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TABLE OF CASES.

	PAGE		PAGE
A.			
Agar, Ellis, In re.....	83	Blake v. Albion Life Insce. Society.....	82, 101
Agar, Ellis v. Lascelles.....	83	Bland v. Andrews.....	338
Agar v. Stokes.....	144	Bloomfield v. Brooks.....	145
Agricultural Savings Society v. Federal Bank.....	210	Borrow v. Wadkin.....	184
Alder v. State.....	240	Bourn v. Morris.....	288
Allsopp v. Day.....	148	Boustead v. Jeffs.....	81
Anchor Insurance Co. v. Phoenix Insurance Co.....	109	Box v. Provincial Insurance Co.....	316
Ancona v. Waddell.....	150	Boyd v. Muir.....	81
Angers, Atty.-Gen. and Murray Re.....	334	Brady v. Keenan.....	16
Angers v. The Queen Insurance Co.....	181, 198	Brennan v. Brennan.....	3
Anglo French Co-operative Assn. Re.....	229	Briggs v. Lee.....	197
Angus Dalton.....	82	Bright v. Legerton.....	155
Anson v. Towgood.....	16	Britton v. Knight.....	262
Archibald v. Cameron.....	158	Brock and Corp. of Toronto, In re.....	106
Arcularius v. Sweet.....	183	Bryan v. Mitchell.....	280
Armour v. Rogers.....	216	Bryson v. Whitehead.....	220
Armstrong v. Kleinhans.....	293	Bunn v. Guy.....	220
Arnold v. Hull.....	72	Butler v. Rosenfeldt.....	54
Ashton v. Corrigan.....	73	Butler v. Standard Bank.....	164
Atlantic and Pacific Telegraph Co. v. Dominion Telegraph Co.....	279	Byerley v. Prevost.....	148
Attorney General v. O'Reilly.....	144	C.	
Atwood v. Rosser.....	108	Cahill v. Campbell.....	240
Avery v. Griffin.....	262	Campbell v. Campbell.....	16
B.		Campbell v. Edward.....	164
Backus v. Smith.....	247	Campbell v. Prince.....	245
Bagley v. Curtis.....	167	Campbell v. Robinson.....	279
Ballantyne v. Watson.....	112	Canada Southern Railway Co. v. Norvall et al.....	246
Bank of Commerce v. Gurley.....	110	Canada Pert. &c. Society v. Taylor.....	213
Bank of Commerce v. Tasker.....	296	Canada Fire and Marine Insurance Co. v. Western Insurance Co.....	104
Bank of Montreal v. Cameron.....	159	Canadian Bank of Commerce v. Green et al.....	105, 107
Bank of Ottawa v. Smith and Marshall	223	Cannon v. Corn Exchange.....	143
Barnes v. Hopkins.....	55	Cardinal v. Dominion Fire and Marine Insurance Co.....	335
Barr v. Clively.....	72	Carew v. Arundel.....	73
Barrett—Re.....	144, 196	Cargill v. Bower.....	82
Barrie Gas Co. v. Sullivan.....	105	Carles v. Brock.....	231
Barwick v. De Blaquiére.....	158	Carmichael v. Ferris.....	145
Baum, In Re.....	148	Carter v. Merriam.....	73
Bell v. Irish.....	210	Castle v. Wilkinson.....	262
Bell v. Lee.....	278	Chamberlain v. Stormont Dundas &c. In re.....	78
Berkeley's Trusts, Re.....	115	Childs v. Elsworth.....	193
Bickford v. Lloyd.....	245	Choynski v. Cohen.....	294
Birdsall et al and The Corporation of Ashodel, In re.....	162	Christopherson v. Lotinga.....	158
Bishop v. Douglas.....	56	Citizens Insurance Co. v. Grand Trunk Railway.....	334
Bissett v. Strachan.....	116	City of Toronto v. Scott, In re.....	280
Blain, Ex parte.....	98	Clark v. Clarke.....	15

	PAGE		PAGE
Clark v. Tarrell.....	113	Dominion Type Founding Co. v. Nagle	53
Cleaver v. North of Scotland Canadian Mtge. Co.....	248	Donly v. Holmwood.....	76
Cleghorn v. Wilson.....	300	Dorin v. Dorin.....	149
Clench, assignee v. Consolidated Bank	212	Douglas v. Fox.....	214
Colbert v. Hicks.....	276	Douglas v. Grand Trunk Railway Co.,	274
Coleman v. Robertson.....	112	Dowling v. Dowling.....	101
Collins v. Locke.....	219	Draggon v. Draggon.....	298
Colquhoun and the Town of Berlin....	129	Drake v. Preston.....	166
Colyear v. Lady Mulgrave.....	2	Dunn v. Dunn.....	293
Comfort v. Brown.....	150	Dunnard v. McLeod.....	333
Commonwealth v. Sherman's Exors. . .	290	Dutton v. Poole.....	2
Company of Felt Makers v. Davis.....	2		
Compton v. Bloxham.....	183	E.	
Connolly v. O'Reilly.....	15	Eagen v. State.....	241
Cook v. Credit Valley Railway.....	55	Edwards v. The Ottawa River Naviga- tion Co.	101
Cooper, Ex parte.....	148	Ellis v. Houstoun.....	149
Cooper v. Blacklock.....	276	Emmens v. Middlemiss	297
Cornell v. Abell.....	214	English and Scottish Investment Co. v. Gray.....	54
Corporation of Albermarle and Corpora- tion Eastnor &c.....	107	Evans v. Hooper.....	289
Corporation of Stafford v. Bell.....	214	Evans v. Volney.....	80
Corporation of Hastings v. Ponton....	275	Ewer v. Coffin.....	293
Corporation of Yarmouth v. Simmons	148		
Corporation of York and Wilson.....	278	F.	
Cosgrave et al v. Boyle.....	106, 272	Fairclough v. Marshall.....	147
Countryman v. Edwardsburg, In re. . .	107	Farbinger v. McDonald.....	209
Court v. Holland.....	115	Farmer v. Livingstone.....	270
Cowley v. Dickson.....	274	Farmers' and Mechanics' Bank v. King- ley.....	155
Cowlray v. Thompson.....	3	Feldman v. Morrison.....	240
Craig v. Proudfoot.....	295	Fenner v. Mears.....	316
Crain v. Trustees Collegiate Institute of Ottawa.....	129	Fenton v. County of York.....	214
Crandell v. Crandell.....	109	Ferguson v. Veitch.....	195
Crofts v. Feuge.....	73	Fisher v. Ellis.....	290
Cronk, Re.....	249	Fisher v. Keane.....	12
Cross v. Currie.....	76	Fisher v. Smith.....	146
Crossley v. Glasgow Life Assurance Co	315	Fitzgerald v. Grand Trunk Railway Co.	77
Cruickshank v. Corby.....	79	Fleming v. Manchester and Sheffield Railway Co.....	81
Currie v. McCallister and James Rus- sell.....	164	Fleming v. McDougall.....	114
Curry, Re.....	333	Flower v. Buller.....	263
Curtis v. Wormald.....	81	Flower v. Lloyd.....	83
D.		Fogler v. Columbia Insurance Co.....	293
Dally v. Humphries.....	223	Foran v. MacIntyre.....	277
Dance v. Girdler.....	289	Francis, In re.....	147
Darling v. Darling..	332	Fraser v. Lunn.....	163
Davidson v. McGuin.....	248	Fraser v. Tupper.....	328
Dawkins v. Penrhyn.....	149	Freeman, Re.....	295
Day v. Brownrigg.....	83	Fryer v. Shields et al.....	162
Deal v. Schofield.....	240		
De la Durantaye Beausoleil, In re. . .	335	G.	
Dean v. Bennett.....	12	Galbraith v. Duncombe.....	196
Dean v. Chamberlin.....	279	Gale v. Gale.....	3
De Kechevore v. Dawes.....	147	Gault v. Baird.....	13
Dighton v. Withers.....	73	Gauntlett v. Carter.....	183
Dilk v. Douglas.....	76	Gelty v. State.....	240
Dixon et al, Appellants &c., Perkins— Respondent.....	334	Georgian Bay v. Fisher.....	273
Pobie, Re.....	334	Gildersleeve v. McDougall.....	212
Dominion Bank v. Blair.....	110, 213	Givins v. Darvill.....	247
Dominion Loan Society v. Darling....	276		

	PAGE
Glaso v. State.....	241
Glen & Hall Manufacturing Co. v. Hall.....	294
Godfrey v. Harrison.....	163
Golding v. Mackie.....	145
Goodchap v. Roberts.....	223
Gower v. Towers.....	183
Graham v. Stevens.....	197
Grand Junction Railway Co. v. Pope.....	108
Grand Junction Railway v. the Corporation of County of Peterboro'.....	277
Grant v. Van Norman.....	294
Graves v. Colby.....	289
Gray v. Pearson.....	289
Great Western Railway Co. v. The Credit Valley Railway Co.....	129
Greaves v. Topfield.....	258
Green v. Onondayer, Com Pleas, Ex Parte.....	293
Green v. Provincial Insurance Co.....	53
Greet v. Royal Insurance Co.....	275
“ v. Citizens Insurance Co.....	275
“ v. Mercantile Insurance Co.....	276
Gregory v. Williams.....	2,
Griffin v. Patterson.....	3
Griffiths v. Bramley Moore.....	279
Griffiths v. Brown.....	53
Griffiths v. Brown.....	104
Guest v. Macpherson.....	116

H.

