The Legal News.

VOL. IV. JUNE 18, 1881. No. 25.

EX-JUDGES RESUMING PRACTICE.

The *Canadian Law Times* criticizes at some length the sudden withdrawal of Vice-Chancellor Blake from the bench, and remarks that a doubt has been freely expressed as to the right of a retired judge to practice at the bar. "Members of the Law Society of Upper Canada," observes our contemporary, "acquire, by admission thereto, a statutory status therein. The judges of the Superior Courts of Common Law and the Court of Chancery acquire a statutory status with reference to the Law Society upon acceptance of their commissions, and, as visitors of the Society, are, we presume, no longer members thereof, as they cannot occupy both the positions of visitors and visited. Once having ceased to be a member of the Law Society by becoming a visitor thereof, can a judge, on retiring, again become a member of the Law Society, without undergoing the usual course prescribed for admission?"

The same journal states that another question arises, assuming the right of ex-judges to practice at the bar, as to their right to retain the rank and precedence of a Queen's counsel in the Courts. "The appointment of a Queen's Counsel is a special retainer of counsel by the Crown. Upon acceptance of a Judge's commission by one of Her Majesty's counsel, the retainer must, perforce, cease, inasmuch as a judge has to determine causes between Her Majesty and her subjects. If, therefore, a judge retires from the bench and re-enters active practice, must he not receive a fresh retainer from the Crown before acting as one of Her Majesty's counsel?"

It appears that there has been but one precedent in Ontario for M. Blake's proceeding—the case of Mr. Mowat; but in the Province of Quebec, several retired judges, though in the receipt of pensions, have resumed practice, chiefly as chamber counsel, however The dignity of Q. C. has also been sometimes resumed. We have before us an opinion, signed by two eminent ex-judges, in which it is not assumed, but this opinion was given to a private individual, and probably there is no significance in the omission.

JUDICIAL REMUNERATION.

With respect to the letter of an English barrister on this subject, quoted *ante*, p. 161, the *Albany Law Journal* says that the writer, being a foreigner, has fallen into the natural error of not distinguishing between federal judges, like Judge Choate, and the State judges. "The latter have for eleven years received $7,000 salary, and have an allowance for expenses, of $2,000; while, in the city of New York, their salary is more than twice the former sum. Their term of office is fourteen years."

These rates correspond nearly with the remuneration of our Supreme Court judges, and show that the New York judiciary are far from being the worst paid judicial officers. The table published on p. 188 exhibits several remarkable inequalities, (some of the salaries being as low as $2,000), but the apparent inadequacy of the remuneration in these instances may be susceptible of explanation.

PERIODICALS.

Some of the English judges have been embarrassed by the question whether a newspaper is a periodical. The London *Times* published a biographical notice of Lord Beaconsfield, which was pirated and reprinted at the price of one penny. The English Copyright Act provides that the proprietor of copyright in any "encyclopædia, review, magazine, periodical work, or other work published in a series of books or parts," shall be entitled to all the benefits of registration upon registering such work in pursuance of the Act. The *Times* is not registered under the Act, and the Master of the Rolls has held that the journal in question, being a periodical work within the meaning of the Statute, the proprietors were not entitled to the protection of the law without compliance with the formality of registration. It appears that this decision is at variance with one rendered some years ago by Vice-Chancellor Malins, and an appeal has, therefore, been taken to a higher Court.

The English bar examinations are becoming a serious test of fitness. At the last examination, 42 out of 102 aspirants are said to have been rejected.

NOTES OF CASES.

SUPREME COURT OF CANADA.

OTTAWA, April, 1881.

COSGRAVE v. BOYLE.

Promissory Note—Death of Endorser—Notice of dishonor.

The appellants discounted a note, made by P. and endorsed by S., in the Canadian Bank of Commerce. S. died, leaving the respondent his executor, who proved the will before the note matured. The note fell due on the 8th May, 1879, and was protested for non-payment; and the Bank, being unaware of the death of S., addressed a notice of protest to S. at Toronto, where the note was dated, (under 37 Vict. c. 47, s. 11, D). The appellants, who knew of S.'s death before maturity of the note, subsequently took up the note from the Bank and sued the defendant, relying upon the notice of dishonor given by the Bank, and without having given any other notice.

