is to determine disputed question of law that are properly brought before them by *bona fide* litigants; and if there be a dozen points readily raised and susceptible of final decision, the highest function of the judge is to aid the Commonwealth in determining them, so as to protect it from 'misera servitus ubi lex aut vaga aut *incerta* est.'

The language of the decision of the Exchequer is, that the second question raised in the case is one of some nicety, 'to be determined hereafter on the balance of authority and on principle, without being fettered! (*sic*) by a decision of this Court.' What an utter subversion of all sound ideas as to the true functions of a Court, that its decisions on disputed points of law are fetters to bind the limbs, instead of lamps to light the path of those who are seeking for guidance in the pursuit of justice! The contrast on this point between the English and Continental jurisprudence as derived from the Roman law has more than once been the subject of comment; and the learned author of the Principles of Jurisprudence tells us in his eulogy on the precision and compass of the Roman law, that the student will find 'no awkard attempts at misplaced subtilty, which entail litigation and misery on generation after generation . . . . no doubts wantonly flung out, like low-born mists, to spread darkness and confusion everywhere, and perpetuating a feeling of insecurity; *no avoiding points which it is for the public welfare to decide;* but strong sense in transparent language, confounding sophistry, abounding in happy illustrations, and *bearing down obstacle after obstacle* till the path of truth is clear, and the way of justice is made straight.' —*Law Journal.*

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## LYNDHURST AND BROUGHAM.

*Lives of Lord Lyndhurst and Lord Brougham.* By Lord Campbell. London: John Murray.

No one can charge Lord Campbell with Boswellianism. No one can say that he has been kind to the virtues or blind to the faults of his friends. Lord Lyndhurst was a Tory, and therefore Lord Campbell was certain to show him no favour; but we were not prepared for such extravagant vituperation of the late venerable ex-Chancellor. Lord Lyndhurst, like Lord Brougham, was wont to amuse himself by worrying Lord Campbell, and we should not have been surprised if Lord Campbell had indulged in a little retaliation, but we never could have anticipated such a biography as that before us. Lord Campbell was not able to understand the chaff of his noble and learned friends. He believed that they were in earnest. So impossible for him was it to comprehend a joke, and so miraculous was his credulity, that he was under the impression that Brougham was jealous of him! It is plain that Lord Campbell deemed himself a better lawyer than Lyndhurst, a cleverer man than Brougham, and a better citizen and a better man than either of them. Lyndhurst and Brougham never did right, while Campbell never did wrong. Campbell became Lord Chief Justice of England and Lord Chancellor by reason of his unequalled abilities and merits, and in spite of the jealousy of Lyndhurst and Brougham, whilst Lyndhurst and Brougham attained to high office by intrigue and by sheer luck. As an instance of Lord Campbell's marvellous faith in his own infallibility, we may take this instance. At page 27 we read:—

> Smith O'Brien was convicted of high treason in Ireland when I was a member of the Cabinet, guiding the deliberations of the Government in such matters. He was clearly guilty in point of law and fact too; but this rebellion was so ludicrously absurd that I thought it would take away all dignity and solemnity from the punishment of death if it should be inflicted upon him, and my advice was followed in offering him a pardon on condition of transportation. So foolish was he that he denied the power of the Crown to commute the sentence without his consent; and he insisted on being immediately liberated, or hang-

ed, beheaded, and quartered. I was actually obliged to bring in and push a bill through Parliament (against which he petitioned) to sanction the conditional pardon.

If Smith O'Brien was not right, and Lord Campbell not wrong, what need was there of pushing a bill through Parliament? But our author could not conceive it possible for John Campbell to make a mistake.

The memoir of Lord Lyndhurst was begun in 1853. Lord Campbell thus writes:—'Having known him familiarly above half a century, both in public and in private life, I ought to be able to do him justice; and notwithstanding a hankering kindness for him, with all his faults I think I can command sufficient impartiality to save me in this memoir from confounding the distinctions of right and wrong.' He commences by insinuating that Lyndhurst was ashamed of his ancestry, and was annoyed at being called the son of a painter, though by the way he occupied the house his father had lived in. Much parade is made of the fact of young Copley being born in America. The biographer then anticipates a little in order to have a fling at the subject of his memoir, at his friend of fifty years' standing, whom he was meeting day after day. Before coming to Lyndhurst's call to the Bar, we are told that till 'he was tempted to join the Tory ranks by the offer of a seat in Parliament and the near prospect of the office of Chief Justice of Chester, he thought a democratic revolution would be salutary, and he is said to have contemplated without dismay the possible establishment of an Anglican Republic.' This same charge of political corruption is repeated more than once in the biography, and there is no good reason for putting it in Chapter I. Next page there is this remark: 'In after life he asserted that he had never been a Whig, which I can testify to be true. He was a Whig, *and something more*, or in one word a *Jacobin*.' The italics are the author's not ours, and throughout the volume italics are frequently used lest the careless reader should pass by any of the author's charitable suppositions. At page 13 it is stated that Copley, 'although by no means scrupulous about principle, was above any sort of meanness.' After a lengthy account of how Copley ratted and became a Tory for the sake of a seat in Parliament and the promise of promotion, we are informed that 'Upon the first vacancy he was made Solicitor-General, and he regularly became a member of Lord Liverpool's Government. He talked rather uncourteously of his chief and of his colleagues, but he very steadily co-operated with them in all their measures, good or bad.' In order that we may understand what a shameless, hardened, heartless renegade Lord Lyndhurst was, we are treated to the following pretty little story:—

> His (Copley's) gait was always erect, his eye sparkling, and his smile proclaiming his readiness for a jest. How different his fate from that of poor Charles Warren, who had been a Whig *and nothing more*. In an evil hour he *ratted*, being made Chief Justice of Chester; but he could not stand the reproachful looks and ironical cheers of his former friends in the House of Commons, and he soon died of a broken heart.

Copley was a very great villain, but he cared not for reproachful looks and ironical cheers. Poor Warren was a villain of a milder type, yet he died of a broken heart. Copley was a familiar friend for above half a century, and Campbell had a hankering kindness for him. Are there many Campbells in the world? If so, let us add this petition to the Litany: 'From the hankering kindness of friends, good Lord deliver us!'

Sir John Copley marries, and this gives the biographer an opportunity for a fling at the private character of the friend of fifty years, for whom he had a hankering kindness.

'There were afterwards jealousies and bickerings between them (Sir John and Lady Copley), which caused much talk and amusement; but they continued together on decent terms till her death in Paris in 1834, an event which he sincerely lamented. He was sitting as Chief Baron in the Court of Exchequer when he received the fatal news. He swallowed a large quantity of laudanum and set off to see her remains. *But his strength of mind soon fitted him for the duties and pleasures of life.*' On this occasion the italics are ours and not the author's, who doubtless omitted to mark the passage, and would have done so if he had revised the sheets. We trust that the full force of the spiteful inuendo will not escape the attention of the reader. Do you think that the political renegade had one redeeming trait? Do you think that, his wife being dead, he was truly sorry for her untimely end? Ah! be not deceived. Lord Campbell was a friend, a familiar friend, a familiar friend for half a century, and he has a hankering kindness for Lyndhurst, therefore he is disposed to be reticent, yet he will be just, so he tells us that the bereaved husband was soon fitted not only for the duties, but also for the *pleasures* of life. Lord Campbell's well known Act *apropos* of certain publications does not make improper insinuations criminal.

Here is an account of Copley's conduct as a judge: 'The gossip of the profession during the short time he was Master of the Rolls was that "he sat as seldom as possible, rose as early as possible, and did as little as possible," His whole energies were now absorbed in political intrigue.' As Lord Chancellor, 'he showed capacity for becoming one of the greatest magistrates who ever filled the marble chair; but, alas! at the same time utter indifference about his future judicial fame—doing as little business as he could without raising a loud clamour against him, shirking difficult questions that came before him in his original jurisdiction, and affirming in almost every appeal—satisfied with himself if he could steer clear of serious blunders, and escape from

public animadversion.' As Lord Chief Baron, 'he would not heartily give his mind to his judicial business. His opinion was and is of small weight in Westminster Hall; and I do not recollect any case being decided on any judgment or dictum of his. It was only while in court that he cared or thought of the causes he had to dispose of. The rest of his time he spent in attending the debates in the House of Lords, or in forming cabals with his political partisans, or at the festal board.' After this, and much more of the same sort, it is a comfort to be told that Lyndhurst 'did not take bribes.' The statement is comforting, but not assuring. Possibly the familiar friend of fifty years' standing suffers his stern sense of justice to be tempered by his hankering kindness. Why are we told that Lord Lyndhurst did not take bribes? Was he charged with such corruption? Never. Is not the reader somewhat enlightened? Does he not see how Campbell blends justice with hankering kindness? Do not nail his ear to the post. He did not take bribes. Umph! We understand. We could easily fill columns with such quotations as we have already given, but enough is as good as a feast, and therefore we shall only take one more passage from the 'Life of Lord Lyndhurst:'—

> Lyndhurst was about this time much alarmed by a bill I had introduced to abolish imprisonment for debt, and to provide a more efficient remedy for creditors by the personal examination of the debtor as to his property and his past expenditure. The stories about executions in Lyndhurst's house I believe were unfounded; but he was still needy from inconsiderate expenditure, and it was by no means clear that a judgment for a debt might not have been suddenly obtained against him. He came privately to me and pointed out the oppression and extortion that might be practised by the power proposed to be given to judgment creditors, and insisted that as the members of the two Houses were not subject to imprisonment for debt, they ought not to be subject to the inquisition substituted for it.

Here is a portrait black as midnight. The son of a distinguished artist is ashamed of his father because he was not aristocratic. An ultra-Republican becomes an ultra-Tory for the sake of place and pay. The judge of the highest Courts in the realm neglects his duties and devotes his energies to political intrigues, so that the best his familiar loving friend can say is that 'he did not take bribes.' This unprincipled politician and unrighteous judge was also a bad man in his private relations. He lived on bad terms with his first wife, and soon forgot her early death and returned to the pleasures of life. He was a spendthrift, and wanted to have a proposed law framed so that he might still be able to defy his unfortunate creditors. Let us complete the portrait by showing that this monster of iniquity could descend to the pettiest meannesses. In page 168 we read as follows:—

> Brougham generally spoke rather respectfully of Lyndhurst behind his back, while Lyndhurst behind Brougham's back was always ready to join in exaggerating his faults and laughing at his eccentricities. During the rest of the day, till it was time to take an airing in his carriage, Lyndhurst was ready to receive all visitors who might drop in. On these occasions it was expedient to go late and stay the last; for I observed the practice to be, that each visitor on departing furnished a subject of satirical remark for the master of the house and those who remained.

Such is the picture, as drawn by Lord Campbell, of Lord Lyndhurst, who, the son of an artist, became Master of the Rolls, the Lord Chief Baron of the Exchequer, four times Lord High Chancellor, and one of the most respected and venerated members of the House of Lords. This biography is of course a gross libel in fact, and, must we add, in intent? No doubt Campbell disliked Lyndhurst for several reasons. Lord Lyndhurst was a Tory, and Campbell hated Tories. Campbell was a dull, heavy plodder, whilst Lyndhurst was a vivacious and brilliant member of society. Campbell never jested, whilst Lyndhurst was fond of jesting, and no doubt told his acidulated friend any number of ridiculous stories, and possibly represented himself as Campbell has represented him in the book. That is the most probable explanation of this biography, and though it does not excuse Lord Campbell's persistent bitterness and ill-nature, it exonerates him from the grave offence of deliberate and conscious slander.