Hagle v. Dalrymple.....	54
Haines v. Hanrahan.....	241
Hallett's Estate, In re.....	286
Hamilton and North Western Railway Co. and Boys.....	129
Harris v. Hamilton, Re.....	75
Harris v. Prentiss.....	111
Havergal v. Harrison.....	183
Hay v. McArthur.....	297
Henderson v. Hall.....	297
Herman v. Hodges.....	73
Heron v. Stokes.....	183
Herrick v. Franklin.....	150
Heyward, Re.....	163
Hicks v. Snider.....	15
Higgins v. Kusterer.....	4
Hirschfield v. Clark.....	158
Hitchcock v. Coker.....	220
Hodgins v. Johnston.....	272
Hodsoll v. Taylor.....	195
Holland v. Wallace.....	113
Holmes v. Holmes.....	293
Hook v. Kinnear.....	2
Hope et al v. Ferris.....	111
Hopkins, Re.....	55
Hopkinson v. Marquis of Exeter.....	12
House v. House.....	81
Howley v. Knight.....	289
Huggins v. Guelph Barrel Co.....	54
Hunt v. Wimbledon Local Board.....	82
Hybart v. Parker.....	289
Hyde v. Barton.....	114
Hyde v. Casmea.....	158

	PAGE
I.	
Imperial Bank v. Dickey.....	113

J.

Jackson v. Hammond.....	16
Jacobs, Ex parte.....	175
Jellet v. Anderson.....	197
Jenks v. Doran.....	275
John Randall, Re.....	114
Johnstone v. Western Assurance Co.....	244
Jones v. Grand Trunk.....	210
Jones, Ex parte.....	1
Joyce v. Halton.....	3

K.

Kean v. Fisher.....	290
Keenahan v. Egleson.....	166
Kelson v. Mayor of Ann Arbor.....	240
Kendrew v. Shewan.....	262
Kingsford v. G. W. Railway Co.....	159
Kinnaird v. Webster.....	149
Kirkpatrick v. Bedford.....	83
Knott v. Hamilton, and Flamboro' Road Co.....	295
Kroer v. People.....	241

L.

La Banque Nationale v. Sparks.....	80
Lackerman v. Montstephen.....	174
Lacy v. State.....	241
Laker v. Hordern.....	149
Langdon and the Township of Arthur, In Re.....	107
Langlois v. Valin.....	271
Langston v. Langston.....	183
Lappington v. Carter.....	241
Laramee et al v. Evans.....	335
Larkin v. Adams, In re.....	280
La Vassaire v. Heron.....	78
Lawson v. Laidlaw.....	339
Leather Cloth Co. v. Lorsont.....	220
Leigh v. Jack.....	216, 218
Lenoir v. Ritchie.....	230, 300
Leonino v. Leonino.....	147
Levy v. Walker.....	148
Lewis Admr v. St. Louis Railway Co.....	170
Lipscomb v. Lipscomb.....	147
London & N. W. Railway v. Garnett... ..	240
Long v. Anderson.....	110
Long v. Guelph Lumber Co.....	213
Lord v. Commissioners of Sydney.....	217
Loughead v. Stubbs.....	196, 261, 262, 263
Lowson v. Canada Farmers' Insce. Co.....	278
Lussier v. Corp. of Hochelaga, Re.....	334

M.

McCarthy v. Arbuckle.....	211, 295
McCracken, Re.....	13

	PAGE		PAGE
McGeorge v. Egan.....	101	National Bank v. Cosby.....	81
McGwan v. Zimmer.....	293	National Guardian Assurance Co., Ex	
McHattie, Ex parte.....	147	parte.....	147
McIntyre v. McCormick.....	79	National Mercantile Bank, Ex parte..	258
McIntyre v. National Insurance Co....	272	Neill et al v. Carroll.....	278
McKay v. Chrysler.....	313	Nells v. Graham.....	115
McKay v. McKay.....	214, 299	Nelson v. Defoe.....	299
McLaren v. McCuaig.....	158	Nerlich v. Malloy.....	13
McLean v. Bradley.....	75	Newbiggin Gas Co. v. Armstrong.....	70
McLean v. Caldwell.....	247	North Ontario Controverted Election..	269
McLean v. Township of Ops, Re.....	210	Norval v. Canadian Southern Railway	
McLellan v. Dalton.....	244	Co.....	53, 129
McMullin v. Williams.....	274	Nugent v. Smith.....	175
McQueen v. Phoenix Mutual Insce. Co.	271	Nurse v. Durnford.....	70
McSherry v. Cobourg.....	211		
Macaulay v. Kemp.....	197	O.	
Macdonell v. McGillis.....	299	O'Brien v. Welsh.....	160
Macnabb v. Johnson.....	232	Odell, Ex parte.....	148
Madden v. Cox et al.....	272	Oppenheim v. Henry.....	183
Mahon v. Nicholls.....	213	O'Reilly v. Allen.....	166
Manning v. Purcell.....	183		
Mark v. Eads.....	41	P.	
Marney v. Adams.....	280	Palmer v. Solmes.....	75, 78
Marquis of Salisbury v. Great Northern		Pardee v. Lloyd.....	53
Railway Co.....	217, 218	Parsons qui tam v. Crabb.....	215
Martin v. Bearman.....	211	Parsons v. Citizens' Insurance Co....	244
Martin v. Consolidated Bank.....	159, 209	Parsons v. Queen Insurance Co.....	244
Mawson v. Hartink.....	231	Parsons v. Standard Insurance Co.....	270
May v. Standard Insurance Co.....	271	Pattridge v. Emerson.....	244
Mealey v. Aikins.....	296	Peak v. Shields.....	212
Merchants Bank v. Graham.....	248	Peck v. Gurney.....	82
Merchington v. Vernon.....	2	Penny v. Worts.....	231
Metcalf v. Bruin.....	288	People v. Washburn.....	244
Methrall v. Vining.....	125	Pepler v. Richardson.....	240
Meyerhoff v. Frochlich.....	147	Peterkin and McFarlane et al.....	270
Miller v. Grand Trunk Railway Co....	211	Pherrill v. Forbes.....	299
Miller v. Reid.....	14	Phillips v. London and South-Western	
Milsome v. Long.....	183	Railway Co.....	41
Minor, Ex parte.....	16	Picken v. Matthews.....	149
Mitchell v. Coffee.....	273	Pigott v. Thompson.....	2, 283
Mitchell v. Goodall.....	103	Pike v. Fitzgibbon.....	263, 339
Moffatt v. Board of Education of Car-		Plumstead Board of Works v. British	
leton Place.....	143	Land Co.....	217
Molson's Bank v. Corp. of Brockville..	215	Pollard v. Huntingdon.....	163
Moore v. Connecticut Mutual Insurance		Porter v. Hannibal and St. John Rail-	
Co.....	71	way Co.....	170
Moore v. Kay.....	144	Powley v. Whitehead.....	159, 160
Morden v. Booth.....	164	Public Schools.....	196
Morier, Ex parte.....	125	Purcell v. McNamara.....	231
Morrall v. Sutton.....	183		
Morrow v. Rourke.....	339	Q.	
Morton v. Nihan et al.....	104	Quebec Bank v. Gray.....	158
Mounsey v. Balmire.....	150	Queen v. Hilbrook.....	83
Moyce v. Newington.....	148	Queen v. Jones.....	334
Mulholland v. Merriam.....	2, 3	Queen v. Lucien Barnes.....	277
Mullidex v. People.....	240		
Munro v. Smart.....	14	R.	
Mutual Benefit Life Insurance Co. v.		Ralph v. Carrick.....	69
Hotterhoff.....	240	Rameshur Pershal Singh v. Koonj P-	
Mykel v. Doyle.....	106	tuk.....	149
N.			
Nagle v. Timmins.....	292		
Nasmith v. Manning.....	104		