Held, reversing the judgment of the Court of Appeal for Ontario, that the holders of the note sued upon, when it matured, had given a good and sufficient notice to bind the defendant, and that the notice so given enured to the benefit of the appellants.

O'Sullivan for appellants.

McMichael, Q. C., for respondent.

SUMMERS v. THE COMMERCIAL UNION ASSURANCE CO.

Interim Receipt—Agent, powers of—Broker cannot bind the Company.

This was an action brought on an interim receipt, signed by one D. Smith, as agent for the respondent company at London, Ontario. One of the pleas was that Smith was not respondent's duly authorized agent, as alleged. The general managers of the Company for the Province of Ontario had appointed, by a letter, signed by them both, one Williams, as general agent for the city of London. Smith, the person by whom the interim receipt in the present case was signed, was employed by Williams to solicit applications, but had no authority from or correspondence with the head office of the company.

In his evidence, Smith said he was authorized by Williams to sign interim receipts, and the jury found he was so authorized. He also stated that one of the general managers was informed that he (Smith) issued interim receipts, and that the former said he was to be considered as Williams' agent. There was no evidence that the other general manager knew what capacity Smith was acting in.

Held, affirming the judgment of the Court of Appeal for Ontario; that Williams had no authority to bind the respondent company.

H. Cameron, Q. C. (with him *Bartram*), for appellant.

Robinson, Q. C., (with him *W. N. Miller*), for respondents.

RAY et al. v. LOCKHART et al.

Will, Construction of—Surplus—Residuary personal estate.

Among other bequests the testator declared as follows:—"I bequeath to the Worn-out Preachers' and Widows' Fund in connection with the Wesleyan Conference here, the sum of $1,250, to be paid out of the moneys due me by Robert Chestnut, of Fredericton. I bequeath to the Bible Society £100. I bequeath to the Wesleyan Missionary Society in connection with the Conference, the sum of $1,500." Then follow other and numerous bequests. The last clause of the will is:—"Should there be any surplus or deficiency, a *pro rata* addition or deduction, as may be, to be made to the following bequests, namely, the Worn-out Preachers' and Widows' Fund, Wesleyan Missionary Society, Bible Society." When the estate came to be wound up, it was found that there was a very large surplus of personal estate, after paying all annuities and bequests. This surplus was claimed, on the one hand under the will by the above-named charitable institutions, and on the other hand by the heirs-at-law and next of kin of the testator, as being residuary estate, undisposed of under his will.

Held, affirming the judgment of the Supreme Court of New Brunswick, that the "surplus" had reference to the testator's personal estate, out of which the annuities and legacies were payable; and, therefore, a *pro rata* addition should be made to the three above-named bequests, Statutes of mortmain not being in force in New Brunswick.

Carker, Q. C, (with him *Sturdee*,) for appellants.

Kaye, Q. C., (with him *Stockton*,) for respondents.

PRIVY COUNCIL.

March 22, 1881.

Present: Sir Barnes Peacock, Sir Montague E. Smith, Sir Robert P. Collier, Sir Richard Couch.

Renny et al. v. Moat.

Subrogation.

The following is the judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Renny and others v. Moat, from the Court of Queen's Bench for Lower Canada, in the Province of Quebec; delivered 22nd March 1881. (See 2 Legal News, p. 97, for judgment of the Court of Queen's Bench.)

Per Curiam. This is an appeal admitted by special leave of Her Majesty in Council, from a judgment of the Court of Queen's Bench for Lower Canada, dated the 22nd of March 1879, whereby a judgment of the Superior Court, sitting in Review, dated the 31st of October 1878, was affirmed on appeal.

The Appellants were the Inspectors appointed under the provisions of the Canadian Insolvent Act of 1875, of the estate of William Patrick Bartley, an insolvent.

The Respondent, Robert Mowat, was a claimant against the estate, and by his claim stated that the insolvent was indebted to him in the sum of $22,950.45, and interest, from the 17th day of March 1876, at the rate of seven per cent., being the amount of an obligation executed by the insolvent in favour of Robert Hamilton, on the 20th March 1871, before Hunter, notary public, and transferred to him by deed of the 23rd June 1877.

The claimant further stated that he held as security for his claim a transfer and subrogation of a mortgage made by the said William Patrick Bartley in favour of the said Robert Hamilton, which said transfer was passed before the said notary, on the 23rd June 1877.