If Lord Brougham had died in 1834, his reputation would have been so great that he would probably have been classed amongst the marvels of the nineteenth century. But thirty years of conspicuous success were followed by thirty years of conspicuous failure, and Lord Brougham lived to prove that his powers had been overrated by himself and by his contemporaries. At the passing of the Reform Bill, Brougham was at the zenith of his fame. He was the hero of the revolution and the popular idol. Plaster casts of his head were sold by tens of thousands, and a gaping world wondered how one skull could contain so much and such varied knowledge. In science, literature, law, politics, and oratory Henry Brougham was supposed to be without a compeer. He was a modern Cicero and something more. In him were supposed to be united the talents of Newton, Bacon, Gibbon, Camden, Pitt, and Demosthenes. Stories were told of his working twenty hours out of the twenty-four. He rose before the lark, dashed off an article for the *Edinburgh*, and wrote a hundred letters before breakfast. He was in Court from nine till four, amazing judges with his legal lore, or enchanting juries with his eloquence. From the Court of Justice he rushed to the House of Commons, to instruct, dazzle, and delight the listening senate. Then home: but before going to bed, the unwearied phenomenon would indite an essay on science that would throw the discoveries of

Newton and Laplace into the shade. This story was believed, and it needed long years of failure to convince the credulous vulgar that the powers of Henry Brougham were not superhuman. In truth, Henry Brougham was not in any sense a man of genius. His parts were excellent, his ambition was great, his capacity for work was immense, and he excelled in many departments. But he did not excel pre-eminently in any one department. He was undoubtedly a good orator, or perhaps it would be better to say a ready and effective speaker. His most celebrated speeches are those he delivered in defence of Queen Caroline, and on the second reading of the Reform Bill. Lord Campbell sneers at both, though to have saved himself from perdition, he could not have composed or indited such discourses. Yet, though these orations are far above mediocrity, they are not to be compared to the great speeches of Burke, Chatham, and Charles James Fox. Let any one glance at the well-known peroration to the Queen Caroline speech, and let him then take up a volume of Mr. Bright's speeches, and glance at some of the perorations of the Right Hon. Member for Birmingham, and he will at once perceive that Brougham was a clever speaker, but not like Mr. Bright, an orator born as well as made; for, in spite of the maxim, a man cannot be an orator unless gifted by nature, even as a man cannot be a poet who does not add to cultivation the inborn talent for poesy. It would be superfluous to canvass the claim of Brougham to be accounted eminent as a lawyer. It is now universally admitted that he was deficient as a lawyer, and that he was not even successful as a *nisi prius* advocate. His defence of Queen Caroline gave him a splendid chance. For a few terms he was inundated with briefs, but his practice soon fell off. He was not competent to argue a point of law, being prone to put forward theories in place of precedents, and he was not fortunate in winning verdicts. As Lord Chancellor he justly boasted that he cleared off the arrears of the Court, but his judgments were not profound, they do not elucidate the principles of equity, and they are seldom referred to. Lord Brougham was a zealous law reformer, but his zeal was not tempered with discretion, and was not guided by knowledge. Considering that he was for nearly half a century talking about law reform, it is surpising how little he accomplished. Lord Campbell says, 'If it would not appear malicious, I would like to move for a return of all the bills introduced into the House of Lords by the Lord Brougham and Vaux since the month of November 1830, with the number of those that have passed into Acts of Parliament, the stages in which the others have died, and the estimated expense of printing them.' Such a return would vindicate our remarks on Lord Brougham as a law reformer, but it is a rich joke to suppose that Lord Campbell was restrained from moving for it lest he should appear malicious. In science Brougham has done nothing more than write some clever papers, and his labours have not contributed to the advancement of science. As a *litèrateur* Brougham had a very moderate success. Of his 'Speeches with Historical Introductions,' Lord Campbell tells us that he heard from Mr. Black, the publisher, 'that a large proportion of the edition was damasked —*i. e.*, passed through a machine by which small squares are impressed upon the printed pages before they are sent to line trunks.' As to his 'Political Philosophy,' Lord Campbell says: 'I do seriously and sincerely think it a most excellent treatise, and I have *bona fide* read it through with pleasure and advantage; but I could never find more than one other person who had undergone the same labour, and the fact was that, unaccountably, it fell still-born from the press. Anticipating a great sale from the reputation of the author, an edition of several thousands had been printed off, and they almost all went to the trunk-maker. The Society of Useful Knowledge (to which Lord Brougham had very generously presented the copyright), had been before in pecuniary distress, and this blow proved its death.' Please to remember that Lord Campbell was a loving friend, that he was under considerable obligations to Brougham, that he had a horror of even the appearance of malice, and then the foregoing passage will be read with amusement or disgust, according to the temperament of the reader. The most successful of Brougham's works was his 'Sketches of Statesmen.' His contributions to the *Edinburgh*, very well in themselves, are not comparable to the essays by Jeffrey, Sidney Smith, or Macaulay. As a politican, Brougham was guilty of grave errors of judgment. After his election for the county of York, he said, 'Nothing on earth shall ever tempt me to accept place.' This was a very imprudent and a very improper declaration. A man who enters the House of Commons ought to be ready to serve his country in office, if he is called upon to do so on fair and honourable terms, and to refuse office on any terms is to shirk bounden duty and honourable responsibility. Soon after, in the House of Commons, he said during the ministerial crisis, 'No change that may take place in the administration can by any possibility affect me.' This was on the 16th November, 1830, and yet on the 22nd of the same month, six days after, he received the Great Seal from the King, and went to the House of Lords as Lord Brougham and Vaux. Such conduct was calculated to render him unpopular and to make him an object of suspicion. We need not, however, assume that Brougham was insincere. It is probable, not to say certain, that a week before he was named Lord Chancellor he had no idea of taking office, and unquestionably the elevation involved a heavy sacrifice, since he had to relinquish a proud position in the Commons. He recovered his popularity by his vehement support of the Reform Bill, but it seems that he needless-

ly offended and irritated the King. In 1834, his conduct was extraordinary. He was manifestly intoxicated with success. He made a sort of 'progress' through Scotland, and spoke of the King as though he had been commissioned to represent the sovereign in the northern kingdom. After receiving the freedom of the city of Inverness he said: 'To find that he (the King) lives in the hearts of his loyal subjects inhabiting this ancient and important capital of the Highlands, as it has afforded me pure and unmixed satisfaction, will, I am confident, be so received by His Majesty when I tell him (as I will do by this night's post) of such a gratifying manifestation.' No wonder that the King was deeply offended, and that colleagues and friends began to doubt the sanity of the Lord Chancellor. In November the Ministry was dismissed, and Brougham, instead of delivering the Great Seal into the hands of the King, sent it to His Majesty in a bag. At this time Brougham was fifty-six years old, and he expected soon to return to office; but though he lived for thirty-four years, his fond hopes were not gratified. Lord Melbourne tricked him by putting the Great Seal into commission, and then appointing Lord Cottenham to the Chancellorship. Lord Brougham was badly used by his political friends. Lord Melbourne said, 'Although he (Brougham) will be dangerous as an enemy, he would be certain destruction as a friend. We may have small chance of going on without him, but to go on with him is impossible.' Yet we hold that the attempt should have been made, and it is not impossible that during a second tenure of office Lord Brougham would have been less self-opinionated, and would have been more careful not to transgress official etiquette.

What then shall we say of Lord Brougham? Shall we recite the threadbare adage that, 'A Jack-of-all-trades is master of none'? Doubtless if Brougham had applied himself exclusively to the study of the law, he would have been a profoundly read lawyer, but it by no means follows that he would have won for himself the cognomen of the English Justinian. If he had kept to science, he might have produced some valuable treatises, but it is not to be inferred that he would have gained distinction as a discoverer. It seems to us that Brougham was not endowed with that quality of mind which we may describe as penetrating. His mental vision was powerful to survey vast realms of thought, knowledge, and speculation, but he had not the faculty of deep research. He was superficial, but not in the ordinary sense of that term. He did more than skim the surface. He could and did follow the lead of other minds, but he could not open up new and unexplored regions. Lord Campbell tells a story of Brougham getting £1,000 from Jeffrey, to be repaid in articles for the *Edinburgh*, and that in a few weeks he had written enough copy for an entire number of the *Review*. Whether the story is true or false, it illustrates the speciality of Brougham's powers. He could write, and write well, on any subject. He was a critic, but not a creator. If then he has left few works to bear witness to his industry and ability, we must not forget that he took an active part in many important movements. He did less than might have been expected as a law reformer, yet, as Lord Campbell remarks, 'without his exertions the *optimism* of our legal procedure might long have continued to be preached up, and *Fines* and *Recoveries* might still have been regarded with veneration.' He did much, very much, towards the spread of education. He was indeed the hardest worker of his age; and it is far easier to set forth what he did not do, than to sum up his accomplishments.

Lord Campbell does not vituperate Brougham as he does Lyndhurst. Brougham was a Whig, and therefore Campbell did not hate him politically. Then, in later life Campbell received many kindnesses from Brougham. The ex-Chancellor used his utmost efforts to get Campbell appointed Lord Chief Justice, and he succeeded. Campbell was received cordially at Brougham Hall and at Cannes. Yet Lord Campbell never misses an opportunity of being spiteful. It is with evident relish he tells us that Brougham's 'Speeches' would not sell, and went to the trunk-maker's, and that the 'Political Philosophy' fell still-born from the press, and ruined the Useful Knowledge Society. We are told of 'Brougham's strange practice of recklessly making statements in the presence of those who he knew might, if so inclined, have flatly contradicted him.' Lord Campbell cannot be charged with that species of recklessness, since he took care that his statements were not published until the attacked persons were dead. At page 539 we read: 'It is my duty, as a true and impartial biographer, to relate that he was made very unhappy by the successful publication of my Lives of the Chancellors. . . He wrote himself, or induced others to write in periodicals over which he had influence, stinging articles against the book and its author.' At page 549 we read: 'Cottenham grew worse, and a paragraph appeared in the newspapers stating that I was likely to be the new Chancellor. This brought out a series of scurrilous articles in the *Morning Herald* (Brougham's organ) vilifying me.' Probably the reader has had enough of Campbell's spite, and therefore we will quote no more of it, but will concludeour somewhat lengthened notice by extracting two capital jokes. Lord Campbell refers to a visit to Brougham Hall, accompanied by his wife and daughter, and says they were most kindly and hospitably received, and adds:—

'Indeed, I still feel not only regret, but something savouring of remorse, when I am obliged, as a faithful biographer, to record anything which may seem not altogether to the credit of one with whom I have spent so many pleasant hours.'

This is perhaps the richest jest in the book, though the following one is well worth repeating. Lord Campbell called on Brougham in Grafton Street, and on meeting him the latter said: 'Lord bless me, is it you? they told me it was Stanley!' In the evening, in the House of Lords, Lord Campbell went up to Brougham and Lord Stanley, who were engaged in conversation, and mentioned the circumstance. Lord Brougham remarked:—

'Don't mind what Jack Campbell says. He has a prescriptive privilege to tell lies of all Chancellors dead and living.'

From which we infer that Lord Campbell need not have felt the slightest remorse about his spiteful inuendoes and assertions; and that, if this biography had been published during the lifetime of Lord Brougham, he would only have laughed at it, and reminded us of Jack Campbell's prescriptive privilege in respect to Chancellors dead and living.—*Law Journal.*

## ONTARIO REPORTS.

## COMMON LAW CHAMBERS.

NOTES OF RECENT CASES.

### Bank of British North America v. White.

*Taxation—Revision—Explanatory affidavit.*

Taxation on entering judgment in the deputy's office, London. Ordinary affidavit of disbursements produced and filed with deputy master. Objection taken, that some of the witnesses were not examined at the trial. An admission to that effect was made by plaintiff. The deputy held that it was unnecessary to show that the witnesses were examined, or to file any affidavit setting forth matter giving good reason for their not being called and examined; and that no affidavit other than the ordinary affidavit of disbursements was necessary.

The costs were revised before the master at Toronto, who held that the deputy was wrong, and that as an admission was made that some of the witnesses were not called and examined, the costs of such witnesses could not be taxed without an affidavit showing good and sufficient reason why they were not called and examined; but the master allowed plaintiff to file such an affidavit on the revision, as an exception to the rule that the revision, on notice before the master at Toronto, must be on the same material only as before the deputy, were the master considering that such affidavit was not filed, owing to the mistaken ruling of the officer of the court, and that therefore the plaintiff should not be prejudiced thereby. This decision was appealed from.

*J. K. Kerr* for appellant.

*S. Richards*, Q. C., contra.

Richards, C. J., held that the master was right in receiving plaintiff's explanatory affidavits as to the witnesses not called or examined.

### Moore v. Price et al.

*Costs—31 Vic. cap. 24, sec. 2, sub-secs. 2, 4.*

[January 16, 1869.]