	PAGE		PAGE
Ramsay v. McDonald.....	145	Sowden v. Standard.....	143
Randall John, Re.....	114	Standard Bank v. Boulton.....	262, 263
Reese River Silver Mining Co. v. Atwell	339	State v. Adams.....	240
Reynolds v. Godlee.....	81	“ v. Ah. Chuey.....	325
Rhodes v. The Airedale Commissioners	129	“ v. Barr.....	240
Richardson v. Richardson.....	163	“ v. Graham.....	325
Riley v. State.....	243	“ v. Mansker.....	240
Robertson and The Queen.....	328	“ v. Page.....	241
Roche U. E. In the Matter of.....	304	Steeve v. Field.....	244
Rogers v. Challis.....	72	Stephenson v. Bain.....	15, 114, 115
Rogers v. Lowthian.....	296	Stewart v. Board of Supervisors.....	244
Romanes v. Smith, Re.....	300	Stewart v. Scott.....	101
Ross, Re.....	77	Stockton Iron Furnace Co, In re.....	147
Ryan v. Ryan.....	77	Stokes v. State.....	325
Rylands v. Fletcher.....	253	Strange v. Lee.....	289
Regina v. Anderson.....	113	Sturgess v. Bridgeman.....	42
“ v. Berthe.....	251	Sullivan v. Corporation of Barrie.....	75, 106
“ v. Brown.....	232	Suter v. Servos.....	55
“ v. Cuthbert.....	78	Sweitzer v. Rosenfeldt.....	54
“ v. Davidson et al.....	108	Swinton v. Bailey.....	150
“ v. Durham.....	241		
“ v. Frawles.....	196	T.	
“ v. Governors of Darlington School.....	12	Terraz, Ex parte.....	86
“ v. Hart.....	78	The Queen v. Hilbrook.....	83
“ v. McLean.....	119	Therault v. Ducharme.....	335
“ v. Seaton.....	221	Thibeau deau et al v. Beaudoin.....	334
“ v. Stewart.....	280	Thomas v. Finlayson.....	153
“ v. Strachan.....	241	Thorpe v. Hosford.....	73
Re x v. Dispham.....	231	Tiffany v. Bullen.....	159
“ v. Rudge.....	232	Timmins v. Wright.....	211
		Tinney v. Boston & Albany Railway Co.	171
S.		Tobor v. Brooks.....	149
Sandford v. Raikes.....	183	Toronto Hospital Trustees v. Denham	216
Saunderson v. Rowles.....	74	Touche v. Metropolitan Railway Warehousing Co.....	3
Sayles v. Brown.....	196	Trust & Loan Co. v. Kirk.....	114
Schleswyer v. Davis.....	15	Trust & Loan Co. v. Lawraison et al	211
Scott v. Vosburg.....	299	Tweddle v. Atkinson.....	2, 3
Selby, In re.....	333	Twig v. Fifield.....	16
Selkirk Controverted Election.....	270		
Senn v. Hewitt.....	80	U.	
Sharp v. Lush.....	150	United States v. Jackson.....	241
Sharp v. Scoging.....	231		
Shaw v. Shaw.....	3	V.	
Sheffield v. Eden.....	146	Van Norman v. Beaupré.....	262
Shelly v. Hussey.....	145	Van Norman v. Grant.....	248
Shepard v. Wright.....	293	Vesey v. Ellwood.....	16
Sherrit v. Beattie.....	248		
Short v. Baltimore City Passenger Railway Co.....	252	W.	
Sibley v. Perry.....	69	Walker v. Barnes.....	72
Sichel v. Mosenthal.....	73	Walker v. Toronto Mutual Insurance Co.....	129
Silverthorn v. Hunter.....	144	Walker v. State.....	325
Simpson v. Dendy.....	217	Walker v. Tipping.....	183
Simpson v. Horne.....	296	Wanty v. Adams.....	280
Skerving v. Honeyman & McDonald.....	117	Ward v. Hobbs.....	148
Smith v. Burns.....	109	Warden, In re.....	148
Smith v. Butcher.....	150	Warren v. Erie Railway Co.....	170
Smith v. Doyle.....	14	Waterous v. Montgomery.....	81
Smith v. Gordon.....	110	Watson v. Macdonald.....	279
Smith v. St. Louis Railway Co.....	168, 205		
Smyth v. Morton.....	111		
Snarr v. Smith.....	196		

	PAGE		PAGE
Watson v. Servos.....	55	Winder v. Baltimore & Ohio Railway Co.....	171
Watts v. Atlantic Mutual Life Insur- ance Co.....	215	Wolf v. Findlay.....	316
Webster v. British Empire Mutual Life Assurance Co.....	316	Wood, In re.....	147
Weir v. Barnett.....	82	Woodgate v. Godfrey.....	148
Weldon v. Dicks.....	81	Woodman v. Blair.....	54
Wellington Mutual Insurance Co. v. Fry.....	245	Woodward v. Buchanan.....	101
Western v. Ince.....	115	Worthington's Trade Mark, Re...220, 257	
Wheatley v. Sharpe.....	113	Wright v. London Life Assurance Co. 105	
Widder v. Buffalo & Lake Huron Rail- way Co.....	129	Wright v. Sun Mutual Insurance Co. 105	
Wilkes v. Wilkes.....	158	Wright v. Way.....297, 298	
Wilkinson v. Grant.....	73	Y.	
Williams v. Corley.....	275	Young v. Wright... ..	54
Williams, Ex parte.....	147	Z.	
Williamson v. Ewing.....	296	Zaritz v. Mann.....	144
Wilson v. Hume.....	112		
Wilson v. McCarthy.....	337		

DIARY—CONTENTS—EDITORIAL NOTES.

DIARY FOR JANUARY.

1. Thur..New Year's day.
2. Frid ..Christmas Vacation in Court of Appeal ends.
4. Sun. ...Second Sunday after Christmas.
5. Mon...Heir and Dev. Sitt. and County Court Term begin. Municipal Elections held.
6. Tues...Toronto and Hamilton Assizes. Christmas Vacation in Chancery ends.
8. Thur..Christmas Vacation in Exchequer Court ends.
10. Sat. ..Christmas Vacation in Supreme Court ends. County Court Terms end.
11. Sun. ...First Sunday after Epiphany.
12. Mon....Sir Chas. Bagot, Gov.-Gen., 1842.
13. Tues...Court of Appeal sittings begin.
18. Sun. ...Second Sunday after Epiphany.
19. Mon...First meeting Municipal Councils, exclusive County Councils.
20. Tues...Heir and Dev. Sittings ond. First meeting County Councils. 1
25. Sun. ...Septuagesima Sunday.

CONTENTS.

EDITORIALS :	PAGE
Supreme Court of United States	1
Law Society—Examiners in Law	1
Married women as bankrupts	1
Vacancy on the Manitoba Bench	1
Stranger to contract enforcing it	2
Personal property in ice	3
LAW SOCIETY—Resumé Michaelmas Term 1879..	5
SELECTIONS :	
The Jury Question	11
Club Law	12
NOTES OF CASES :	
Court of Appeal	13
Queen's Bench	15
Chancery Chambers	15
Master's Office	16
LAW STUDENTS' DEPARTMENT :	
Examination Papers	16
REVIEW :	
The Dominion Annual Register and Review....	19
CORRESPONDENCE :	
Unlicensed Conveyancers	19
ERRATUM	20
FLOTSAM AND JETSAM	20
LAW SOCIETY OF UPPER CANADA.	

Canada Law Journal.

Toronto, January, 1880.

A second number will be issued in the middle of this month to give our readers the result of the judgments recently delivered.

The Supreme Court of the United States is said to be more than three years in arrears. Although during the recent term 379 cases were disposed of, there yet remain to be heard 1150.

The following gentlemen have been appointed Examiners in Law under the recent resolution of the Law Society : Thomas Hodgins, Esq., Q.C., Equity Jurisprudence ; T. D. Delamere, Esq., Commercial Law ; J. S. Ewart, Esq., Real Property ; J. E. McDougall, Esq., Criminal Law, Maritime Law, &c.

The Court of Appeal in England has recently decided that a married woman cannot be made bankrupt, even though she has separate property. The Court puts it on the ground that she is not liable to be sued as a debtor, properly so called, but her engagement has made her separate estate liable to satisfy that engagement : *Ex p. Jones*, 23 Sol. J. 75.

There is the most urgent necessity for the appointment of a strong judge to the vacancy still remaining on the Manitoba Bench. We all know what the Chief Justice is. The recent appointment (Mr. Debuc), though giving high character and integrity to the bench, does not add much, we understand, to its judicial ability. The requisition made by the Manitoba bar for the appointment of Mr. Dalton to the third place, shows their view of the situation, and while we think

STRANGER TO CONTRACT ENFORCING IT.

it out of the question, to expect any move on the part of the Government to appoint Mr. Dalton, or any desire on his part to change his work and residence; yet we quite appreciate the wish of the Manitoba Bar to have such an able, upright lawyer placed on the prairie bench.

—

*STRANGER TO CONTRACT
ENFORCING IT.*

—

The law has undergone remarkable changes upon the rights of one who is a stranger to a contract, which contains a clause for his benefit, to enforce such a contract. At one time the preponderance of opinion was plainly in favour of the proposition, that if one person made a promise to another for the benefit of a third, that third might maintain an action upon it. This, indeed, is the very language of Mr. Justice Buller, in *M v. Chington v. Vernon*, 1 B. & P., 101 (*in notis*). The same was the opinion of Eyre C. J., as expressed in *The Company of Fellmakers v. Davis*, 1 B. & P., 102. Such was also the early view in Equity, as may be seen by referring to *Hook v. Kinnear*, 3 Swanst., 417 note, when the Lord Chancellor (1743), said: "it is certain if one person enters into an agreement with another for the benefit of a third person, such third person may come into a Court of Equity and compel a specific performance."