The obligation and mortgage to which the claim referred were created by a deed of the 17th March 1876, by which Bartley, the insolvent, acknowledged to have received from Hamilton the sum of $20,000, and promised to pay the same to him in five years from the date thereof, with interest thereon at the rate of seven per cent. per annum, from the 17th March 1871, payable half yearly, on the 17th of March and the 17th of September in each year, the first payment thereof to be made on the 17th day of September 1871, and by which deed Bartley mortgaged and hypothecated certain lands therein mentioned as security for the payment of the principal sum of $20,000 and interest at the times therein mentioned. By the same deed, the members of the firm of Mulholland & Baker became bail and security for Bartley to Hamilton for the due, faithful, and punctual payment of the said sum of $20,000 and interest at the times in the deed mentioned.

The appellants contested the claim of the respondent, and alleged that of the sum of $20,000, referred to in the deed of obligation, the sum of $9,570.20 was not paid to Bartley by Hamilton, but that the same was deposited (according to an understanding existing between the said parties at the time) in the Merchants' Bank of Canada, to the credit of Bartley, "subject to approval of Robert Hamilton."

That the total amount of indebtedness to Hamilton under the deed of obligation, on the 17th day of March 1876, for principal and interest, was the sum of $20,700.07, which was paid to him on that day in two separate amounts —namely, the sum of $9,087 advanced for that purpose by the claimant, and the sum of $11,-613.07, being the amount of the said deposit in the said bank by means of the check of Bartley, and delivered over to Hamilton.

That the only amount advanced by the claimant, in connection with the payment of the said obligation, was the said sum of $9,087; the balance of said mortgage being paid by the insolvent himself, with the funds so deposited as aforesaid at his credit in the said bank.

That, having so paid the said sum of $9,087 the claimant was by law entitled to be subrogated in all the rights of Hamilton, under the deed of obligation, to the extent of the amount so paid, and the interest to accrue thereon at the rate in the deed stated, and no more. That with a view to securing such subrogation the deed of the 23rd day of June 1877, in the said claim referred to was executed, but in and by the said deed, the parties thereto did falsely and erroneously declare that the total amount of the said obligation had been really paid by the claimant, whereas in truth and in fact he had only paid the said sum of $9,087.

That the deed of the 23rd day of June 1877, was not a deed of transfer from Hamilton to the claimant, but a mere deed of subrogation by the creditor to the claimant, a third party, in terms of Article 1155 of the Civil Code of Lower Canada, and did not and could not legally operate as a deed of subrogation beyond the amount so paid by the claimant, the remainder of the debt due to the creditor having been actually paid to him, as aforesaid, by the debtor himself (the said insolvent), out of funds at his own credit in said bank, and in no way lent or advanced by the claimant.

Wherefore the inspectors prayed, that by the judgment to be rendered on the contestation, it be declared and adjudged that the rights of the claimant, under the deed of subrogation of the 23rd day of June 1877, were limited and restricted to the sum of $9,087, and interest thereon at the rate of seven per centum per annum from the said 17th day of March 1876, and that the claim be reduced to that amount and interest, and, as regards the excess beyond that amount and interest, be dismissed with costs.

The case was heard in the Superior Court in first instance, by the Honorable Mr. Justice Mackay, who allowed the claim to the extent of only $9,087, and interest thereon at the rate of seven per cent. per annum, from the 17th of March, 1876, and maintained the contestation as to the residue of the claim. That judgment, so far as it related to the whole of the claim, beyond the $9,087 and interest, was reversed by a majority of the Judges of the Court of Review, one of the Judges, Mr. Justice Dunkin, dissenting. The judgment of the Court of Review was affirmed on appeal by the Court of Queen's Bench, the majority, consisting of the Chief Justice and Justices Monk and Ramsay, being in support of the affirmance, and Justices Tessier and Cross dissenting.

The sum of $22,950.45, which formed the subject of the claim, consisted of the sum of $20,700.07, which were paid to Hamilton on the 17th of March, 1876, for principal and interest, and $2,250 and some odd cents, on account of moneys which had been previously paid by Mulholland & Baker, as Bartley's sureties, to Hamilton, in discharge of former instalments of interest.

It was objected, on the argument of this appeal, that the $2,250 odd had been repaid to Mulholland & Baker, and a credit which was given on the 27th of March, 1876, by Mulholland & Baker in account with Bartley & Co., not with Bartley alone, was referred to (*See* Record, p. 41.)