In this action a verdict having been found for the plaintiff for $118, Mr. Justice Gwynne, before whom the case was tried, certified on the record as follows: "I certify to entitle the plaintiff to County Court costs."

The plaintiff taxed County Court costs in the presence of the defendants attorney at $66 76, which taxation was admitted by the attornies for both parties to be correct.

The defendants attorney then produced and required the taxing officer to tax a Superior and County Court bill, claiming that he had a right to set off the difference between the two bills produced by him against the plaintiff's costs.

The taxing officer refused to allow any set off for costs to the defendants.

It was agreed that if the defendants were entitled to set off costs against the plaintiff that the amount that ought to be set off was $26 33.

The question then arose, whether, under the statutes of Ontario, 1867–68, cap. 24, sec. 2, subsecs. 2, 4, particularly, and the effect of the statute generally, the defendants had a right to set off costs of defence against the plaintiffs costs and verdict?

*Crombie* for plaintiff.

John Wilson, J.—Ordered the Master to tax to the plaintiff County Court costs, and not tax to defendant any costs of suit.

### Boyd et al. v. Haynes (British America Assurance Co. Garnishee.)

*Attachment of debts—Verdict—Affidavit.*

[February 1, 1869.]

*Duggan*, Q. C., for execution creditors, moved for an order on the garnishee to pay over to the creditors the amount of a verdict recovered on a policy of assurance against fire.

*Spencer*, for judgment debtor, showed cause.

Hagarty, C. J.—A verdict for unliquidated damages cannot be attached, and it makes no difference that the garnishees attorney told the attorney for the judgment debtor, that they had agreed on the costs, and promised to pay without seeking judgment. If not a debt until judgment this conversation cannot make it such.

An application of this kind must be supported by an affidavit of the plaintiff or his attorney.

### Reg. ex rel. Fluett v. Semandie.

*Municipal election—Qualification—Assessment roll.*

[February 20, 1869.]

This was an application to unseat one of the councillors elect for the town of Sandwich, on the ground that he was not possessed of sufficient property qualification.

*Harrison*, Q. C., for relator.

*Warmoll* contra.

John Wilson, J. — A person desiring to qualify as town councillor cannot supplement his qualification on his real estate, which was assess-

ed on the roll at $750 ($50 less than the required amount) by adding thereto $400 of personal property.

The assessment roll is conclusive as to the rating, and there can be no enquiry behind this as to whether the candidate has more real property than that for which he was rated on the roll.

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### Reg. ex rel. Arnold v. Wilkinson.

*Municipal election—Town of Sandwich—Interpretation of Statutes.*

[February 25, 1869.]

The town of Sandwich was incorporated by 20 Vic. c. 94, which also provided for the election of mayor and councillors, &c. This enactment was not expressly repealed by the late Municipal Act, with which, however, it clashes.

This application was to unseat the mayor elect on the ground that he was not properly elected, in that he was elected by the people, and not from among the councillors.

*Harrison*, Q. C., for relator.

*Warmoll* contra.

John Wilson, J.—A special Act of Parliament cannot be repealed by a general enactment, except when there is express reference to it. The Statute 20 Vic. cap. 94, is not therefore repealed by 29, 30 Vic. cap. 51, sec. 428.

The late act amending the Municipal Act of 1866 (31 Vic. cap. 30, sec. 6, Ontario), must be read in connection with the act incorporating the Town of Sandwich (20 Vic. cap. 94, secs. 2, 3), and so reading them, the Town of Sandwich having only one ward is entitled only to three councillors, in addition to a mayor and a Reeve, elected by the people.

No costs were given, as the point was doubtful, owing to the loose way in which the repealing clause in the Municipal Act was drawn.

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### Reg. ex rel. Fluett v. Gauthier.

*Municipal election—Disqualification—Interest in contract with corporation.*

[February 26, 1869.]

This was a similar application to the last, the ground alleged being that the defendant was interested in a contract with the Corporation of Sandwich, to which he had been elected a councillor.

*Harrison*, Q. C., for relator.

*Warmoll* contra.

John Wilson, J.—I do not think that it is necessary that a valid contract should be shewn binding on the corporation. If there is no contract binding on the corporation the danger is the greater of the party improperly using his position to his own advantage and to the prejudice of the Municipality. The policy of the law is, that no man should be a member of a municipality who cannot give a disinterested vote on a matter of dispute that may arise. If his judgment is likely to be clouded by self-interest in a matter of contract or quasi contract he should not be a member of the council.

An order was made to unseat the defendant, but it was unnecessary, owing to the decision in the last case, to order a new election. No costs.

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### Purcell v. Walsh.

*Assault—Several pleas.*

[February 26, 1869.]

John Wilson, J.—The practice has been for years to allow pleas of not guilty and justification to be pleaded together to an action for assault. *Goldburgh* v. *Leeson*, 2 U. C. L. J. 209, overruled.

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### Quebec Bank v. Gray.

*Law Reform Act, 1868—Notice for jury—Similiter.*

[March 4, 1869.]

Action on promissory note. Special plea on equitable grounds. Issue taken thereon by plaintiff.

Rejoinder by defendant, who "joined issue," and gave notice for a jury under sec. 10 of Law Reform Act, 1868.

A summons was obtained to set aside rejoinder and notice for jury.

*Harrison*, Q. C., shewed cause.

*Leith* contra.

Hagarty, C. J.—The old similiter is not done away with by the Common Law Procedure Act, but is in fact preserved by section 108 of that Act. The only effect of that statute in this particular case is to give a short form of a pleading in denial. Summons discharged.

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### Cooper v. Watson.

*Declaration not founded on writ of summons—Setting aside,*

[March 4, 1869.]

*Boswell* obtained a summons to set aside a declaration on the ground that no writ of summons had been served on defendant whereon to ground it.

*Harrison*, Q. C.—1. The affidavit is defective in not shewing that the writ had not come to defendant's knowledge.

2. A declaration without a writ of summons is only an irregularity which can be waived, and has in this case been waived by defendant's laches.

Hagarty, C. J.—Held both objections good. Summons discharged.

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### Allan v. Andrews.

*Commission to examine witnesses—Application before issue joined.*

[March 6, 8, 1869.]

*Scott*, for plaintiff, asked for an order for a commission to take the evidence of a person in the United States. The application was made before issue joined, to expedite proceedings.

*Osler* shewed cause. There is no sufficient reason why the general rule that a commission will not be ordered until issue joined; and it makes no difference that the plaintiff undertakes not to execute it before issue joined.

Gwynne, J., refused the order.

## INSOLVENCY CASES.

(Before Hon. Geo. Sherwood, Judge of the County of Hastings.)

### In re Huffman, an Insolvent.

*Insolvency—Notice.*

Notice of application for discharge in *Canada Gazette*, and not in *Local Gazette*. Held sufficient.

It is sufficient to publish notices of application for discharge in the *Canada Gazette*.

The insolvent filed his petition on the 2nd Feb. 1868, for discharge.

*Jellett*, appeared for a creditor, and objected, that notice of application should have been published in the *Ontario Gazette*.

Other matters came up in this application to which it is not necessary to refer.

Sherwood, Co. J.—By the 91st clause of the Insolvent Act, 30 & 31 Vic. c. 3, I find among other things that the Parliament of Canada has exclusive legislative powers in matters of bankruptcy.

The Insolvent Act of the late Province of Canada, requires that all notices under that statute shall be published in the *Canada Gazette*, and this paper was, prior to the passing of the Act of Confederation above mentioned, the evidence of all official notices in matters relating to the administration of justice in the former Province of Canada.

The 3rd sec. of the Act of the Ontario Legislature, 31st Vic. cap. 6, enables the Lieutenant Governor to authorize the publication of an official gazette, to be called the *Ontario Gazette*, for the publication of official and other matters, and all such matter whatever as may be from time to time desired; and that all advertisements, notices and publications, which by any act or law in force in this Province, are required to be given by the Provincial Government or any department thereof or by any sheriff or officer, person or party whatsoever, shall be given in the *Ontario Gazette*, unless some other mode of giving the same be directed by law. And if in any act in force in Ontario, of the late Province of Upper Canada, or of the late Province of Canada, any such notice is directed to be given in the *Upper Canada Gazette* by authority or in the *Canada Gazette*, the *Ontario Gazette* shall be understood to be intended; and it repeals c. 13 of the Con. Stat. of Canada, which heretofore related to that part of the late Province of Canada, now Ontario.

If the Act of Ontario above mentioned, is to be construed literally, it interferes directly with the statute of Canada respecting insolvency which is now in force in Ontario, and deals with a subject which the Imperial Legislature has placed exclusively under the Parliament of Canada. I must confess I feel great reluctance in coming to the conclusion I have. It appears however to me, on full consideration of the subject, that the Act of Ontario was only intended to apply to notices that were connected with matters over which it had control, either exclusively or jointly, with the Legislature of Canada, and not to those within the authority of the last mentioned Legislature. The Act of the late Province of Canada should govern, I think, as to notices in bankruptcy, and the publication of notices in the *Canada Gazette* is therefore sufficient.

Discharge ordered, but on other grounds suspended for six months.

### In re John Sullivan an Insolvent.

*Assignment, to what official assignment—Assignment must be in duplicate—Neglect to keep books of account.*

This was an application for the discharge o the insolvent. It was opposed on the ground that the insolvent, according to his own statement, never was in business for himself, but had for several years both worked as foreman for his father and brothers in getting out and bringing lumber down the Trent. They resided in Seymour, and their business was there transacted, except as to receiving advances and selling their lumber, which was principally done at Trenton. The insolvent set out in his petition that at a meeting of his creditors called pursuant to the statute, his sole creditor attended the meeting, and appointed William Henry Delaney of the Township of Murray, in the County of Northumberland, his assignee, who refused to act, and that on such refusal, he appointed George Dean Dickson, an official assignee for the County Hastings. The assignment appeared only to have been executed in one part to the official assignee, and no copy was filed with the clerk of the court.

*Lazier* opposed the discharge of insolvent on the part of his creditor.

Sherwood, Co. J.—The 4th sub-sec. of the 2nd sec. of the Insolvent Act, provides (among other things), if the assignee appointed at the meeting refuses to act, the insolvent may make an assignment to any official assignee of the county in which the insolvent has his place of business. The insolvent has no place of business, and was foreman to persons whose place of business seems to me, by his own statement, to be within the County of Northumberland; and we may fairly infer that the insolvent's place of business was the same, if he had any business at all. His residence was within that county, and I think that the assignment should have been made to the official assignee of that county.

The 6th sub-sec. of the same section enacts that the deed or instrument of assignment if executed in Upper Canada *shall* be in duplicate, and although it may be (as argued by the insolvent's counsel) that the assignment in one part passed all the insolvent's property to the assignee, it does not comply with the statute which is mandatory.

The insolvent has not, subsequent to the passing of the Act, kept any account book, shewing his receipts and disbursements in cash, nor was he able to give any account of them on his examination.

For these reasons I must refuse to grant his discharge.

## PROBATE.

### In re Hunter.

(In the Surrogate Court of the County of Norfolk.)

*Appointment of Guardian—Practice—Notice—When application may be made—Reasons for application—Second Marriage of Mother—Caveat—&c.*

This was an application made by the infant children of one John Hunter deceased, for the appointment of David Hunter as their Guardian.

In this notice, served upon the mother, and also in the published notice, it was stated that appli-

cation would be made before the Judge in his Chambers on Wednesday the 3rd of February, 1869, at 11 o'clock a.m. In consequence of the absence of the Judge on that day, no proceedings were then had. On the following day however both parties appeared by their counsel, when an appointment was made for the 16th February. Mr. Foley on behalf of Mrs. Sheldrick, the mother of the minors, raised the following objections.

1. That the application is informal and incorrect, in this, that there is no affidavit of the witness to the signatures of the infants, and further, that the witness should have been personally present for examination.

2. That the proceedings of to-day are illegal, not being in accordance with the written and printed notices.

3. That the notice served upon the mother is inconsistent with the notice published, in this, that it contains an addition viz., "or so soon thereafter as counsel can be heard" and that both notices should conform.

4. That no such notice as the statute requires of any proceeding to be had this day, has been given.

5. That the 20 days' notice required by the statute has not been given.

6. That the security required by statute has not yet been given.

7. That no reason has been assigned why the children should be removed from the care of their natural guardian.

8. That the affidavits are not entitled in any cause.

9. That the papers and affidavits filed, show that the mother had been legally appointed administratrix &c., and therefore had the legal right to the administration of the estate.