Subsequently, however, this doctrine was contravened at law by the case of *Tweedle v. Atkinson*, 1 B. & S., 393, where the Court disregarded the earlier authorities (those, however, which we have noted do not appear to have been cited), and held that a third person cannot sue at law on a contract made by others for his benefit, even if the contracting parties have agreed that he may, and they laid it down also, (departing from the doctrine of *Dutton v. Poole*, 2

Lev., 210), that near relationship makes no difference. And a similar position in equity appears to be laid down by Lord Langdale, in *Colyear v. Lady Mulgrave*, 2 Keen, 98, in which he remarked substantially as follows: "that if there is a covenant by one person with another to pay a sum of money to a stranger, or do any act for the benefit of a stranger, who is not a party to the instrument or agreement, the person to whom the money is to be paid, or who is to be benefitted cannot sue, either at law, or in equity, because there is no privity of contract."

But one finds in the still later decisions, a strong disposition to revert to the earlier rule, and to give a right of redress to the stranger so circumstanced. The more modern cases in effect adopt the position which was laid down by Lord Alvanley (a judge who distinguished himself both in equity and on the common law bench), in *Pigott v. Thompson*, 3 B. & P., 149 (1802). He there said: "it is not necessary to discuss whether, if A. let land to B., in consideration of which the latter promises to pay the rent to C. his executors and administrators, C. may maintain an action on that promise. I have little doubt, however, that the action might be maintained, and that the consideration would be sufficient; though my brothers seem to think differently upon this point. It appears to me that C. would be only a trustee for A., who might for some reason be desirous that the money should be paid into the hands of C." The same view is taken by Sir William Grant, in *Gregory v. Williams*, 3 Mer., 582, a case which is at the basis of the admirable judgment of Strong, V. C., in *Mutholland v. Merriam*, 19 Grant, 288. In that case the defendant had agreed with a person deceased, that upon an assignment of real and personal estate to him by the deceased, he would

STRANGER TO CONTRACT ENFORCING IT—PERSONAL PROPERTY IN ICE.

pay thereout certain sums to the children of the deceased. It was contended that the beneficiaries had no right to seek to recover the amounts by a suit in their own names, but that the only remedy was by an action at law in the name of the personal representative of the father with whom the agreement had been made. The Vice-Chancellor, however, argued thus: that if a personal representative of the deceased did sue at law and recover the money from the defendant, he would recover as trustee for the beneficiaries. If the money when recovered would be affected with a trust, so would in like manner the right of action which vested in the personal representative be impressed with a like trust, and if so, then the personal representative and the beneficiary might conjointly maintain the bill. For this he cites *Gregory v. Williams*. Another and later decision might also have been referred to, and to the same effect, namely, that of Vice-Chancellor James, in *Peel v. Peel*, 17 W. R., 586. In *Mulholland v. Merriam*, there was no personal representative of the deceased, and as such a representative would have been merely a formal party, the Vice-Chancellor directed that the suit might proceed in the absence of any person representing the estate of the deceased under the authority of the general orders. This decision was affirmed on re-hearing by the full court in S. C., 20 Gr., 152. The views of the present Chancellor upon this important question may be found in *Shaw v. Shaw*, 17 Gr., 282. He there held that when land was conveyed in consideration of the grantee's agreeing to convey a part to a third person who was a stranger to the transaction, this third person could maintain a suit in his own name for the recovery of the part in question. In that case, both the contracting parties were made defendants, and the benefi-

ary was the plaintiff. The Chancellor at p. 285, pointedly adverts to this, and says that in his opinion the suit was properly constituted.

The conclusions reached in these Canadian decisions are also fortified by very recent English authorities. Thus in *Touche v. Metropolitan Railway Warehousing Company*, L. R. 6 Ch. 777, Lord Hatherley states that there is authority for holding that where a sum is payable by A. B., for the benefit of C. D., then C. D. can claim under the contract, as if it had been made with himself. See also *Gale v. Gale*, L. R. 6 Ch. D. 144.

In the Irish courts reference to the following cases will be found useful on this head of the law. In *Joyce v. Halton*, 11 Ir. Ch. R. 123, the Master of the Rolls in Ireland decided against the right of third persons collateral to the contract to sue. This was reversed on appeal in S. C., 12 Ir. Ch. R. 71, the Lord Justice giving very much the same reasons as Vice-Chancellor Strong. See also *Cowbray v. Thompson*, I. R. 2 Ch. 226, where the authority of *Tweedlev. Atkinson* was recognized and followed: *Brennan v. Brennan*, Ir. R. 2 Eq. 270, where the right of the third parties to intervene was given effect to, chiefly on the ground that the agreement was in the nature of a family arrangement, and for the benefit of the relatives who brought the suit.

PERSONAL PROPERTY IN ICE.

In this Canada of ours we see ice, both in winter and summer. In winter, its principal use is to provide a means of exercise for the rising generation, and to a more limited extent, to enable surgeons to practice setting broken limbs, and lawyers to bring actions against corporations and others. In summer it is largely used for various household purposes, as well as for many others, varying from an out-

PERSONAL PROPERTY IN ICE.

ward application to counteract a sun-stroke, to an inward application to "cool the coppers" of those who have made their alcohol unwholesome, according to the Celtic theory, by too great an admixture of water the night before.

Ice is, of course, an article of commerce of some importance, and is therefore entitled to its own special litigation in these Millennial days, when litigants politely endeavour to "swear their cases through," with smiles on their faces, and malice in their hearts, instead of the old "a word and a blow" of what we are pleased to call the "dark ages." But we should not enlarge on this topic for fear of endangering the craft.

The litigation on this subject, is not, however, very extensive. The last case we have seen discusses the elementary question, as to whether ice is personal property; and it was then decided, with undoubted correctness, that a sale of ice, readily formed, whether in or out of the water, as a distinct commodity, is a sale of personalty. It was further held that a parol bargain for ice formed on the surface of a pond, both parties being in view thereof, and the price being paid on the spot, passed the title (*Higgins v. Kusterer*, Supreme Court, Michigan, U. S., noted in *Central Law Journal*). The Chief Justice in delivering judgment, said:—

"While we think there can be no doubt that the original title to ice must be in the possessor of the water where it is formed, and while it would pass with that possession, yet it seems absurd to hold that a product which can have no use or value except as it is taken away from the water, and which may at any time be removed from the freehold by the moving of the water, or lose existence entirely by melting, should be classed as realty instead of personalty, when the owner of the freehold chooses to sell it by itself. When once severed no skill can join it again to the realty. It has no more organic connexion

with the estate than anything else has that can float upon the water. Any breakage may sweep it down the stream and thus cut off the property of the freeholder. It has less permanence than any crop that is raised upon the land, and its detention in any particular spot is liable to be broken by many accidents. It must be gathered while fixed in place, or not at all, and can only be kept in existence by cold weather. In the present case the peculiar situation of the pond rendered it likely that the ice could not float away until nearly destroyed, but it could not be preserved from the other risks and incidents of its precarious existence. Any storm or shock might in a moment convert it into floating masses which no ingenuity of black-letter metaphysics could annex to the freehold.

"It does not seem to us that it would be profitable to attempt to determine such a case as the present by applying the inconsistent and sometimes almost whimsical rules that have been devised concerning the legal character of crops, and emblements. Ice has not been much dealt with as property until very modern times, and no settled body of legal rules has been determined upon concerning it. So far as the principles of the common law go, they usually, if not universally, treated nothing movable as realty, unless either permanently or organically connected with the land. The tendency of modern authority, especially in regard to fixtures, has been to treat such property according to its purposes and uses as far as possible.

"The ephemeral character of ice renders it incapable of any permanent or beneficial use as part of the soil; and it is only valuable when removed from its original place. Its connexion—if its position in the water can be called a connexion—is neither organic nor lasting. Its removal or disappearance can take nothing from the land. It can only be used and sold as personalty; and its only use tends to its immediate destruction. We think that it should be dealt with in law according to its uses in fact, and that any sale of ice already formed, as a distinct commodity, should be held a sale of personalty, whether in the water or out of the water."

LAW SOCIETY, MICHAELMAS TERM, 1879.

LAW SOCIETY.

MICHAELMAS TERM, 43RD VICTORIA, 1879.

Resumé of proceedings of Convocation during this Term :

MONDAY, Nov. 17th.

Mr. Irving was moved into the chair in the unavoidable absence of the Treasurer.

The Report of the Examiners on the examination of candidates for call was received and read, reporting the following gentlemen as having passed a satisfactory examination for call to the Bar, namely : Messrs. W. J. Delaney, G. H. Hopkins, J. W. Holmes, W. M. Reade, J. S. Macdonald, J. C. Lillie and W. J. Franks.

The Sub-treasurer reported that the following gentlemen, namely : W. J. Delaney, G. H. Hopkins, J. W. Holmes, W. M. Reade, J. S. Macdonald, J. C. Lillie, had complied with all the rules of the society, and might be called to the Bar.