The short extracts from the accounts set out at p. 34 of the Record, and of which the dates of most of the entries are long after the date of the 17th of March 1876, are scarcely intelligible as they stand. It is, however, clear that it was never contended in the Courts below that the $2,250 had been repaid to Mulholland & Baker, and in the deed of transfer of the 23rd of June, 1877, to which reference will be made, the amount was admitted by Bartley to be due. It was admitted in the Appellant's factum in the Court of Queen's Bench, p. 66, para. 2, that Mulholland & Baker had paid $2,100 on account of the instalments of interest due on the 17th September 1874, the 17th March 1875, and the 17th September 1875, and there was no contention that they had been repaid. The $2,250 were allowed both by the Court of Review and by the Court of Queen's Bench, and their Lordships are of opinion that there is no ground for the contention that they were repaid. Even the learned Judge of the Queen's Bench who dissented as to the $11,613 was of opinion that the $2,250 ought to be allowed.

There is not the slightest ground for contending, nor indeed was it contended, before their Lordships that Moat, the claimant, had himself paid to Hamilton any part of the debt due under the mortgage, although he advanced to Mulholland & Baker the $9,087 with which that portion of the debt was paid off by them. It is clear, therefore, that Moat was not subrogated to the rights of Hamilton by a conventional subrogation within the meaning of Art. 1155 of the Civil Code of Lower Canada. The only substantial question in this appeal is whether the sum of $11,613.07, part of the sum of $20,700.07 paid to Hamilton on the 17th of March, 1876, in discharge of the mortgage, was paid by Mulholland & Baker as the agents of Bartley, the insolvent, or on their own account, in discharge of the obligation under which they had become bound to Hamilton as sureties for Bartley. Upon that question of fact there are the concurrent judgments of the Court of Review and of the Court of Queen's Bench that the

payment was made by Mulholland & Baker on their own account. Their Lordships, acting upon the sound rule by which they are usually guided in such cases, would not interfere with that finding, unless some error or miscarriage of justice were manifest. So far from that being the case, their Lordships, having carefully considered all the documents and evidence, are satisfied that the majority of the Judges, both in the Court of Review and in the Court of Queen's Bench, arrived at a just and correct conclusion. Independently of the recitals in the deed of the 23rd June 1877, there is ample evidence to warrant it.

It is true, as alleged in the contestation, that of the sum of $20,000 mentioned in the deed of obligation and mortgage, $9,570 were deposited in the Merchants' Bank of Canada to the credit of the insolvent, subject to the approval of Hamilton; it is also a fact that of the $20,700 paid to Hamilton, on the 17th March 1876, on account of principal and interest, $11,613.07 were paid by a cheque for that amount, drawn by the insolvent on the Merchants' Bank of Canada against the sum of $9,570 so deposited to his credit, as above mentioned, and the interest which had accumulated thereon. That cheque was drawn by the insolvent in the office of Mulholland and Baker. It was made payable to Jackson Rae or order for Robert Hamilton, and was handed to Mulholland & Baker by the insolvent, he being at that time indebted to them in a much larger amount. They handed the cheque to Rae, who was the manager of the Bank, and acted in the transaction as the agent of Hamilton (Record, p. 53), and Rae gave them a receipt for the cheque, by which he acknowledged that he had received it from them to be applied in discharge of the mortgage, and it was so applied. There is nothing in the evidence to lead to the conclusion that Mulholland & Baker received the cheque from Bartley as his agents, or that they, as his agents, paid it to Rae for Hamilton. There was only one receipt for the cheque for the $11,613.07, and the cheque for the $9,087 which was paid by Mulholland & Baker to Rae at the same time, and which, beyond all dispute, was Mulholland & Baker's own cheque, and the same words were used in the receipt with reference to both cheques (Record, p. 6 D. 1). It was contended that, as the cheque drawn by Bartley was made payable to Rae, or order, for Hamilton (Record p. 82), Barclay could not transfer it to Mulholland & Baker without Rae's endorsement, and it was not so endorsed at the time when it was handed over to them. It does not appear when it was endorsed. The insolvent, no doubt, knew that Mulholland & Baker were going to use it in discharge of their liability as sureties to Hamilton, and neither he nor they could have doubted that Hamilton, in the exercise of his control over the money in the bank, would consent to its being so used. The form of the cheque is not decisive of the question whether Bartley handed it to Mulholland and Baker, as his agents, for the purpose of paying it to Hamilton on his behalf, or to Mulholland & Baker on their own account in part discharge of the larger amount due from him to them.