10. That the real estate is subject to Mrs. Sheldrick's dower.

For these reasons she objects and protests against the appointment of Mr, David Hunter as guardian of these children, believing it would be detrimental to their moral and material interests.

*Livingstone* on behalf of the infants urged, that as administratrix, Mrs. Sheldrick had no control over the real estate; that the petition from the minors shows their desire that a guardian should be appointed; that it is unnecessary to assign any special reason, and that Mr. Hunter is their nearest of kin; that the 20 days' notice is proved by the affidavit on file, and that in consequence of the absence of the Judge on the day named in the notice, that counsel could not be heard, but that on the opening of Chambers on the following day, the further hearing was adjourned to this day.

Judgment was deferred until the 1st March, when the following judgment was delivered.

Wilson, Co. J.—Having carefully examined the Act relating to guardians, with the Rules and Orders framed by the Judges appointed under the 14th Section of the Surrogate Courts Act of 1858, and having also considered all the objections and arguments of counsel, I have come to the conclusion that the contesting party is not properly before the Court until she has filed a caveat. I threw out a suggestion to this effect, when the parties were before me on the 16th ult., but no caveat has yet been filed. The proper practice appears to me to be, that in the event of the mother, or any one else objecting to the appointment proposed, it is for them to file a caveat with the Surrogate Registrar; *then*, when the application is made, the party contesting, must be warned to appear on some day to be named by the Judge, who will then hear the parties and decide the matter, either on affidavits, or he may take evidence *viva voce* if he thinks it advisable to do so.

With reference to the objection raised by Mr. Foley that by the printed and written notice, the application in this matter should have been made to me at my Chambers on Wednesday the 3rd of February, 1869, at 11 o'clock in the forenoon, and that as no such application was then made, therefore any subsequent application or proceeding would be irregular and illegal. I have no doubt that I had full power and authority to receive and entertain the application on the first day I was in Chambers, although this was after the day named in the notice. I had received no intimation of this appointment, neither had my convenience been consulted in any way, and if counsel will arbitrarily make appointments for me, they must submit to occasional disappointments. By the 3rd Section of the Act respecting the appointment of Guardians it is enacted, that after proof of 20 days' public notice of the application &c., the judge may appoint, &c. Now the usual form in such cases is to the effect that the person giving the notice, will apply to the Judge after the expiration of 20 days, &c., without naming any day or hour, and the application may in fact be made at any time after the period has expired, but even if a day has been named, (as in the present case), I am still of the opinion that it is immaterial whether the Judge is applied to on that particular day or not.

Several objections raised by Mr. Foley were overruled by me at the time, and as to his 7th, that no reasons have been assigned in the application for removing the minors from the care of their mother, I need only say that neither the Statute nor the Rules require such statement, and with reference to the objection that the appointment of Mr. Hunter would be detrimental to the moral and material interests of the infants, I can only repeat what I have already said, that to raise this issue properly, a caveat should have been filed as I suggested, when this allegation might have been fully investigated. In the absence of any evidence as to the unfitness of the proposed guardian, and from my own knowledge of his character and position in life, I am of opinion that Mr. Hunter, the paternal uncle, and next of kin should, on furnishing the necessary security, be appointed Guardian as prayed for.

The minors are of age to choose their own guardian, and the person of their choice, it appears to me, should be appointed, except it be clearly established, either that he is unfit, or that there are other good grounds of objection to his appointment. The second marriage of the mother, to a man who has children of his own, would in my opinion, constitute a good reason why *she* shold not be appointed as guardian, but as she has made no application, and has filed no caveat, I must decide that the uncle, as next of kin, and the choice of the minors, is entitled to letters of guardianship.

The usual order was then made.

## COUNTY COURT CASES.

### William Nash v. Andrew Sharp and Owen Senate.

(In the County Court of the County of Wentworth.)

*Overholding Tenants Act.*

The Overholding Tenancy Act of the first session of the Legislature of Ontario, gives jurisdiction to the County Judge in cases when the tenancy has been determined by forfeiture for breach of contract.

Service of the demand of possession must be personal; and service of notice of inquisition, must either be personal or at the place of abode of the tenant.

[Hamilton, November, 1868.]

The facts in this case were as follows. Sharp held under a lease for a term of years, terminating 1st March, 1869, and had paid all rent due up to 1st September, 1868. The landlord applied in November, under the Overholding Tenancy Act of the first session of the Province of Ontario, alleging a forfeiture of the lease for breach of covenant. The lease contained a proviso for making it void on non-performance of covenants by lessee, and the breaches complained of were, neglecting to fall plough 20 acres, to clear 24 acres newly seeded down in clover, taking straw off the premises and subletting or assigning the term to Senate. The lessee Sharp it was alleged had left the country. The demand of possession and notice of holding inquisition were served on Senate. Senate appeared and filed an affidavit denying the sub-letting or assignment of the term to him, and alleging that he was merely left in charge of the premises to take care of them for Sharp.

*R. R. Waddell*, for the landlord.

*J. W. Ferguson*, for the tenants, contended that the Act did not apply to cases where the lease was determined by forfeiture, and that service both of the demand of possession and notice of inquisition must be personal. He also denied the truth of the alleged breaches of covenant, and cited *Patton* v. *Evans*, 22 U. C. Q. B. 606; 9 U. C. L. J. 320; and referred to 10 U. C. L. J. 1.

Logie, Co. J.—I think that the Act of the first session of the Province of Ontario, gives jurisdiction in cases where the tenancy or right of occupation has been determined by a forfeiture for breach of covenant committed by the tenant. The second section gives the judge jurisdiction not only in cases where the tenancy has even determined by notice to quit, but also in all cases where it has been determined *by any other act whereby a tenancy*, or right of occupancy *may be determined, or put an end to*. These words are sufficiently comprehensive to include cases where the tenancy has been put an end to, or become void in consequence of any breach of covenant by the lessee.

One of the breaches of covenant complained of, and relied on as having made the lease void is the alleged sub-letting or assignment of the residue of the term to Owen Senate. If he had gone into possession as sub-tenant or assignee of the term, it is very doubtful if the Act against tenants wrongfully holding over would enable the landlord to put him out of possession, on the ground that there is no privity between them. Under the Act of 4 Wm. IV., it was expressly held that *it* did not apply to a case where there was no privity between the owner of the land and the person in possession: *Bonser* v. *Boice*, 9 U. C. L. J. 213. Senate swears, however, that he is in possession under Sharp only for the purpose of taking care of the premises, and it is probably true that he has no legal right of occupancy. Then with regard to Sharp, two questions arise as to the sufficiency of the service on him: 1st, of the demand of possession, and 2nd, of the holding of this inquisition. In *Goodler* v. *Cook*, 2 Cham. Rep. 157, Sullivan, *J.* set aside the proceedings, on the ground that notice of the inquisition was not served personally on the tenant, he being at the time not resident on the premises. The clause under which that was decided is similar to section 4, of the Act of last session. If service of the notice of inquisition must be personal, or at the actual place of abode of the tenant, it seems to be much more necessary that service of demand should be personal; as the refusal to go out and reasons for the refusal, if given, must be stated in the application, which means to imply personal service.

I think, therefore, that service of the demand of possession must be personal, and that notice of the holding of the inquisition must either be served personally, or be left at the place of abode of the tenant; and that service on a person in possession of the premises, the tenant being resident elsewhere, is not sufficient. The application must be discharged for the reasons stated.

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### The Corporation of Belleville v. Fahey.

(In the County Court of the County of Hastings.)

*Promissory note—Consideration—Corporation—Demurrer.*

A promissory note, made payable to the Treasurer of, and endorsed by him to a Municipal Corporation to secure a balance due the Corporation on a past transaction is not void under the Municipal Acts.

Sherwood, Co. J.—The plaintiff in this case declares upon a promissory note made by the defendant to Thomas Wills, Treasurer of the Town of Belleville, and states that Wills, as Treasurer, endorsed and delivered the note to them.

The defendant demurs, and gives as a ground, that plaintiffs cannot legally contract by promissory notes, neither can they make, endorse, &c., or otherwise negotiate by or in promissory notes.

The only case I find bearing on this point, is that of the *Municipality of Westminster* v. *Foy*, 19 U. C. Q. B., 203. In that case the demurrer was sought to be sustained, on the ground that the corporation could not take more than 6 per cent. interest, if they could take interest at all. In the argument, the same or nearly the same objection was taken as in the present case, but inasmuch as it was taken at the argument, the court seemed to think it too late; but the learned Chief Justice in giving judgment remarked that, for all that appeared, the note sued on may have been given upon a transaction having nothing to do with banking or any kind of business prohibited, as for instance, money over paid to the defendant on a contract. He therefore was of opinion that a note given with such a consideration might be recovered. There are other matters besides these, such as rent, that would be a good consideration.

It does not appear here, that this note was given for a bad consideration, or in any kind of business prohibited to a corporation such as this,

I cannot see that the note having been made to the treasurer, and by him endorsed to the plaintiff, would alter the case, and I must therefore hold that the plaintiffs can recover.

Judgment for plaintiffs.

## ENGLISH REPORTS.

### QUEEN'S BENCH.

FUENTES AND ANOTHER v. MONTIS AND ANOTHER.

*Principal and agent—Factors Acts, 6 Geo. IV., c. 94; 5 & 6 Vic. c. 39—Authority of factor to pledge goods—Revocation.*

If a principal entrusts goods to a factor for sale, and afterwards revokes the authority and demands back the goods, the factor is not "entrusted with the possession of goods" under the Factor Act, and cannot make a valid pledge of the goods.

[Dec. 1, 1868, 17 W. R. 203.]

Appeal from a decision of the Court of Common Pleas, discharging a rule to enter a verdict for the defendants.

The facts of the case, with the material sections of the Acts of Parliament, are fully set out in 16 W. R. 900 (and see L. R. 5 C. P. 268).

*Pollock*, Q.C. (*Archibald* with him), for the defendants, referred to the same authorities in the court below.

*Sir. G. Honyman*, Q. C. (*Channell* with him), for the plaintiffs, was not called upon.

COCKBURN, C. J.—I think it is quite clear that the judgment of the Court of Common Pleas was right. Mr. Pollock has been obliged to admit that but for the last Act, 5 & 6 Vic. c. 30, he would have no *locus standi*. By the law as it stood before the passing of that Act a man could only deal with goods which he had in his possession as the owner of them, if it was not known that he had possession of them as agent; but by it the power of dealing goods was extended, and it was enacted that "any agent entrusted with the possession of goods, or of the documents of title to goods, should be taken to be the owner of the goods," for the purpose of protecting persons making *bonâ fide* advances even with the knowledge of the agency. Mr. Pollock has contended that the proper construction of that Act is, that if a man has once been an agent he is still an agent, though the agency has been put an end to by a communication from the principal unknown to the public; and in like manner that if a man has once been entrusted he is still entrusted, though his authority has been terminated in a similar way. I think that if that had been the intention of the Legislature it would have been so expressed, and that we must not translate the language of the Act which is in the present tense as if it were in the past tense.

Kelly, C.B., Bramwell, B., Channell, B., Pigott, B., and Hayes, J., concurred.

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DAW v. ELEY.

*Ex parte* COLLETTE.

*Contempt of Court—Publications by a solicitor in the cause of matters in the suit—Costs.*

A solicitor to a defendant in a suit wrote anonymous letters to a newspaper stating as facts the matters relied on by the defendant, which were in fact the issues which would have to be tried in the cause by a jury.

*Held*, that he was liable to be committed for contempt.

The editor of the journal allowed the letters to be published as part of a general controversy carried on in his columns, but refused to admit letters on the other side, and continued to publish the letters after he knew that the writer was a solicitor to the defendant.

*Held*, that he was not entitled to the costs of a motion to commit him, which was refused.

[Dec. 15, 1868, 17 W. R. 245.]

This was a motion to commit Charles Hastings Collette, the solicitor of the defendant in the suit, for contempt of court in publishing certain letters relating to matters in question in the suit.

There was also a motion to commit the editor of the *Volunteer Service Gazette* in which the letters had appeared.