Ordered accordingly.

Ordered, that W. J. Franks, upon his filing the necessary petition, bond and presentation, may be called.

The Report of the Examiners on the examination of Candidates for admission as Attorneys was received and read, reporting the following gentlemen as having passed, namely, Messrs. F. Fitzgerald, G. H. Hopkins, W. F. Morphy, T. S. Plumb, W. R. Hickey, R. W. Jameson, J. J. Scott, P. A. Macdonald, H. E. Morphy, C. S. Rankin, A. Carss and J. B. Rankin.

The Sub-treasurer reported that the articles and services of the following were correct, namely, Messrs. F. Fitzgerald, W. F. Morphy, G. H. Hopkins, W. R. Hickey, R. W. Jameson, J. S. Scott, A. Carss, J. B. Rankin ; that they might receive their certificate of fitness : ordered accordingly.

Ordered that C. S. Rankin, upon the Sub-treasurer receiving proper certificate from the principal in whose office the said Rankin had served, may receive his certificate of fitness.

Ordered, that the following be referred to the Legal Education Committee : The cases of Mr. P. A. Macdonald and Mr. H. E. Morphy.

Ordered, that the case of Mr. T. S. Plumb be referred to a special committee, under the rule for special cases.

Mr. Leith, Mr. Hoskin and Mr. Kerr to be the special committee to deal with Mr. Plumb's case.

Report of the Examiners on the first Intermediate examination was received and read.

The Secretary reported that the following candidates had passed their examinations as Articled Clerks in due course, namely, Messrs. W. H. Hewson, T. A. Gorham, J. Christie, W. A. Geddes, A. T. S. McVeity, V. Switzer, J. W. Russell, A. A. Hughson, J. Chisholm, H. D. H. Helmcken, E. E. Kittson, F. W. Davis, F. McDougall, D. Buchanan, W. V. Maclise, C. G. O'Brian, A. J. W. McMichael, E. A. Foster, J. C. Grant, G. H. Smith, J. A. O'Rourke, L. H. Dickson.

Ordered, that the foregoing gentlemen be allowed their examinations, as the first Intermediate for Articled Clerks and Students-at-Law.

Ordered, that the Hon. D. Mills be allowed his examination as the first Intermediate of a Student-at-Law.

Ordered, that the cases of Mr. McDermott and Mr. Keys be referred to the Legal Education Committee.

The Report of the Examiners on the second Intermediate Examination was received and read.

The Secretary reported that the following gentlemen passed this examination in due course, namely, Messrs. Ponton, J. G. Geddes, T. H. Thompson, H. Buchanan, G. Bell, J. B. O'Brian, Æ. Irving, D. H. Cooper, F. C. Moffatt, A. McKay, W. C. Hamilton, W. H. Bennett, J. Harrison, G. W. Baker, P. Mulkern, A. Stewart and W. M. German.

Ordered, that their examination be allowed as the second Intermediate of Students and Articled Clerks.

The cases of A. B. Cox, James Henry and W. E. Macara were referred to the Legal Education Committee.

The Report of the Special Committee on the case of Mr. Plumb was received, read and approved.

LAW SOCIETY, MICHAELMAS TERM, 1879.

Ordered, that he receive his certificate of fitness.

Mr. Hodgins brought up Report of Legal Education Committee, as to appointment of Examiners and Examinations, referred to them by Convocation in Trinity Term.

Ordered, that it be considered on Saturday next.

Messrs. W. J. Delaney, J. W. Holmes, W. M. Reade and J. C. Lillie were called to the Bar.

The petition of T. T. Rolph was referred to the Finance Committee, with power to act.

The case of Mr. F. W. Campbell, of Nananee, and letter of J. B. Read, Esq., the Solicitor, were referred to Finance Committee, with power to act.

The case of Mr. Lowe was referred to said Committee, with power to act.

Adjourned.

TUESDAY, November 18th, 1879.

Report of Legal Education Committee on Students for Admission and Articled Clerks was received and read.

Ordered that the following gentlemen who have been reported as Graduates, be entered on the books of the Society as Students-at-Law:

Peter Sinclair Campbell, B.A., University of Toronto.

Alex. Edward Ward Peterson, B.A., Victoria College.

James Andrew Thomas, B.A., Victoria College.

Edward Robert Cameron, B.A., University of Toronto.

George Benjamin Douglas, B.A., University of Toronto.

John Joseph O'Meara, B.A., University of Toronto.

John Wilson Elliott, B.A., University of Toronto.

Ordered, that the following gentlemen, who have been reported entitled as Matriculants, namely,

University of Toronto. — James Graco, William Atchison Proudfoot, William T. Allen, Henry Thompson Brock, Albert Carswell, Albert Ephraim Grier, Adolphus August Kraft, William Edward Middleton,

Charles Potter, John Clinnie Drewry (Albert University), Frank Hedley Phippen (Albert University), Glanville C. Cunningham, Charles A. Grier, John Wilford, John A. Richardson (University of Toronto), and Flavius L. Brooke (Albert University), be entered on the books as Students-at-Law.

Ordered, that the following gentlemen who have been reported as having passed the examination, namely, John Thomas Sproule, Dyce W. Saunders, Henry John Wickham, George Hales, Arthur Burwash, John Alexander McIntosh, George Conry Thomson, Norman McMurchy, Checkly Francis Johnston, William James Church, Hume Blake Elliott, Sheriff Harkins, James Miller, Charles Franklin Farewell, Alexander George Murray, William Highfield Robinson, John McNamara, Frederick Thistlewaite, Charles Morse, Edward Augustus Wismer, Joseph Alphonse Vallin, George Weir, Walter Samuel Morphy, Louis Hayes, James S. Boddy, be entered on the books as Students-at-Law and John Arthur Albright as Articled Clerk.

Report of Legal Education Committee on the petition of Mervyn McKenzie received, read and ordered for immediate consideration.—Adopted.

Report of Legal Education Committee on the case of G. B. Douglass received, read, and ordered for immediate consideration.—Adopted.

Ordered, that on the payment of \$10 Mr. Douglas be entered on the books as a Student-at-Law in the Graduate Class.

Report of the Legal Education Committee on the case of C. W. Mortimer read and ordered for consideration.

Ordered that the petition be referred to the Finance Committee, with power to act.

Letter of Wm. Deveroux read. No action ordered.

Report of Legal Education on case of Mr. J. G. Kelly, 6th Dec., 1878, read and adopted.

Statement of Sub-treasurer as to Mr. Kelly's fees made.

Ordered, that he be refunded the \$10 paid by him under protest.

Mr. Kelly was called to the Bar, pursuant to the order of 6th December.

LAW SOCIETY, MICHAELMAS TERM, 1879.

The letter of Mr. Hamilton, and the enclosed memorial to the Attorney-General of numerous members of the profession, on the subject of means of access to the offices of the Master in Chancery and Registrar of the Court of Appeal, was read and ordered for immediate consideration.

Moved by Mr. Hodgins, seconded by Mr. MacLennan.

That in the opinion of Convocation a more convenient means of access from the main building and Library to the offices of the Master in Chancery, and Registrar of the Court of Appeal, and Chambers of the Judges in Appeal, should be provided for the use of the profession, and that the Treasurer be requested to bring the matter before the Government.—Carried.

Mr. Hopkins and Mr. Franks were called to the Bar.

SATURDAY, November 22nd.

The Report from the Legal Education Committee respecting the cases of Messrs. Coffee, H. E. Morphy, P. A. Macdonald, A. Beverly Cox, James Henry Macara, W. M. McDermott, H. D. Helmcken, J. B. McLaren, E. N. Lewis, F. H. King and C. W. Oliver, was received and read.

Ordered for immediate consideration and adopted.

Ordered, that Messrs H. E. Morphy and P. A. Macdonald do receive their certificates of fitness.

The Report from the same committee on the cases of M. W. Russ and Joseph Alphonse Valin was received and read.

Ordered for immediate consideration.

Ordered that the above named Marcus W. Russ and Joseph Alphonse Valin be entered on the books as Students-at-Law.

Report of the Finance Committee on the subject of the proposal of the President of the Telephone Despatch Company, to connect Osgoode Hall with the general Telephone system of the Company, was received and read.

Ordered for immediate consideration and adopted.

The Report of the same committee in reference to the waste of water was received and read.

The chairman of the Committee on dis-

cipline presented the report of the committee on the case of R. R. Waddell, Esq., of Hamilton, which had been referred to them by Convocation for investigation and report.

The Report was received and read.

Ordered for immediate consideration and adopted.

Pursuant to the order of Monday last, the chairman of the Committee on Legal Education brought up the report of that committee on the subject of Examiners and Examinations.

Ordered, That the Report be considered by Convocation on Saturday next, the 29th instant, and that notice thereof be given by the Secretary to each Bench.

Ordered, That the letters of Mr. Macklem and Mr. Hough be referred to the Finance Committee, with power to act.

Ordered, That the Secretary do acknowledge the receipt of Mr. Falconbridge's letter, in reference to the theft of his hat from the Hall, and say that Convocation can do nothing in the matter.