If Bartley had intended that the cheque should be applied on his behalf in paying the debt for which he was liable as principal, and not by Mulholland and Baker, on their own account, in discharge of their obligation as sureties, there was no necessity for his handing the cheque to Mulholland & Baker. It was manifestly the intention of both parties that the mortgage should be kept alive, and they must have known that if the $11,613.07 were paid with Bartley's money, the debt would have been discharged *pro tanto*, and the mortgage subrogated and kept alive only for that portion which was paid by Mulholland & Baker. Besides, if Bartley intended to discharge the mortgage to the extent of the $11,613.07, it would have been only reasonable that he should have required some discharge from the mortgage debt beyond the mere receipt given by Rae to Mulholland & Baker, but no such discharge was ever required by or given to him. If, on the other hand, Mulholland & Baker paid the cheque in discharge of their liability as sureties, the mortgage was not discharged, but they were at once subrogated to the rights of Hamilton by Article 1166 of the Code, and required nothing more than a receipt for the money. Further, Bartley was credited in the books of Mulholland & Baker with the $11,613.07. It was contended that that was not done until a day or two after the cheque was handed to them, and then only under the advice of Mr. Abbott, their solicitor. The entries were, however, shown to Bartley, and there can be no

doubt that he assented to and ratified what had been done. Mr. Baker in his evidence stated that Bartley was perfectly aware that the entries were made or intended to be made in their books, that the whole matter was discussed with him, that the intention was that Hamilton was to be paid off by Mulholland and Baker, and that they were to be subrogated in all Hamilton's rights which were to be kept alive. Besides all this evidence there is the recital in the deed of June 1877. It is there said, "And whereas the said parties of the second part" (that is, Mulholland and Baker) "as such "sureties have at divers times paid instalments "of the interest on the said debt, and finally "paid the entire principal thereof to the said "party of the first part," (that is Hamilton,) "upon the agreement, and with the under-"standing that they should receive a subro-"gation of his rights under the said deed." Bartley personally intervened and signed that deed, and declared and acknowledged himself content and satisfied therewith, and to have been well and sufficiently signified in the premises. All this was done and passed in the office and in the presence of Hunter, a public notary, who signed the deed, and certified that the same had been duly read in his presence. The deed seems to have been an authentic document within the meaning of Article 1207 of the Civil Code, and not having been contradicted or set aside as false upon an improbation, it may be a question whether, according to Article 1210 of the Civil Code, it did not make complete proof between the parties to it and their legal representatives of the facts mentioned in the recital. It is not necessary to hold that it amounted to complete proof. It is sufficient to say that it was strong evidence against Bartley, and in the absence of fraud or collusion, of which there was no suggestion or proof, it was also evidence against the appellants. There was no evidence to show that Bartley was insolvent at the time when he intervened and signed the deed, or that at that time any of the debts due by him at the time he became insolvent had been contracted.

It was contended that any admission made by Bartley after the mortgage was paid off could not affect the question of subrogation, and that if the $11,613.07 were really paid by him and not by Mulholland and Baker, no subsequent admission or ratification by him could convert a discharge into a subrogation. That contention may be admitted to be correct, upon the hypothesis that the amount was really paid by him; but his admissions, made without fraud or collusion, before he became insolvent, are evidence against him and the inspectors of the estate of what the real transaction was at the time when it took place.

Their Lordships concur with the majority of the Judges of the Court of Review and of those of the Queen's Bench, that the cheque was made over by the insolvent to Mulholland and Baker towards the discharge of a larger amount due from him to them, and that the cheque having become their property, they applied it in discharge of the liability which they, as sureties for the insolvent, had contracted with Hamilton.

Their Lordships are clearly of opinion that the deed of 23rd June 1877 operated as a transfer to the Respondent of the rights to which Mulholland and Baker were entitled under the subrogation, and that it vested in him the right to the principal sum of $20,700 paid on the 17th of March 1876 by Mulholland and Baker to Hamilton for principal and interest, and to the sum of $2,250 due on account of the instalments of interest previously paid by them, the two sums making together the sum of $22,950.