The bill was filed early in the year 1868 to restrain the infringement of a patent obtained by the plaintiff for the manufacture of copper-cased cartridges for breech-loading rifles. The defence to the suit raised the issue of the novelty of the invention.

Some correspondence had been carried on in the *Volunteer Service Gazette* as to the respective merits of the various systems of manufacturing breech-loading cartridges, without any direct reference to the pending suit, or to the question of the priority of the invention of the coppere cased cartridges, and the number of the *Gazett*- for the 26th of September contained a leading article merely discussing the general merits of the question. In the same issue, however, there appeared the first of a series of letters signed "Copper Cap." These letters expressly raised the questions in the suit, and asserted as facts the matters relied upon by the defendant in the suit. They referred to a provisional specification obtained by a Mr. Rochatte, of Paris, as being an anticipation of the plaintiff's patent, and stated that one portion of the cartridge called the "anvil," and claimed as new by the plaintiff, was only a modification of a system previously in use and introduced by a Mr. Pottet.

The plaintiff sent letters for publication to the *Volunteer Service Gazette*, in answer to the letters signed "Copper Cap," but the editor declined to insert them, alleging that they contained expressions which were wanting in due courtesy to those who supported the opposite contention. On inquiry it appeared that the writer of the letters signed "Copper Cap" was the solicitor of the defendant, and the plaintiff moved as above-mentioned.

*Jessel, Q. C.*, and *Russell Roberts*, in support of the motion, contended that the publication of these letters was distinctly calculated to interfere with the due prosecution of the suit. The issues raised were as to questions of fact, and would have to be tried before a jury. The general public were largely interested in the question, and especially the Volunteers, who were the chief readers of the *Volunteer Service Gazette*, and some of whom it would be desirable to have upon the jury. They referred to *Tichborne* v. *Tichborne*, 15 W. R. 1072, and *Lechmere* v. *Charlton*, 15 Ves. 193, and to a similar recent motion*

*This was a motion made on the 12th November, 1868, to commit the editor of a Sheffield newspaper for an article in reference to the then pending Parliamentary election at Sheffield. The article set out portions of a bill of complaint filed against the directors of the Exchange Bank, one of whom was Mr. Roebuck. He was also one of the candidates for Sheffield, and the newspaper in question was conducted by his political opponents, and the article made use of the allegations of the bill for the purpose of injuring his candidature. Lord Romilly, M. R., held that

by Mr. Roebuck against the editor of a Sheffield newspaper.

*Southgate, Q. C.*, and *Langley*, for Collette, contended that the letters had in fact no relation to the matters in dispute in the suit. Collette had taken a great interest in the question as a volunteer, and the letters were not such as would prejudice the mind of any person in reference to the suit.

*W. W. Karslake* appeared for the editor of the *Volunteer Service Gazette*, and contended that at all events the order ought not to go against him. He knew nothing at first about Collette's position in reference to the suit, and was not bound to refuse to allow a discussion in the columns of his newspaper of a matter of such general interest as that of the cartridges, or to insert every letter sent to him on the subject.

Lord Romilly, M. R.—I will read the letters before I dispose of the matter finally; but, as it strikes me at present, I think the conduct of Mr. Collette cannot be defended. The principle upon which all these cases are founded is quite established. It is that no person can be permitted to do anything with a view to pervert the sources or the proper flow of justice, or, in fact, to make, any publication or write anything which would be likely or might possibly induce the Court, or the jury, or the tribunal which might have to try a cause to come to any conclusion other than that which is to be derived from the evidence brought forward by the parties to it.

Certainly no one ought to be permitted to prejudice the minds of the public beforehand, by mentioning circumstances relating to a case. If that is done with the intention of perverting the ends of justice, it is unquestionable that the Court could stop it, and very often it will judge for itself what are the fair inferences to be derived from the publications which appear. But it must also go beyond this, and must stop the publication of these things where the evident result would be to affect the administration of justice, though that might not have been the intention of the person who did it. The main question in the present case is whether Mr. Collette was justified in writing the letter of the 26th of September, which is the first letter on the subject. There is a leading article on the same subject, but that does not say a word, as far as I have seen, on the priority of any invention, and does not even mention Daw's patent. But Mr. Collette's letter treats of nothing else, as it appears to me, with the exception of this at the beginning:—"The writer of the article in your last issue, under the heading 'The Cartridge of the New Military Rifle,' can have scarcely given the subject a practical consideration when he places the Daw cartridge in comparison with the present Boxer service cartridge, particularly when he says that the Daw cartridge approaches the first essential more nearly than the Boxer, the first essential being safety." If it had stopped there (and I am not now considering the position which Mr. Collette filled), and had merely enlarged upon that subject, it might have been said that it was a fair discussion of the respective merits of two particular patents. But he says as to the portions of the cartridge claimed as new by Mr. Daw, that "they had all been in public use before Mr. Daw's patent of March, 1867," and that "a Mr. Rochatte, of Paris, in January, 1867, obtained a provisional protection" for a similar invention, and so on. What have these statements to do with the comparative merits of the two? He, further on, asserts that Mr. Daw in all his cartridges uses Snider's process. That is not a question of whether one is or is not better than the other. It is stating that Mr. Daw's patent is worth nothing because he is using an old process. Then he goes on, "This is in all respects similar to, 'Pottet's base arrangement,' except, that the 'anvil' is cylindrical and grooved up the side." There are things expressly stated in these letters to show that Daw's patent cannot be original. Then these letters are put in, not by a mere stranger who might say he really knew nothing at all about the suit, but by the solicitor to the defendant, who is opposed to Mr. Daw. Surely that is a very strong feature in the case. He must wish that his client should succeed, and it is impossible that he could write an article in a newspaper, which, if believed, must have a beneficial effect upon his client, and afterwards say, "I had no intention of that sort at all, however much I may wish for it." It must be regarded as an endeavour to interfere with the due administration of justice. Where is the line to be drawn? It is highly important that the Court should not allow steps of this sort to be taken by the officers of the court, in causes in which they are engaged, which possibly may have an effect favourable to their client, or unfavourable to the other side. I may further say that if I am to go minutely into every sentence of a letter which is written in a public newspaper, to say this is questionable, and that is doubtful, and the like, it is imposing a task and a duty upon the Court which it will be impossible to perform. There is one distinct line drawn, which is this, that gentlemen who are concerned for contending clients in this court, whether solicitors or counsel, should abstain entirely from discussing the merits of those questions in public print. If they do it at all they ought to put their names to their communications; but to let the public suppose that it is merely done by a person who takes a great interest in matters of this description, and has great knowledge of the subject, and that he discusses the question in a public point of view, when, if the fact were known, he is the solicitor of the defendant, and has the strongest possible interest in its success, appears to me conclusive upon that point.

Dec. 14.—Lord Romilly, M.R.—I have little to add to what I stated on Friday, when I explained the reason which induced me to take the course which I now intend to take. The perusal of the articles confirms me in the view I have taken, and it must be admitted by everybody to be an extremely improper thing for a solicitor in a cause to write an article in a paper which may either directly or indirectly be believed, and which may influence the suit upon which he is engaged. I do not believe it was done with any

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the case came clearly within the rule in *Tichborne* v. *Tichborne*, the only difference being that the newspaper articles in that case were calculated to prejudice the public mind in reference to the suit, and so injuriously affect the complaining parties; while in *Mr. Roebuck's case* the allegations of his opponents in the suit were used to damage his position as an individual.—Ed. W. R.

improper motive, but it was done with great want of judgment. My opinion from reading these papers and the comments and the remarks in the anonymous publication in the *Volunteer Service Gazette* is that it has the direct effect of influencing the suit, and therefore I am obliged to make the order that I have been obliged to make on former occasions, and which was made by the present Lord Chancellor in *Tichborne* v. *Tichborne*. I shall make the same order as before, but I shall direct that it shall not be acted upon for a fortnight, to allow Mr. Collette to take the opinion of a superior tribunal upon the subject, or to make an apology and pay the costs of the motion. It appears to me, to say the least of it, a serious error of judgment on the part of Mr. Collette, and it is necessary that the Court should interfere.

When I look at the case of the editor, I think that he did not show quite the forbearance towards Mr. Daw that he might have done, considering how materially interested Mr. Daw was, and that he might have made some little excuse for the warmth Mr. Daw showed upon the subject. At the same time there is nothing against the editor for which I can require him either to make an apology or to pay the costs of the motion, but I cannot give him costs: that is out of the question. He has certainly shown a tendency to decide against Mr. Daw. I also feel for the difficult position in which an editor is placed in such cases; but with respect to him I can make no order. The order as to Mr. Collette is that he stands committed for contempt of this court, and I desire that the order shall not be enforced for a fortnight.

Dec. 15.—Lord Romilly, M.R., said that there seemed to have been some misapprehension as to his judgment in reference to this matter. It seemed to have been supposed that the effect of the judgment would be to prevent a free discussion of the merits of inventions or anything of that description in the newspapers. That was not his intention. The question to be determined in the suit was whether Mr. Daw's invention was new, and the reason he refused the editor his costs was that after he had notice that the gentleman who wrote the anonymous paper was the solicitor to the defendant, he published another letter from him which had nothing to do with the merits of Mr. Daw's invention, and had refused to allow Mr. Daw to defend in his paper the novelty of the invention.

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## Withington v. Tate.

*Mortgage—Transfer—Redemption—Payment to party not authorised to receive—Loss by defaulting solicitor—Estoppel.*

A mortgage was transferred to the plaintiff without notice to the mortgagors, who were trustees for a charity, and they afterwards repaid the principal of the debt to the solicitors of the mortgagee and the plaintiff, who had always received the interest on the debt on their behalf. A deed was executed by the mortgagee purporting to be a re-conveyance, but there was no endorsed receipt, and it appeared that the mortgagee believed the deed only to be an appointment to new charity trustees. The solicitors did not communicate the fact of the payment to the plaintiff, and the money was lost by their default.

*Held*, that the plaintiff was not bound to give notice of the transfer to the mortgagors, and the payment was not a payment to him, and, as he had the legal estate, he was entitled to foreclose.

[M. R. 17. W. R. 247.]

The question to be determined in this suit was as to how a loss occasioned by a defaulting solicitor should be borne.

By a deed dated the 7th of July, 1858, the defendants, who were the trustees of a charity, mortgaged the charity property to Messrs. Nixon & Thew, of Liverpool, to secure £1,400 and interest.

By an indenture dated the 1st of January, 1864, to which the defendants were not parties, Messrs. Nixon & Thew transferred the mortgage to the plaintiff.

Messrs. Stockley & Wrigley, of Liverpool, were the solicitors both of Messrs. Nixon & Thew and of the plaintiff, and the interest on the mortgage money was always paid by the defendants to them for Messrs. Nixon & Thew. They did not give notice to the defendants of the transfer, but continued to receive the interest for the plaintiff as they had done for Messrs. Nixon & Thew.

The documents of title, including the original mortgage, remained at their office, and after the transfer was executed it remained there also.

In the early part of 1864 the defendants gave notice to Messrs. Stockley & Wrigley of their intention to redeem, and on the 15th of August, 1864, one of them attended at their office and paid the sum of £1,438 6*s* 5*d*.

Upon this payment Messrs Stockley & Wrigley gave the defendants a receipt in the following form:—

"Rev. Dr. Briggs and others to Nixon & Thew.

| | £ | *s.* | *d.* |
|---|---|---|---|
| To amount of principal.... | 1,400 | 0 | 0 |
| Interest on ditto from February 3 to August 15—194 days, at 5 per cent.....£37 4*s.* 1*d.* | | | |
| Less tax.. 19*s.* 8*d.* | 36 | 4 | 5 |
| Costs..... ..... ..... ... | 2 | 2 | 0 |
| | £1,438 | 6 | 5 |

Received one thousand four hundred and thirty-eight pounds six shillings and five pence.

Stockley & Wrigley."

15th August, 1864.