The petition of George Osborne Montgomery was referred to the Finance Committee, with power to act.

The letter of Mr. Robinson, Editor of the Reports, on the subject of a room for the use of the reporters was read.

Ordered, That the Secretary do reply to the effect that Convocation is not prepared to make any order on this subject at present.

Mr. J. Sandfield Macdonald was called to the Bar.

Mr. Crooks gave the following notice of motion with respect to call of Barristers, and for admission of Attorneys and Solicitors taking the degree of Bachelor of Laws :

Any person having successfully passed the examination now prescribed for the degree of Bachelor of Laws in the University of Toronto, by its present or any future curriculum with equivalent requirements, may be called to the Bar, or admitted as an Attorney or Solicitor ; in the case of a Barrister, after four years from his admission as a student of this Society, and in the case of an Attorney or Solicitor, after hav-

LAW SOCIETY, MICHAELMAS TERM, 1879.

ing duly served under articles of clerkship for the term of four years, which period may have elapsed either before or concurrently with the passing of said examination for such degree. This rule shall not affect any of the provisions of other rules of the Society with respect to graduates.

Ordered, that the Secretary supply every member of Convocation with a copy of Mr. Crooks' notice, and the same be considered by Convocation on Saturday, the 29th instant.

Mr. Preston's letter to the Treasurer, referring to an irregularity in respect of the bringing of suit of the Albert Cheese Co. v. Leaming, was read.

Ordered, that it be referred to the Discipline Committee.

Mr. Hodgins gave the following notice of motion, namely, that on the consideration of the report of the Committee on Legal Education, on the subject of Examiners and Examinations, next Saturday, he will move the following resolution :

1. That four Examiners in Law be appointed, who shall be Barristers of at least five years' standing at the Bar, and who shall hold office for four years, and receive a salary of \$600 per annum.

2. That the said Examiners be appointed to Examine in the following subjects :

- (a.) Commercial and Maritime Law.
- (b.) Real Property.
- (c.) Equity Jurisprudence.
- (d.) Criminal Law and the Law of Torts.

3. That the said Examiners conduct all Intermediate Examinations of Students-at-Law and Articled Clerks, all Scholarship Examinations, all Final Examinations for the call of Barristers, and for the admission of Attorneys and Solicitors, and such other and special examinations in law as the Benchers may prescribe.

4. That a sufficient number of Examiners for Matriculation be appointed during each term preceding the examination of candidates for admission as Students-at-Law and Articled Clerks, who shall conduct the Primary Examination of such candidates during the term for which they shall be so appointed.

5. That the Examinations of the Law Society be held as follows :

1. PRIMARY EXAMINATIONS. — The Primary Examinations for the admission of

Students-at-Law and Articled Clerks, on the Tuesday, Wednesday and Thursday of the third week before Hilary and Michaelmas Terms. The Examination of Graduates and Matriculants as Students-at-Law and Articled Clerks, on such days prior to Hilary, Easter, Trinity and Michaelmas Terms as the Committee on Legal Education may appoint.

2. INTERMEDIATE EXAMINATIONS. — The First Intermediate Examination of Students-at-Law and Articled Clerks, on the Tuesday and Wednesday of the second week before each Term. The Second Intermediate Examination of Students-at-Law and Articled Clerks, on the Thursday, Friday and Saturday of the second week before each term.

3. FINAL EXAMINATIONS. — The ordinary Final Examinations for the call of Barristers, on the Monday, Tuesday and Wednesday of the week preceding each Term. The additional examination for call with Honours, on the Thursday and Friday of the same week. The Final Examinations for the admission of Attorneys and Solicitors, on the Thursday, Friday and Saturday of the week preceding each Term.

4. SCHOLARSHIP EXAMINATIONS. — The Scholarship Examinations on the Tuesday, Wednesday and Thursday of the second week of Michaelmas Term.

6. That the last of the days above prescribed for the said Primary, Intermediate, Final and Scholarship Examinations be appropriated to the oral examination of the candidates.

7. That the Examinations on each of the said days be held during the following hours :

Forenoon examinations to commence at ten o'clock in the forenoon and close at half-past twelve in the afternoon.

Afternoon Examinations to commence at two o'clock and close at half-past four o'clock.

8. That two Examiners, or one Examiner and a Benchers be present during the whole time of the Examinations.

9. That any Articled Clerk, being also a Student-at-Law, who as such Student-at-Law has passed, during his clerkship, the Intermediate Examinations required by the rules of this Society, shall be allowed such Intermediate Examinations as Intermediate Examinations required by the statute, without further examination or certificate to that effect by the Secretary of the Law Society.

Ordered, that the Secretary supply every member of Convocation with a copy of

LAW SOCIETY, MICHAELMAS TERM 1879.

Mr. Hodgins' notice, and that it be considered by Convocation on Saturday next, the 29th instant.

Mr. Robertson moved, seconded by Mr. Cameron, that Messrs. Leith, Crickmore and Dr. Smith be a Committee of Benchers, under the rules of June, 1876, provided for special cases, before whom Mr. R. R. Waddell, an applicant for call, may be examined; the said Robert R. Waddell being an Attorney and Solicitor of at least ten years' standing.—Carried.

SATURDAY, NOV. 29th.

Mr. Hodgins presented the Report of the Committee on Legal Education, on the cases of J. B. McKillop, N. P. Graydon, G. Muirhead, E. F. B. Carey and D. G. Downey, which was considered and adopted, and services allowed accordingly.

Mr. Hodgins presented the report of the same committee, on the case of W. H. Barry, which was considered.

Ordered, that Mr. Barry be entered on the books as a Student-at-Law.

Mr. Hodgins presented the Special Report of the same committee, recommending the fitting up of cupboards in the Examiner's room, pursuant to a plan and tender, at an expense of \$104, which was considered and adopted.

Mr. Hodgins presented a Special Report of the same committee, proposing that fees should be charged for certificates of admission, and for Barristers' diplomas.

The report was considered and adopted.

Mr. MacLennan presented the Report of the Committee on Reporting, which was read clause by clause and adopted, with the exception of the third clause.

A letter from Mr. Dwight, the manager in Toronto of the Montreal Telegraph Company, was read, in which he applied for permission to open a branch office of the company in Osgoode Hall.

The letter was referred to the Finance Committee, with power to act.

Mr. MacLennan moved that the Finance Committee be instructed to endeavour to arrange for the placing of a post-office letter box at Osgoode Hall.—Carried.

A letter from Mr. F. E. Hodgins, applying for the use of the lecture room, for the

delivery of a course of lectures on Logic, was read and referred to the Legal Education Committee, with power to act.

A letter from Mr. Allan Cassels, on the subject of the thefts from the profession, at Osgoode Hall, was read. The letter of Mr. Falconbridge on the same subject, dealt with last meeting, and the action of Convocation thereon, were ordered to be reconsidered.

Ordered, that Mr. Crooks be requested to call the attention of the Government to the circumstances stated in the letters in question, with a view to preventing their recurrence.

The Treasurer reported that, pursuant to the directions of Convocation, he had waited on the Attorney-General, and represented their views on the subject of the access to the offices of the Master in Chancery and Registrar in Appeal, and that the Attorney-General had directed Mr. Tully to report on the possibility of the plan suggested, with a view to its being carried out; that the Treasurer had met Mr. Tully by appointment, at Osgoode Hall, and gone over the ground, when Mr. Tully stated that there was no difficulty in carrying out the plan, and that he would report accordingly.

Mr. Crooks moved, pursuant to notice, the following motion:

Any person having successfully passed the Examination now prescribed for the degree of Bachelor of Laws in the University of Toronto, by its present or any future curriculum, with equivalent requirements, and having obtained such degree, and having also successfully passed an examination before this Society, in the subjects of the Statute Law, and the Practice and Pleadings of the Courts, and in Criminal law, may be called to the Bar, or admitted as an Attorney or Solicitor, upon payment of the usual fees; in the case of a Barrister, after four years from his admission as a Student of this Society, and in the case of an Attorney or Solicitor, after having duly served under Articles of Clerkship for the term of four years, which period may have elapsed either before or concurrently with the passing of said examination for such degree. This rule shall not affect any other provisions of the rules of the Society with respect to graduates.

Mr. Read moved that the further consideration of the motion be adjourned to the

next meeting of Convocation, and that the notice be reprinted and distributed to the Benchers, with an intimation that it will then be taken up.

The further consideration of the Report of the Legal Education Committee, on the subject of Examiners and Examinations, was then taken up.

Mr. Hodgins moved in amendment a series of resolutions, which were put clause by clause, and finally adopted, as follows :

1. That four Examiners in Law be appointed, who shall be Barristers of at least five years' standing at the Bar, and who shall hold office for three years, subject to the removal of any of them, at the discretion of Convocation, and each of which Examiners shall receive a salary of \$600 per annum.

2. That the said Examiners be appointed to examine in the following subjects:

- (a.) Commercial and Common Law.
- (b.) Real Property.
- (c.) Equity Jurisprudence.
- (d.) Criminal Law, the Law of Torts, and Maritime Law.