For the reasons above given, their Lordships are of opinion that the Court of Review was right in rejecting the contestation, and that the Court of Queen's Bench was right in affirming the judgment of the Court of Review.

They will, therefore, humbly advise Her Majesty to affirm the judgment of the Court of Queen's Bench, and to order that the claim of the Respondent be admitted for the full amount of $22,950, and interest as claimed.

The Appellants must pay the costs of this appeal.

COURT OF QUEEN'S BENCH.

MONTREAL, June 14, 1881.

DORION, C.J., MONK, RAMSAY, TESSIER, and CROSS, JJ.

REGINA v. KAYLOR.

Abduction—Proof of Woman's Interest in Property—32-33 Vict. c. 20, s. 54.

Verbal evidence of an interest in property generally will not sustain an indictment under 32-33 *Vict. c.* 20, *s.* 54, *which sets forth the abducted person's interest in a particular property.*

It is not necessary, on an indictment under the second disposition of s. 54, *to establish the prisoner's knowledge of the woman's interest.*

RAMSAY, J. This is a reserved case from the Court of Queen's Bench, sitting in the district of Iberville. The prisoner was indicted for that he "did feloniously and fraudulently allure, take away and detain one Louise Dupuis out of the possession and against the will of Joseph Jean-Baptiste Dupuis, her father; he, the said Joseph Jean-Baptiste Dupuis, having then the lawful care and charge of the said Louise Dupuis, she, the said Louise Dupuis, then being under the age of twenty-one years, and having a certain, legal, absolute and present right and interest in the following described property." Then follows the description of the property it is alleged the said Louise Dupuis held under a certain deed; and the indictment concludes thus:—"With intent her, the said Louise Dupuis, to carnally know, against the form," &c.

The indictment is under section 54, 32-33 Vict., cap. 20.

The prosecution attempted to prove the interest of Louise Dupuis in the property described, by a notarial copy of the deed mentioned in the indictment. Objection was taken to this, and the Judge maintained the objection. The prosecution then proceeded to prove generally by witnesses that she had an interest worth $10,000 in property.

The prisoner was convicted, and the judge reserved the following questions for the consideration of this Court:

1st. Was the verbal testimony to which objection was made allowable and sufficient to sustain the indictment in that respect?

2nd. Is the indictment sustained without evidence of the prisoner's knowledge that Miss Dupuis was an heiress?

I am inclined to think that the indictment should set forth the interest of the woman in the property. It is a substantial fact which the prisoner has a right to rebut. He cannot do this unless he is told what the interest is. But it is not absolutely necessary for the court to decide that question here, for there can be no doubt that when the interest is set forth in the indictment, as it is in this case, the prosecution must prove it as laid. The verbal evidence of an interest in property generally cannot sustain this indictment. We do not decide, let it be observed, that verbal evidence of interest cannot be given. That is not the question submitted, and it is evident that there might be an interest which could only be proved by parol.

On the second point reserved, I think it was not necessary for the prosecution to prove the knowledge of the prisoner as to the interest of Louise Dupuis. The distinction referred to by the counsel for the Crown is made very clear by reference to the Statute. There are two categories established by section 54. First, there is the case of a woman possessing property, of any age, abducted "from motives of lucre." If the prisoner had been indicted for this offence, it would have been necessary to establish the motive, and to do this some proof of knowledge on his part, or at all events belief, probably would be required. *R.* v. *Barratt*, 9 C. & P. 387. But in an indictment under the second disposition of the section (the present case,) it is not necessary that there should be any motive; the intent to carnally know, or to marry, or to cause to be, etc., is all that is required to make up the offence.

On the first point, then, we are of opinion that the conviction is bad, and the prisoner should be discharged.

Conviction quashed.

Mercier, for the Crown.

Carter, Q.C., for the prisoner.

IN CHANCERY, ONTARIO.

Warehouseman—Warehouse Receipt—Acquirement by Bank directly—Power of Federal Parliament—Mixture.—W. S., a member of a firm engaged in the business of buying and selling coal, was lessee of a wharf, where the coal belonging to his firm was stored. Other articles had been stored there.

Held, that he was sufficiently qualified, under 34 Vict. cap. 5, p. 46, to give a warehouse receipt upon such coal.

Under 22 Vict. c. 20, a warehouse receipt could be taken by a bank by endorsement

only; but by 34 Vict. c. 5 (D), a bank may take one directly.