Messrs. Stockley & Wrigley thereupon handed over to Robert Chapman, one of the defendants, all the deeds and documents of title except the transfer to the plaintiff, and he sent them, together with the above mentioned receipt, to the defendants' solicitor with instructions to prepare a reconveyance of the mortgaged property. After some delay the draft was agreed to by the respective solicitors of the defendants and of Messrs. Nixon & Thew, and the deed was executed. It bore date the 31st of September, 1864, and purported to reconvey the property in question to the present defendants as trustees for the charity, discharged of the mortgage debt, and contained a recital that the defendants had repaid to Nixon & Thew the principal and interest of the mortgage debt, and a covenant by them that they had not incumbered. No receipt for the mortgage money was endorsed on the deed, and Messrs. Nixon & Thew stated that they executed the deed in the belief that it was necessary to complete the title of some of the defendants who

had become trustees of the charity since the date of the mortgage deed, and had nothing to do with the mortgage. Messrs. Stockley & Wrigley never communicated to the defendants the fact of the transfer of the mortgage, or to the plaintiffs the payment of the mortgage money or the execution of the last-mentioned deed, and continued to pay interest on the mortgage debt to the plaintiff till the 3rd of August, 1867.

At the close of the year 1867, Mr. William Stockley, one of the partners in the firm of Stockley & Wrigley, absconded, and Mr. Wrigley, who was the only other partner at the time of the repayment of the mortgage debt, afterwards became bankrupt.

The plaintiff then first heard of the repayment by the defendants, and, after ascertaining from Messrs. Nixon & Thew that they did not know of it till after Mr. Stockley absconded, filed the bill in the present suit, which was in the ordinary form of a foreclosure bill.

*Southgate, Q.C.*, and *Robinson*, for the plaintiff, said that there had been no payment to the person entitled to receive the mortgage money. The plaintiff was in possession of the legal estate, and entitled either to be paid off or to foreclosure.

*Sir R. Baggallay, S.G.*, and *Bagshawe*, contended that where there is a transfer of a mortgage and no notice of the transfer given to the mortgagor, a payment to the transferror is a valid discharge. The plaintiff by his acts had allowed Messrs. Stockley & Wrigley to be treated as his agents for the receipt of the purchase money. They referred to *Williams* v. *Sorrell*, 4 Ves. 389; *Matthews* v. *Wallwyne*, 4 Ves. 118; *Norrish* v. *Marshall*, 5 Madd. 475; *Stocks* v. *Dobson*, 4 D. M. G. 11.

*Southgate*, in reply.

Lord Romilly, M.R.—I think this is a very clear case. A mortgagee assigns his mortgage to a stranger for value, and the transferee gives no notice to the mortgagor. That does not prevent him from filing his bill for foreclosure The only effect of his not giving notice is to prejudice him in respect to any question of priority. If the answer to this bill had been that the defendants had paid the mortgagees and got a reconveyance from them, that might have been a good defence. But that is not the present defence. Here the mortgagor goes to the solicitor of the mortgagee and transferee, and gives six months' notice to pay off the mortgage debt. At the expiration of the six months he goes and pays the principal to the solicitor, and gets a receipt from him. There is no receipt from the plaintiff, who never received anything. The deed cannot affect him; it could only affect the mortgagee by estoppel, and that would not effect the plaintiff. For estoppel is where one is prevented by something he has done from stating the truth, and can only affect the person who is estopped. In this case if the deed operated by estoppel it could only prevent Messrs. Nixon & Thew from denying that the money was paid. But in this court it is never considered that a deed is evidence of money having been paid without an endorsed receipt. The deed really amounts only to an appointment to new trustees, and vests the property in them. The plaintiff has the legal estate, and all I can do is to make the ordinary foreclosure decree, and it may be remarked that this question would have come properly for determination on taking the account, because nothing can come into the account except what has been duly paid to the mortgagee or transferee, or to some person by his order.

## CHANCERY.

### Holt v. Sindrey.

*Will—Gift to children begotten or to be begotten—Illegitimacy unknown to testator—Description—Provision for future illegitimate children.*

A testator bequeathed trust funds to M., whom he believed to be the lawful wife of L., for life, with remainder to all her children begotten or to be begotten equally.

M. had by L. four children born or *in esse* at the date of the will, and three born afterwards, all illegitimate.

*Held, that* the children begotten at the date of the will were sufficiently described, and took the fund; but as to those born afterwards, the gift was a provision for future illegitimate children, and therefore failed.

[V. C. S. 17 W. R. 249.]

William Holt, the testator in this petition, by his will, dated in the year 1827, directed his trustees, after the decease or second marriage of his wife, to stand possessed of so much of certain funds as would produce the sum of £35 a year upon trust during the life of his daughter Mary, the wife of John Lattimer, for her sole use, exclusive of her then present or future husband, and after the death of his said daughter, to pay the same unto all and every the child or children of his said daughter begotten or to be begotten, in equal shares, if more than one, and if there should be but one such child then the whole to be in trust for such one child, and to be vested in the same children when they attained the age of twenty-one years or died under that age leaving issue; and in case there should not be any such child of his said daughter Mary Lattimer, or in case all such children, if any, should die under the age of twenty-one years without leaving issue, then the testator gave the trust fund in trust for other persons.

The testator died in the year 1828, and his widow in the year 1831.

The chief clerk's certificate upon a decree for the administration of the testator's estate had certified that Mary Lattimer, then Mary Holt, spinster, was on the 4th of May, 1817, married to J. C. Flenly, but there was not any issue of the marriage, as the parties had separated immediately after the ceremony, and they never met again; also that J. C. Flenly died in July, 1850; also that on the 31st of January, 1818, Mary Flenly, as Mary Holt, was married to John Lattimer, and that of that marriage seven children were the issue, all of whom were born before the death of J. C. Fienly. John Lattimer died on the 23rd of October, 1850.

By an order of the Court made in the year 1858 the trust fund, which was then represented by a sum of Bank Annuities, was carried over to the account of "the legacy of Mary Lattimer, her children, and their incumbrances," and the dividends were ordered to be paid to Mary Lattimer during her life.

Mary Lattimer died on the 29th of August, 1868, without having had any lawful issue, and a petition was presented by some of the parties entitled under the testator's will to the trust

fund in the event of there being no children to take under the bequest.

The evidence showed that the marriage between J. C Flenly and Mary Holt was never consumated, and that the marriage took place without the knowledge of, and was never made known to, the parents of Mary Holt; also that four of the children of Mary Lattimer by John Lattimer were born or *in esse* at the date of the testator's will; the other three children were born after that date. The testator knew that his daughter had no other children except those by Lattimer.

*Hinde Palmer*, Q. C., for the children of Mary Lattimer, claimed the fund for the four elder, though he admitted though the three younger could not take. The children illegitimate, were sufficiently described.

*Greene*, Q. C., and *Renshaw*, for the parties entitled under the gift over, contended that the gift over had taken effect.

*Bagshawe*, *Fischer*, and *Langley*, for parties in the same interest.

The following cases were referred to:—*Howarth* v. *Mills*, L. R. 2 Eq. 389; *Warner* v. *Warner*, 15 Jur. 141, 1 Sm. & Giff. 126; *Pratt* v. *Mathew*, 4 W. R. 418, 22 Beav. 340; *Re Herbert's Trusts*, 8 W. R. 660, 1 J. & H. 121, 8 W. R. 660; *Godfrey* v. *Davis*, 6 Ves. 43; *Kenebel* v. *Scrafton*, 2 East, 530; *Harris* v. *Lloyd*, T. & R. 310; *Re Overhill's Trusts*, 1. W. R. 208, 1 Sm. & Giff. 362; *Re Well's estate*, 16, W. R. 784, L. R. 6 Eq. 599.

Stuart, V. C.—In order that any legatees may take, whether as a class or individuals, it is necessary that they should be clearly described. When there is a gift to a child or children as a class, legitimate children are understood, but if the object is clearly defined, it matters nothing whether the object be legitimate or illegitimate. In the construction of wills, however, the primary and proper signification of every word must be attended to. It is contended in the present case that the gifts to the child or children of the testator's daughter begotten must altogether fail. I think that the testator understood and thought that his daughter was the wife of Lattimer, and his lawful wife. In his will he refers to children begotten, so he knew that children were born, and the fact that were illegitimate seems to have nothiug to do with the question whether they are sufficiently described when it is certain that there are none other than the children by the marriage with Lattimer. The words of the will are clearly intelligible, and I know that the testator intended children begotten of the marriage with Lattimer. In cases of this description fallacies are occasioned by the use of two words which require very accurate definition, namely, "children" and "class." If children are properly described as a class there is no rule to say that illegitimate children shall not take; this runs through every case except *Beachcroft* v. *Beachcroft*, 1 Mad. 430, and *Fraser* v. *Pigott*, 1 Yo. 354. The cases relied upon by the parties objecting to this gift are clear authorities in favour of gifts to persons clearly described. In *Godfrey* v. *Davis* (*supra*) it was decided that if there were no other children than illegitimate children to answer the description they must take, although in point of law they do not stand as children. This shows that there can be a valid gift to illegitimate children under the description as children begotten during the testators lifetime. *Pratt* v. *Mathews* (*supra*) and *Cowden* v. *Parke* (*supra*) were cases in which the gift was to children to be begotten, and it is against the policy of the law to allow such a gift, but a gift to a child begotten but unborn is valid although the child be illegitimate. There is, however, one point in this case which might raise a doubt, namely, the use of the word "such" in a subsequent part of the will, where it directs the interest to be vested when the children arrive at the age of 21, and makes further provisions in case there should not be any such children. I do not entertain any doubt upon the construction of the will as to the children begotten or the one *en ventre sa mere* at the time of the testator's death.

## DIGEST.

### DIGEST OF ENGLISH LAW REPORTS.

FOR AUGUST, SEPTEMBER AND OCTOBER, 1868.

*(Continued from page 52.)*

Laches.

A continual claim, without any active steps in support of it, will not keep alive a right which would otherwise be barred by laches.—*Lehmann* v. *McArthur*, Law Rep. 3 Ch. 496.

Landlord and Tenant.

1. It is not necessary to the validity of a notice to quit, given by the general agent of a landlord to a tenant, that the agency should appear on the face of the notice.—*Jones* v. *Phipps*, Law Rep. 3 Q. B. 567.

2. M being yearly tenant to the plaintiff, under a written agreement, the defendant in consideration of the plaintiff's continuing M as such tenant, gave to the plaintiff a guaranty for "the rent of the L farm, in the occupation of M." The plaintiff afterwards gave M notice to quit, but withdrew it before the expiration of the current year. Next year the rent was in arrear, and the plaintiff brought suit on the guaranty. *Held*, that the old tenancy was determined by the notice to quit; that the guaranty applied only to the tenancy in existence when it was given; and that the defendant was not liable.—*Tayleur* v. *Wilden*, Law Rep. 3 Ex. 303.

3. By a lease of a house and grounds, the landlord undertook to keep the premises in repair, and to pay all taxes and charges payable in respect to the premises. In the grounds was a piece of ornamental water, in which, during the tenancy, an accumulation of mud caused a nuisance to the tenant and to the public. The tenant being summoned under the Nuisances Removal Act, 1855, employed a con-

tractor to clear the water to the satisfaction of the inspector of nuisances. Afterwards, an order was made on him to abate the nuisance. The whole of the mud was cleared out, under the contract, part before and part after the date of the order. *Held* (1), that the landlord was not, under his agreement to repair, bound to cleanse the water; (2) that no charge on the premises, in respect to any part of the work done, had been created by the proceedings under the Nuisances Removal Act.—*Bird* v. *Elwes*, Law Rep. 3 Ex. 225.

4. In a lease, the lessee covenanted not to assign without license, and the lessor covenanted not to withhold his license unreasonably or vexatiously. The lessee contracted to assign his lease to the plaintiff, "subject to the landlord's approval." The lessor refused to give his license, not from any objection to the proposed assignee, but because he wished to buy up the lease for the purpose of rebuilding. The lessee, having failed to obtain the license, surrendered the lease to the lessor for the same price for which he had agreed with the plaintiff. In a bill by the plaintiff against lessor and lessee for specific performance of the contract to assign: *held*, that the lessee was not bound to take legal proceedings to oblige the lessor to give his license, and that, having used all reasonable efforts to induce the lessor to consent, he was at liberty to consider the contract at an end, and to make his own terms with the lessor. Whether the lessor's refusal was unreasonable or vexatious, *quære*.—*Lehmann* v. *McArthur*, Law Rep. 3 Ch. 496.