3. That the Law Examiners conduct all Intermediate Examinations of Students-at-Law and Articled Clerks, all Scholarship Examinations, all Final Examinations for the call of Barristers, and for the admission of Attorneys and Solicitors, and such other and special Examinations in Law as the Benchers may prescribe.

4. That three Examiners be present during the whole time of the written examinations.

5. That any Articled Clerk, being also a Student-at-Law, who as such Student-at-Law has passed, during his clerkship, the Intermediate Examinations required by the rules of this Society, shall be allowed such Intermediate Examinations, as Intermediate Examinations required by the statute, without further examination or certificate to that effect by the Secretary of the Law Society.

The Report of the Examiners on the Scholarships Examinations was read.

The Scholarships were awarded as follows :—

- Fourth year.....Mr. Nesbit.
- Third yearMr. Drayton.
- Second year.....Mr. Burgess.
- First year.....Mr. J. L. Murphy.

Mr. Irving gives notice of motion, for the next sitting,

That on the first day of Hilary Term next, and on the first day of every Hilary Term in each year thereafter, a return shall be laid before Convocation, shewing—

1. The names of Attorneys who have taken out certificates for the current year.

2. The names of Attorneys whose names appear on the roll of Attorneys who have omitted to take out certificates for the current year.

3. A Report from the Solicitor of the action or proceedings taken, and the result of such proceedings upon cases where certificates have not been taken out for the year preceding, and that, on the first day of Hilary Term next, shall be laid before Convocation.

4. A Report from the Solicitor upon the cases of all Attorneys whose certificates are unpaid for any year up to the 31st December, 1878.

FRIDAY, 5th Dec., 1879.

Mr. Crooks reported the result of his interview with the Attorney-General on the subject of the recent thefts at Osgoode Hall, and stated that the Attorney-General suggested that the Law Society should organize some plan for securing accommodation for practitioners.

Mr. Crooks moved that the subject be referred to the Finance Committee, with instructions to report to Convocation.—Carried.

Mr. Kerr presented a Report from the County Libraries Aid Committee on the subject of the Hamilton Association, and containing a general recommendation, which was considered and adopted.

A letter from Mr. Jex, on the subject of the payment of his special fee, was read.

Ordered that Mr. Jex be informed that his case was disposed of, after full consideration, and that his letter presented no grounds for reconsideration.

Letters of recommendation for Mr. Lightbourne and Mr. Eddis for the office of Auditor were read, and referred to the Finance Committee.

Mr. Crickmore presented the Report of the Select Committee on the examination of Mr. Waddell.

Ordered that it be forthwith considered. The report was adopted.

Mr. Maclellan moved that Mr. Waddell be required to pay the sum of \$200, in addition to the usual fee, as required by the rules under which he was examined, and that he be thereupon called.

Mr. Robertson moved that Mr. Waddell be called on payment of \$150, the usual fees in ordinary cases.

The amendment was lost.

Mr. Maclellan's motion was carried.

Mr. Leith moved second reading of rule as to Examiners and Examinations.—Carried.

Mr. Leith moved third reading of same rule.—Carried.

Mr. Leith moved that the usual advertisement, under the direction of the Legal Education Committee, be published, intimating that Convocation will, on the 30th December, appoint four Examiners, pursuant to the above rule, and that notice be given to each Bencher of such meeting.—Carried.

The debate on the first reading of Mr. Crooks' proposed rule was resumed.

Mr. Crooks proposed to further amend the rule by inserting the words "Presented for call and admission respectively for the final examination, may, upon payment of the fees required in ordinary cases," immediately after the words "Passed an examination before this Society in the subjects."

Mr. Crooks moved the adjournment of the debate till the next meeting.

Mr. Crooks gave notice that he would, at the next meeting, move for the authority of Convocation for the institution of such legislation as may be necessary to give Convocation further power to deal with the subjects referred to in the rule.

Mr. Irving moved his resolution as to Attorneys' certificates, which was carried.

Mr. Irving also moved that a copy of the roll be printed, for the purpose of carrying out the above resolution.—Carried.

Mr. Waddell was called to the Bar. Convocation rose.

SELECTIONS.

THE JURY QUESTION.

The jury system has suffered in public estimation from excessive adulation on the one hand, and excessive denunciation on the other. Like every other social system, it is probably susceptible of improvement; at all events, it demands modification to suit the changed circumstances of society. *First*: It is our firm belief that the jury is invaluable as a political system, in educating the citizen to feel a personal responsibility for government, in dividing the responsibility for legal decisions, and in standing between the individual and great monopolies, such as banks, and railway and insurance companies. *Second*: The system as it stands has not worked ill. Wrong verdicts and disagreements are exceptional. The public always hear of disagreements and wrong verdicts, while little is said of the vast majority of just verdicts. The ablest judges in this country have assured us that they have rarely known an absolutely unjust verdict. *Third*: Disagreements and wrong verdicts are very frequently the fault of the judge rather than the jury. Disagreements are often produced by excessive refinements and balancings in the charge, and wrong verdicts sometimes are the result of the judges usurpation of the advocate's office. *Fourth*: Except in large cities the intelligence and honesty of jurors is much underrated by the public. *Fifth*: We can conceive nothing more ill-advised than an unchanging bench of judges to decide all questions of fact arising in a community. Such centralisation of power is certainly extremely inconsistent with republican institutions. If two suitors desire to have their differences decided by one man, they have the privilege, but the right of either to demand a jury is inestimable. *Sixth*: The single change we would make in the system is to allow nine to pronounce a verdict in all cases but capital cases and those punishable with imprisonment for life; in the latter, unanimous verdicts should be required. But with all its imperfections, we should as little think of pronouncing the system a "nuisance" as

CLUB LAW.

it stands, as of pronouncing sunshine and water nuisances, because of occasional sunstrokes and malaria.—*Albany Law Journal*.

CLUB LAW.

Mr. Labouchere has been reinstated in the Beefsteak Club, by the decision of the Master of the Rolls that he was irregularly expelled. Now the Beefeeders will probably try it again. Since our last, the decisions of the same judge, in the case of Major Fisher, of the Army and Navy Club, has been published: *Fisher v. Keane*, 41 L. T. N. S. 335. The major had been a member of that club about twenty years. One evening, after dining there, he joined a game of pool, one of the players being a guest of another member of the club, and also a friend of the plaintiff. The guest, finding the game did not proceed so rapidly as he desired, said to the plaintiff, "Get on, I want to go home; you are drunk." The plaintiff answered, "I don't think I would say such a thing to you at your club," and the guest replied, "You are drunk." Thereupon the plaintiff said "You are a d——d liar," or "its a d——d lie." A rule of the club empowered the committee, in the case of conduct by any member, injurious to the character and interests of the club, to recommend him to resign, and if the recommendation should not be observed within a month, to call a general meeting which should decide the matter by ballot. If the committee are unanimously of the opinion that the offence is so grave as to warrant immediate expulsion, they are empowered to suspend, which becomes final, unless within twenty-one days twenty members demand a general meeting. The committee consists of twenty-four. The major's offence was reported to them at a meeting at which nine were present (three forming a quorum), and having examined two members who were present at the incident, they suspended the major. The major had no previous notice of this action, but meantime had written an apology to the guest, who had expressed his satisfaction to the committee. He also explained to the com-

mittee that he had some years before met with a severe fall, which had made his head weak, and offered to make any apology deemed requisite. The only answer of the committee was to "bounce" the major at the end of twenty days. This action was subsequently approved by a large majority at a general meeting. Now the Master of the Rolls says this was all wrong. He holds that the unanimous consent of the entire committee was necessary to suspension, and that the unanimous consent of those present at the meeting, was not sufficient. He then concludes :

"As to the second ground, in my opinion a committee acting under such a rule as this are bound to act, as Lord Hatherley said, according to the ordinary principles of justice, and are not to convict a man of a grave offence which shall warrant his expulsion from the club without fair, adequate, and sufficient notice, and an opportunity of meeting the accusations brought against him. They ought not, as I understand it, according to the ordinary rules by which justice should be administered by committees of clubs, or by any other body of persons, who decide upon the conduct of others, to blast a man's reputation forever, perhaps to ruin his prospects for life, without giving him an opportunity of either defending or palliating his conduct. In my opinion, upon this ground also, the committee have not acted properly or fairly."

The conduct of this club strongly resembles that of a ministerial convention or a women's sewing society. It seems to our blunted perceptions that the major ought to have been acquitted, and the guest suspended; but we don't know much about clubs. The case of *Hopkinson v. Marquis of Exeter* is reported in L. R., 5 Eq. 63; 17 L. T. N. S. 368. See, also, *Dean v. Bennett*, L. R., 6 Ch. 489; 24 L. T. N. S. 169; *Reg. v. Governors of Darlington School*, 14 L. J. 67, Q. B. See, also, *Angell & Amos on Corporations*, 10th ed., § 410, note (a).—*Albany Law Journal*.