The provisions of 34 Vict. c. 5, relating to warehouse receipts, do not invade the functions of the Provincial legislature, by an interference with "property and civil rights" in the Province.

Two of the warehouse receipts stated that the coal was in sheds, and two others that it was in bins, "separate from, and will be kept distinguishable from other coal." Other coal was received during the year, and was mixed with the coal under warehouse receipt. The quantity in store, at the time of the firm's insolvency, was less than the quantity there at the time of the receipt.

Held, that the plaintiff, the assignee in insolvency, could be in no better position than the insolvent as against the bank, and that the Bank was entitled to any coal of the description specified in the warehouse receipts that might be found in the warehouse.—*Smith* v. *The Merchants' Bank*, (May 21, 1881.)

RECENT CRIMINAL DECISIONS.

Burglary—Intent alleged must be proved.—The indictment charged that the defendant broke and entered a certain building belonging to the Warren Institution for savings, "with intent then and therein to commit the crime of larceny, and the property, goods and chattels of the said Corporation in said building then being found, then and there in said building, feloniously to steal, take and carry away." At the trial the evidence was that defendant broke and entered the basement of the building in question, and worked his way into part of the first story, occupied by the United States for a post-office; and that the sole intent of the defendant was to steal some postage-stamps belonging to the United States. *Held*, (by the Massachusetts Supreme Judicial Court) that there was a fatal variance between the indictment and the proof. The intent with which the defendant broke and entered the building is an essential element of the crime, and must therefore be alleged in the indictment, and must be proved as laid. A charge of breaking and entering with intent to steal the goods of one person is not supported by proof of breaking and entering with intent to steal the goods of another. Jenk's case, 2 East's P.C. 514—*Commonwealth of Massachusetts* v. *Moore*, 23 Alb. L. J. 298.

GENERAL NOTES.

There are fourteen judges of English County Courts whose united ages amount to 1,065 years, with an average of 76 years. Of these, five were appointed judges in 1847, on the passing of the first County Court act; they will, therefore, complete thirty-four years' service this year—more than twice the time required for a judge of the high court to earn his retirement. These venerable gentlemen can only receive a pension on being "afflicted with some permanent infirmity disabling them from the due execution of their office."—Ohio *Law Journal*.

W. H. Seward's First Case.—Mr. Seward, in his Autobiography, gives the following account of his first case in court:—"My *début* at Auburn obtained for me a reputation which, though I was thankful for it at the time, I had no reason to be proud of. A convict discharged from the State Prison there in the morning was warned to leave the town immediately. Reaching the suburb, he discovered an open door, entered it, and proceeded to rifle a bureau. Taking alarm, he rushed out, carrying with him only a few valueless rags. He was indicted for this petty larceny, which, being a second offence, was punishable with a new term in the State Prison. I was assigned by the court to the defence of the unfortunate wretch. The theft and the detection were completely proved. The stolen articles lay on the table. The indictment described them as 'one quilted holder of the value of six cents,' and 'one piece of calico of the value of six cents. I called upon a tailor as an expert, who testified that the holder was sewed, not 'quilted,' and that the other article was white jean, and not 'calico' at all. The bystanders showed deep interest in the argument which the defence produced, and were gratified when they found that the culprit escaped a punishment which they thought would be too severe for the transgression."

In the Queen's Bench division recently, says the *London Times*, the time of the Court was largely occupied at the instance of a solicitor who appeared in person to protest against disallowance on taxation of certain items in a bill of costs to recover which he had brought an action against a former client. The items in dispute were of the most trifling character, but, notwithstanding the patience and consideration of the Court, nearly the whole morning was consumed in a desultory and somewhat irregular argument. Ultimately, after the matter had been disposed of, and during the progress of a fresh case, the solicitor in question rose again to address the Court. Mr. Justice Denman desired him to sit down. The appellant, however, persisted, complaining that he had been ill-treated, whereupon Mr. Justice Denman warned him that if he persevered in his contempt he should be obliged to send him to prison. "Send me to prison, my Lord?" said the solicitor, defiantly. "Then the sooner the better." Mr Justice Denman—"No, I shall not send you to prison, but I fine you £5, and if you do not immediately leave the Court the fine will be increased." The solicitor then withdrew, and the business before the Court was proceeded with.