*See* Frauds, Statute of, 1.

Lease—*See* Landlord and Tenant.

Legacy—*See* Devise; Heirloom; Next of Kin; Power, 2; Revocation of Will; Trust; Vested Interest.

License—*See* Landlord and Tenant. 4.

Marriage—*See* Divorce, 2.

Marriage Settlement.

A marriage settlement contained a covenant to settle on the trusts of the settlement all the estate which the wife was, at the date of the settlement, or should during the coverture become, seised or possessed of, or entitled to at law or in equity. At the time of the deed, and during the whole time of the coverture, the wife was entitled to an estate tail in remainder after other estates tail. *Held*, that it was not within the covenant.—*Dering* v. *Kynaston*, Law Rep. 6 Eq. 210.

*See* Power, 2.

Married Woman—*See* Husband and Wife.

Master—*See* Freight, 2; Ship, 2, 3.

Master and Servant.

The defendant was engaged in constructing a sewer, and employed men, with horses and carts. The men were allowed an hour for dinner, but were directed not to go home or to leave their horses. One of the men, however, went home, about a quarter of a mile out of the direct line of his work, to dinner, and left his horse unattended in the street before his door. The horse ran away, and injured the plaintiff's fence. *Held*, that the jury were justified in finding that the man was acting within the scope of his employment.—*Whatman* v. *Pearson*, Law Rep. 3 C. P. 422.

Misrepresentation.

It is not sufficient, in a bill praying to be relieved from a contract for shares in a company on the ground of its being induced by misrepresentation in a prospectus, to allege generally that the prospectus contained false statements, by which the plaintiff was deceived and drawn into the contract; but the precise misrepresentation must be distinctly stated, and also that it formed a material inducement to the plaintiff to take shares.—*Hallowes* v. *Fernie*, Law Rep. 3 Ch. 467.

Mortgage—*See* Fixtures; Foreign Court; Freight, 1; Priority, 2-5; Ship, 2.

Necessaries—*See* Husband and Wife, 1.

Negligence—*See* Action; Master and Servant; Railway, 1; Ship, 1.

Next of Kin.

A testator gave a legacy to A for life, and, in default of issue, to "her next of kin in blood, as if she had died unmarried." A died without issue. *Held*, that the only surviving sister of A was entitled to the legacy, in exclusion of children of deceased brothers and sisters; for that the words, "as if she had died unmarried," did not point to the mode of distribution in cases of intestacy, and that, therefore, "next of kin" meant nearest relations, and not persons entitled as next of kin under the Statute of Distributions.—*Halton* v. *Foster*, Law Rep. 3 Ch. 505.

Notice—*See* Landlord and Tenant, 1, 2; Priority, 1.

Nuisance—*See* Way, 2.

Nullity of Marriage—*See* Divorce, 2.

Parent and Child—*See* Husband and Wife, 1.

Parol Evidence—*See* Frauds, Statute of, 1.

Parties—*See* Husband and Wife, 3: Way, 2.

Partnership.

The plaintiff, being entitled to a fund in court, gave the firm of solicitors who had acted

for him in the matter a joint and several power of attorney to receive the money. The plaintiff sent the power to B, one of the firm, who, under it, received the money, signed the receipt in his own name, paid the money into his private bank account, and soon afterwards absconded with it. The letters on the subject of the power and the cost of stamping it were charged in the bill of costs of the firm. On a bill seeking to make S, the other partner, liable to repay the money, but not praying an account, *held* (1), that there was jurisdiction at equity; (2) and that S was liable for repayment of the amount, with interest.—*St. Aubyn* v. *Smart*, Law Rep. 3 Ch. 646.

Part-owner—*See* Ship, 2.

Pawn—*See* Pledge, 1.

Pleading—*See* Action, 1.

Pledge.

1. A, a holder of scrip certificates for shares, borrowed money of the defendant, and deposited with him the certificates as security. He afterwards became bankrupt, and the defendant, without demand and without notice, sold the shares to repay himself. A's assignee, without making any tender of the amount of the debt, brought trover to recover the value of the shares. *Held*, that, even assuming the sale to be wrongful, the right to possession was not by the sale revested in the plaintiff, and that he could not maintain trover either for the value of the shares or for nominal damages.—(Exch. Ch.) *Halliday* v. *Holgate*, Law Rep. 3 Ex. 299.

2. A, a stock broker, borrowed, on behalf of the plaintiff, a sum of money for three months, from the defendant, also a stock broker, on the security of certain railroad stock which was transferred by the plaintiff into the name of the defendant. At the end of the three months the plaintiff repaid the loan; and the defendant, who had sold the plaintiff's stock, purchased other stock and retransferred a similar amount to the plaintiff. The plaintiff claimed to be entitled to the amount of profit that the defendant had made. *Held* (1), that the plaintiff could sue as principal; (2) that the defendant was not justified, either by law or by the custom of the stock exchange, in parting with the security, but was bound to restore the identical stock pledged; and that the plaintiff was entitled to recover the profit made by the defendant.—*Langton* v. *Waite*, Law Rep. 6 Eq. 165.

Power.

1. A power for setting up children in business does not justify trustees in making advances to a married daughter for the purpose of paying her husband's debts. But an advancement for setting up a married daughter in the farming business, her husband covenanting that the business should be for her separate use, is a good execution of the power —*Talbot* v. *Marshfield*, Law Rep. 3 Ch. 622.

2. A testatrix, having a general power of appointment over personal property, by her will, made after the Wills Act, directed her executor to pay her debts and funeral expenses out of her personal estate; she then gave several pecuniary legacies, with a direction that they should abate ratably, if, after payment of her debts and funeral expenses, there should not be sufficient to pay them in full; and she gave the residue of her estate to certain persons. *Held*, that the will was an execution of the power in favor of the executor, for the purpose of paying the testatrix's debts, funeral expenses, and legacies, and that only what remained, after making those payments, passed by the residuary bequest.— *Wilday* v. *Barnett*, Law Rep. 6 Eq. 193.

3. By a marriage settlement, reciting only the intended marriage, and that the wife's property should be settled to the uses after mentioned, her freeholds were conveyed to her use for life, remainder to the husband for life, remainder to such uses as the wife should appoint, and, in default of appointment, to uses in favor of the issue of the marriage. The wife covenanted to surrender her copyholds "to the uses hereinbefore expressed" concerning the freeholds. *Held*, that the power of appointment was general, and could not be restricted to a power to appoint to issue, and that the covenant made the copyholds subject in equity to the same power of appointment as the freeholds, though powers were not expressly referred to in the covenant.—*Minton* v. *Kirkwood*, Law Rep. 3 Ch. 614.

*See* Revocation of Will, 1.

Practice—*See* Appeal; Interrogatories, 2.

Prescription.

1. From 1803 to 1854, the fee paid on a marriage in a certain church was almost uniformly 13*s*. There was no evidence before 1803. On a special case, in which the court were at liberty to draw inferences of fact: *held* that the amount of the fee, being so great that it could not have existed in the time of Richard I., was sufficient to rebut the presumption from modern enjoyment, that the fee had an immemorial legal existence (Keating, J., *dissentiente*).—(Exch. Ch.), *Bryant* v. *Foot*, Law Rep. 3 Q. B. 497.

2. A claim by prescription to a toll in a market of 1s. on every wagon may be sustained as a claim to a reasonable toll, which might vary in amount with the value of money.—(Exch. Ch. reversing the decision of the Queen's Bench), *Lawrence* v. *Hitch*, Law Rep. 3 Q. B. 521.

Principal and Agent—*See* Landlord and Tenant, 1; Master and Servant; Pledge, 2; Ship, 3.

Principal and Surety—*See* Landlord and Tenant. 2.

Priority.

1. A trustee, a solicitor, saw in a newspaper the notice of a petition in insolvency by his *cestui que trust*, and acted on the information. *Held*, under the circumstances, that a subsequent assignee of the *cestui que trust*, who had given to the trustee formal notice of the assignment to him, did not thereby acquire priority over the assignee in insolvency, who did not give formal notice till afterwards.—*Lloyd* v. *Banks*, Law Rep. 3 Ch. 488.

2. A having made a mortgage to B, and a subsequent equitable charge in favor of the plaintiff, requested the defendants to pay off the first mortgage. This was done, a discharge by B was endorsed on the first mortgage, and the title deeds handed to the defendants, and A at the same time executed a mortgage to the defendants, who had no notice of the plaintiff's charge. *Held*, that the defendants had the better equity, and therefore that the rule, *Qui prior est tempore potior est jure*, did not apply, but that the defendants could not tack a further advance which they had made at the time of paying off the first mortgage, and which was included in the mortgage to them.—*Pease* v. *Jackson*, Law Rep. 3 Ch. 576.

3. A trustee of funds, invested in a mortgage in his name, deposited the deeds, without notice of the trust, to secure an advance to himself. *Held*, that the *cestuis que trust* were entitled to priority over the equitable mortgagee, and to delivery up of the deeds.—*Newton* v. *Newton*, Law Rep. 6Eq. 135.

4. A ship owner, having mortgaged the ship to T. subsequently effected a charter party on her, the freight to be paid "on unloading and right delivery of the cargo, as customary," and "freight to be collected by the charterers." During the voyage, the owner assigned the freight under this charter party to B. The ship arrived, and most of the cargo, which was a general one, was delivered to the consignees; but, before the whole had been delivered, T took possession. *Held*, that T, having taken possession before any freight had become payable from the charterers to the owners, was entitled to the freight, in priority to B.—*Brown* v. *Tanner*, Law Rep. 3 Ch. 597.

5. The owner of a ship mortgaged it to G, who transferred it to W by way of sub-mortgage; both the mortgage and the transfer were registered. In March, 1865, G paid off W's sub-mortgage, but the mortgage was not re-transferred. In May, 1865, the mortgagor gave G another mortgage to secure an amount which included the money due on the original mortgage, and this mortgage was registered. In October, 1865, the second mortgage was transferred to B. In March, 1866, G agreed that W, who had no notice of the transfer to B, should hold the original mortgage, to secure an account current between them, and in July, 1866, B registered his transfer. *Held*, that as W became, in March, 1865, a trustee of the original mortgage for G, and as the money secured by it was included in the subsequent mortgage which was transferred to B before the new agreement with W, B had priority over W.—*Bell* v. *Blyth*, Law Rep. 5 Eq. 201.

Promissory Note—*See* Alteration; Discharge.

Railway.

1. A railway company are bound to take every reasonable care to prevent danger to their passengers from cattle coming on to the line, but they are not bound to maintain fences sufficient to keep the cattle off the line under all circumstances.—*Buxton* v. *N. E. Railway Co.*, Law Rep. 3 Q. B. 549.

2. Where a railway company have diverted a road, *ultra vires*, but with a *bona fide* view to the convenience of the public, a court of equity will not compel them to replace the road, if the result will be to cause greater inconvenience to the public or to the complaining section of the public. In such a case, an information was dismissed, but without prejudice to a proceeding at law.—*Attorney General* v. *Ely, &c., Railway Co.*, Law Rep. 6 Eq. 106.

*See* Action, 2; Ultra Vires.

Remainder—*See* Devise.

Repeal of Statute—*See* Statute, Repeal of.

Res Adjudicata—*See* Divorce, 1.

Revocation of Will.

1. A testator, having a power to charge certain land with £7,000, to be divided among his children as he should appoint, and, in default, among them equally, by his will charged the land with the £7,000, and directed that £4,000, part thereof, should be paid to his son, and the remainder to his three daughters equally. By

a codicil, he revoked this charge, and charged the same land with £7,000, to be paid to his son alone. *Held*, that, though the appointment by the codicil was invalid, the revocation took effect.—*Quinn* v. *Butler*, Law Rep. 6 Eq. 225.

2. A testatrix gave to A, for life, the interest of £300, or thereabouts, invested by her in a certain company, and the interest of £200; and after A's death, she gave the "said principal sum of £500" to A's children, and directed, if her personal estate proved insufficient for the payment of legacies, that the deficiency should be made up out of her real estate. By a codicil, she gave "all her personal estate" to B. *Held*, that the whole personal estate passed by the codicil; that the legacy of £300 was specific, and was revoked; but that the legacy of £200 remained charged on the real estate.—*Kermode* v. *Macdonald*, Law Rep. 3 Ch. 584.

Sale—*See* Company, 4; Frauds, Statute of, 2.

Servant—*See* Master and Servant.

Set-off—*See* Bankruptcy, 2.

Ship.

1. The provision in the 17 & 18 Vict. c. 104, sec. 299, that a loss arising from the non-observance by a ship of the rules laid down in the act, shall be deemed to have been occasioned by the wilful default of the person in charge of the deck, does not render an unintentional breach of the rules, barratry.

A collision arising from the negligence of the crew is not damage of the seas, within the meaning of an exception in a bill of lading.

Therefore, where a ship owner, by bill of lading, undertook to deliver goods safely, "barratry of master or mariners, accidents or damage of the seas or navigation excepted," and the ship came into collision with another by violating the rules of the above act, and sank, the ship owner was held liable for the loss of the goods.—*Grill* v. *General Iron-Screw Collier Co.* (Exch. Ch.) Law Rep. 3 C. P. 476.

2. The master's lien, under 24 Vic. c. 10, on the freight for his wages and disbursements, in priority to the claims of a mortgagee, is not affected by his being part owner of the vessel.

In a suit against ship and freight by a master, for disbursements, in priority to mortgagees in possession, the following items were allowed: (1) For tobacco and slops supplied to seamen who had deserted, notwithstanding the master may have made a small profit on them; (2) for some amounts which had not been paid, no order for the payment to be made till the master gave satisfactory evidence that the amounts had been paid; (3) for a bill of exchange, drawn by the master, which had been dishonored, though he had received no notice of the dishonor.—*The Feronia*, Law Rep. 2 Adm. & Ecc. 65.

3. Ship owners entered into a charter party, by which it was provided that the master should be appointed by them, be under their control, and be dismissed by them, but that his wages should be paid by the charterer, and also that the master should act as supervisor of the repairs and fittings of the ship. *Held*, that they were liable for necessaries supplied to the ship by the master's order.—*The Great Eastern*, Law Rep. 2 Adm. & Ecc. 88.

*See* Foreign Court; Freight; General Average; Insurance; Priority; Statute, Repeal of; Stoppage in Transitu.

Solicitor—*See* Attorney; Partnership.

Specific Performance.

1. An agreement for renewal of a lease provided for the tenant doing certain specified works, and "other works," on the property, and estimated the expense at from £150 to £200. The specified works were such as must evidently cost nearly that sum. *Held*, that there was no such uncertainty as to prevent specific performance.—*Baumann* v. *James*, Law Rep. 3 Ch. 508.

2. A agreed in writing with B, to transfer to him the unexpired term of a lease held by A of land and houses at S, and to build or finish certain houses thereon; to proceed with the building at once; and to consult B's wishes in building the houses then in progress, and in building other houses not then commenced. B agreed to take the term, and to pay a certain rent. Both parties agreed that a proper contract should be drawn for their mutual execution, by a certain solicitor. No such contract, however, was executed. Possession was given, and the buildings altered by A at B's instance. *Held*, having regard to surrounding circumstances, and to a part performance by A, that the agreement was not so vague but that specific performance ought to be decreed at the suit of A.—*Oxford* v. *Provand*, Law Rep. 2 P. C. 135.

*See* Company, 4; Frauds, Statute of, 2; Landlord and Tenant, 4.

Statute of Frauds—*See* Frauds, Statute of.

Statute, Repeal of.

The Merchant Shipping Act, 1854, provides that no ship owner shall be answerable for any damage occasioned by the fault of a pilot, where the employment of such pilot is compulsory. A subsequent act, passed in 1857, provides that the owner of any ship navigating

the Thames shall be answerable for all damages done by the ship, or by any of the boatmen or *other persons* belonging to or employed about the same, to any of the property of the Thames conservators, and that the boatmen or other persons so offending shall be answerable for and shall repay all such damages to the ship owner. *Held*, that the general enactment in the later statute did not repeal the particular enactment in the earlier statute.—*Conservators of the Thames* v. *Hall*, Law Rep. 3 C. P. 415.

Stoppage in Transitu.

A, in Sweden, agreed to sell goods to B, in London; B chartered a ship to fetch the goods, and insured them. The goods were damaged during the voyage, and, before they arrived in England, B had failed, and A thereupon had given notice of stoppage *in transitu*. *Held*, that A was entitled, as against the other creditors of B, to the proceeds of the sale of the goods, but not to money paid for the damage by the insurers.—*Berndtson* v. *Strang*, Law Rep. 3 Ch. 588.

*See* Freight, 2.

Surety—*See* Landlord and Tenant, 2.

Tail, Estate in—*See* Marriage Settlement.

Trover—*See* Pledge, 1.

Trust.

A testator gave £2,300, bank annuities, to trustees, on trust to pay his debts, if his ready money was insufficient, and to hold the residue on trust to pay the dividends to his wife during her life, and, after her death, to sell the fund and also his household furniture, and out of the proceeds and of all other his personal estate to pay seven legacies, amounting to £1,075, and to pay the residue to A. The testator died in 1832, and his estate was administered, and no part of the £2,300 bank annnities being required for payment of debts, the whole was transferred into the names of the trustees. Both trustees died, and the administrator of the survivor embezzled the greater part of the fund, so that only £716 were forthcoming. The widow died in 1862. *Held*, that, there having been no consent of the legatees to the special appropriation of the fund, the residuary legatee could take nothing till all the pecuniary legatees had been paid.—*Baker* v. *Farmer*, Law Rep. 3 Ch. 537.

*See* Company, 2, 3; Power, 1; Priority, 1, 3.

Ultra Vires.

A railway company has no power to use its funds to prosecute a suit not instituted by it; and a court of equity will, at the instance of a shareholder, restrain it from doing so, without going into the question whether the suit is or is not for the benefit of the company.—*Kernaghan* v. *Williams*, Law Rep. 6 Eq. 228.

*See* Railway, 2.

Vendor and Purchaser of Real Estate—*See* Frauds, Statute of, 2.

Vested Interest.

A gift to all the children of A, "now or here after to be born, who shall attain twenty one," was followed by a power of advancement out of the "vested or presumptive share" of any object of the gift. *Held*, that the class of children to take was not ascertained when the eldest attained twenty-one (*Bateman* v. *Gray*, 29 Beav. 447, reversed).—*Bateman* v. *Gray*, Law Rep. 6 Eq. 215.

Way.

1. The mere non-user of a way for thirty years does not, in the absence of the acquisition of rights by other parties in consequence of it, amount to an abandonment.—*Cook* v. *Mayor, &c., of Bath*, Law Rep. 6 Eq. 177.

2. If a plaintiff has suffered a particular injury from the obstruction of a public way, a bill for an injunction will lie, and the attorney-general need not be made a party.—*Ibid.*

Will—*See* Devise; Heirloom; Legacy Duty; Next of Kin; Power, 2; Revocation of Will; Trust; Vested Interest.

## REVIEWS.

The Law Magazine and Law Review: February, 1869, London: Butterworth.

We draw largely from the masterly pages of this welcome quarterly. The last number contains articles on the following subjects:—Jettison and General Average—Considerations on the facilitating proceedings in Criminal matters—Lord Kingsdown, formerly known as Mr. Pemberton Leigh, who is spoken of as a lawyer of much ability, but whose name, he being a mere lawyer, though successful and upright, will be scarcely known to posterity—Post nuptial Settlements—The High Sheriff, which we copy—London Criminal Law and Procedure and Church Patronage, neither of which will interest us much here—Lord Cranworth—Amalgamation of the Professions—Recent decisions on the Equitable doctrine of notice, transcribed for the benefit of our readers—&c.

The American Law Review: Boston: Little, Brown & Co. January, 1869.

This comes naturally in order after the quarterly it would seem to take partly as a model. It commences with an excellent article on the confinement of the insane, then follow other articles of much interest to its readers south of us. It contains the usual excellent digests of cases, English and American, that we have so often alluded to.

Books Received.

We also acknowledge the regular receipt of The Solicitors' Journal and Weekly Reporter; The Law Times, with Reports; The American Law Register; Blackwood and the English Quarterlies; Lower Canada Jurist; Legal Intelligencer, Philadelphia; Legal Journal, Pittsburg; Chicago Legal News; Godey's Ladies Book, &c.

Lawyers and Clients.—There can be no justice in a community without the constant intervention of a trained and educated body of men, whose interest and business is to see that justice is done. No thanks to them for it. They are paid for their labor, as they ought to be; for every one who works, and he only, shall be paid. But their work is laborious and difficult, affording scope for the exercise of the highest morals and intellectual qualities, and requires a special education and ample learning, and shall be paid accordingly. And, in the main, it is well done, for the profession does not admit of quackery. It is a saying among lawyers, that "a man who is his own lawyer has a fool for a client;" but there are very few fools of this description in the world. Sometimes a man who is not a lawyer ventures to write his own will; and when he does, unless the provisions are very few and simple, he generally makes a nice piece of work for the lawyer, and a very bad one for his devisees. But I never knew one bold enough to examine for himself a title to real estate which he wanted to buy, and remember only one who was rash enough to try his own case in court. I have known many people who would listen to any quack in medicine, and swallow almost any prescription, but never one who, when he found himself involved in a legal difficulty, did not desire the advice of a legal practitioner, and the best, too, whose services he could command. A man who is positive and dogmatical with his physician or his clergyman, is apt to be submissive to his lawyer, for the reason that when he meddles with the law, he knows that he is trifling with edged tools, which may cut deep when he least expects it. "What are you going to do next?" said a client to an astute old lawyer in a neighboring city. "I am going," said the lawyer. "to file a demurrer." "A demurrer, and what is that?" "A demurrer is what your Maker never intended that you should understand!"—*Geo. Wm. Brown.*

For his mastery of oratorical artifice Alexander Wedderburn was greatly indebted to Sheridan, the lecturer on elocution, and Macklin, the actor, from both of whom he took lessons; and when he had dismissed his teachers and become a leader of the English bar he adhered to their rules, and daily practised before a looking-glass the facial tricks by which Macklin taught him to simulate surprise or anger, indignation or triumph. Erskine was a perfect master of dramatic effect, and much of his richly-deserved success was due to the theatrical artifices with which he played upon the passions of juries. At the conclusion of a long oration he was accustomed to feign utter physical prostration, so that the twelve gentlemen in the box, in their sympathy for his sufferings and the admiration for his devotion to the interests of his client, might be impelled by generous emotion to return a favorable verdict. Thus when he defended Hardy, hoarseness and fatigue so overpowered him towards the close of his speech, that during the last ten minutes he could not speak above a whisper, and in order that his whispers might be audible to the jury, the exhausted advocate advanced two steps nearer to their box, and then extended his pale face to their eager eyes. The effect of the artifice on the excited jury is said to have been great and enduring, although they were speedily enlightened as to the real nature of his apparent distress. No sooner had the advocate received the first plaudits of his theatre on the determination of his harangue, than the multitude outside the court, taking up the acclamations which were heard within the building, expressed their feelings with such deafening clamor, and with so many signs of riotous intention, that Erskine was entreated to leave the court and soothe the passions of the mob with a few words of exhortation. In compliance with this suggestion he left the court, and forthwith addressed the dense outdoor assembly in clear, ringing tones that were audible in Ludgate Hill, at one end of the Old Bailey, and to the billowy sea of human heads that surged round St. Sepulchre's Church at the other extremity of the dismal thoroughfare.—*Jeaffreson.*

The Salary of Judges.—A Bill has been introduced in the Legislature to fix the salary of Supreme Judges at $4,000, and the Circuit Judges at $3,000. This is a measure much needed, and should pass at once. Let us give our Judges a fair compensation for the labor exacted of them, and for the legal learning and ability asked of them. We expect our Judges to perform an immense amount of labor, and then pay them only a beggarly salary. A lawyer of ability whose services are valuable, can not afford to take the judgeship at the present salary. Give them good pay, then require them to do the work or resign. —*Chillicothe Spectator.*

Horace Greeley purposes to write, during the year 1869, an elementary work on Political Economy, wherein the policy of Protection to Home Industry will be explained and vindicated. This work will first be given to the public through successive issues of The New York Tribune, and will appear in all its editions—Daily, $10; Semi-Weekly, $4; Weekly, $2 per annum.