NOTES OF CASES

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

COURT OF APPEAL.

C. C.]

[Dec. 1, 1879.

NERLICH V. MALLOY.

*Division Court Bailiff—Action for false
return.*

To an action against a bailiff and his sureties for a false return, they pleaded that the bailiff immediately levied, but that he was at once notified by the attorney of one of the principal creditors of the execution debtor, that if he proceeded to sell, the debtor would be placed in insolvency, and that before the goods were sold, and while they were being advertised pursuant to the statute, a writ of attachment was issued, and an assignee appointed, whereupon the bailiff gave up the seizure and returned the writ, and that the plaintiff suffered no damage.

At the trial the learned Judge withdrew the case from the jury, and directed a verdict for the defendant, on the ground that this plea and another had been proved, and refused a rule *nisi* for a new trial.

Held, reversing the judgment of the County Court, that the plea was a good defence to the action, although under the 221st section of the Division Court Act the plaintiff would have been entitled to nominal damages upon the bare proof of breach of duty, without showing any injury; but that it was for the jury and not for the Judge to say whether the inaction of the bailiff had caused the plaintiff's damage, and a new trial was therefore ordered.

Before commencing the present action, the plaintiffs had taken summary proceedings by way of summons, under the 220th section of the Division Court Act, against the bailiff, which summons was discharged.

Held, that the order was not a bar to an action, under the following section, for a false return.

O'Donohoe for the appellant.

J. McDougall for the respondent.

Appeal allowed.

Q. B.]

[Dec. 1.

GAULT V. BAIRD.

Insolvent Act—Deed of composition.

A deed, professing to be under the Insolvent Act, was made between the insolvents of the first part, certain sureties of the second part, and "the several persons, firms and corporations who are creditors of the parties of the first part, and also are mentioned in the annexed list, of the third part." It provided for the payment of composition by the insolvents of 75c. in the dollar, which payment was guaranteed by the sureties, and contained the following clause: "This deed shall be ineffectual unless and until completed by all creditors having claims for over one hundred dollars."

Held, on demurrer, affirming the judgment of Osler, J., that this clause only applied to creditors mentioned in the annexed list, and that certain other creditors, having refused to come into the arrangement did not prevent the deed from being operative.

H. J. Scott for appellant.

G. C. Gibbons for respondent.

Appeal dismissed.

C. C.]

[Dec. 1.

RE McCracken.

Insolvency—Landlord's lien.

Held, if before an assignment or attachment in insolvency the landlord has levied, the assignee cannot take the goods out of his possession without payment or tender of the six months' arrears.

After the assignee has taken possession, the landlord cannot seize, but he is entitled to be paid the six months' arrears out of the proceeds of the goods in the demised premises, in preference to any other claim.

The landlord is not a privileged creditor, but is merely entitled to a lien upon the goods of the insolvent which he might have distrained.

If the assignee sells upon credit, he must arrange with the landlord before the goods are removed; otherwise he becomes liable to an order for immediate payment.

If the creditors or inspectors order the assignee to make such a sale, and do not provide him with the means of satisfying

C. of A.]

NOTES OF CASES.

[C. of A.]

the landlord, he should apply to the judge for direction.

Whenever the assignee is remaining in possession unreasonably long without realizing or satisfying the landlord, the latter may invoke the summary jurisdiction of the Court.

R. Martin, Q. C., for the appellant.

Hoyles for the respondent.

Appeal dismissed.

Chy.]

[Dec. 1.]

SMITH v. DOYLE.

Bill filed in behalf of plaintiff and all other creditors—Effect of.

This was a suit brought by the assignee in insolvency of P. D., to impeach a sale of real estate to the defendant. The answer set up that before the proceedings in insolvency a bill was filed by W. S. and J. S., as execution creditors, in behalf of themselves and all other creditors who should contribute to the expenses of the suit, for the purpose of avoiding the conveyance in question, as a fraud upon creditors, and that after answer the bill was dismissed. It was alleged that the facts set up in the two bills were substantially the same; that the case made by each was the same, and that the defendant believed that the evidence, if this suit proceeded, would be similar in effect to that upon which the plea refusing relief was founded.

Held, that the decree was not a bar to this suit.

Donovan for the appellant.

O'Donohoe for the respondent.

Appeal allowed.

Chy.]

[Dec. 1.]

MUNRO v. SMART.

Will—Construction of.

The testatrix devised all the rents and profits of her estate to C., an unmarried daughter, so long as she remained unmarried, and upon her marriage the whole to be divided between her and her four sisters, but if she died unmarried the division was to be amongst her four sisters; and in case of either of these four dying before the marriage or death of C., the share of the one so dying to go to her children; and

then followed a provision that in case of the death of any of her "said" daughters, without leaving child or children, the share of such daughter was to be divided among the surviving daughters, and the children of deceased daughters.

Held, reversing the decree of the Court of Chancery, that it was clearly the intention of the testatrix that there should be a final distribution of the estate, upon the marriage of C., and that, on that event happening, each of the daughters took an immediate absolute interest.

Crooks, Q. C., and *Cattanach* for the appellants.

Boyd, Q. C., and *Moss* for the respondents.

Appeal allowed.

C. P.]

[Dec. 1.]

MILLER v. REID.

Insolvency—Money paid within thirty days.

A. sold his stock in trade and assets of all kinds to S., the sale being arranged and carried out by one R., to whom the cash portion of the purchase money was paid. R. afterwards, within thirty days of A.'s being declared insolvent, accepted and paid out of this purchase money two drafts drawn on him by the defendant, being the price of the goods for which A. was indebted to the defendant. The plaintiff, as assignee in insolvency of A., sued the defendant to recover back the money so paid him. The defendant set up that the drafts were drawn and the money paid by R. under a personal understanding contained in letters written to him by R.

Held, affirming the judgment of the C. P., that the defendant had probable cause for believing A. to be insolvent, and that the plaintiff was entitled to recover the money, which clearly belonged to the insolvent.

Held, also, that the acceptance was not a valuable security within the meaning of section 134, which the assignee was obliged to restore to the creditors, as a condition precedent to the prosecution of the suit.

McKellar, Q. C., for the appellant.

Walker for the respondent.

Appeal allowed.

Q. B.]

NOTES OF CASES.

[Chan. Cham.

Q. B.]

[Dec. 1.

Spragge, C.]

[Nov. 24.

SCHLESWYER v. DAVIS.

Guarantee for payment of rent—Action on.

To an action on a guarantee given to secure the payment of rent, defendant pleaded that, without his knowledge or consent, the plaintiff accepted a surrender before the expiration of the term, and that there were then goods and chattels upon the premises, liable to distress, more than sufficient to pay the distress.

Held, that the plea was no defence, as a landlord holding such a guarantee is not bound to distrain before suing the sureties.

Brown and Falconbridge for the appellants.

Kerr, Q. C., for the respondent.

Appeal dismissed.

QUEEN'S BENCH.

IN BANCO.

MICHAELMAS TERM, 1879.

HICKS v. SNIDER.

Will—Construction—Estate in fee.

Testator devised as follows: "I make and give all my property, both land, house and all the stock, and every other article I possess now, to my loving wife Elizabeth, by making her my executrix."

Held, that the wife took an estate in fee.

Wallbridge, Q. C., for plaintiff.

Reeve, contra.

CHANCERY CHAMBERS.

Referee.]

Nov. 15.

CONNOLLY v. O'REILLY.

Costs on appeal—Sum in gross in lieu of—Practice.

An order allowing \$400 to be paid into Court by appellant, in lieu of bond, will be granted *ex parte*.

In this case *Hoyles*, for appellant, moved *ex parte* for leave to pay \$400 into Court, as security for the costs of appeal.

The Referee made the order.

CLARK v. CLARK.

Partition—Land in different Counties—G. O. 641—Costs—G. O. 643.

In this suit an order for partition of lands in County of Peel, had been made by the Master at Brampton, under General order 640.

Fleming now moved, under G. O. 641, for the sale or partition, under said order of the Master, of certain lands in County of Grey. It appeared that the Grey lands were not discovered, after the granting of the order by the Master, but were known at the time of the making thereof.

Plumb for the infants.

SPRAGGE, C., *held* that the case was within the scope and intention of order 641, notwithstanding the use of the words "after an order, &c., lands are discovered in another county."

Held, also, that the case was a proper one for the exercise of the discretion of the Court or Judge, reserved under 643, and costs of the application were allowed, exclusive of commission fixed in the order.

Referee.]

[Nov. 28.

STEPHENSON v. BAIN.

Sale under decree—Loss after contract signed—Who bears.

Lands were sold under decree for partition or sale in the cause. The purchaser signed the usual contract on the day of sale to purchase the property at \$1,500. The day after the sale the hotel buildings, of which the property was composed, were burned down. The report on sale was made and confirmed. The land, without the building, was worth about \$300. The purchaser had paid his deposit on day of sale, and this application was to compel payment into Court of the balance of purchase money.

Hoyles, for the plaintiff, contended that the English cases in point did not apply, because here an absolute agreement to purchase is entered into, whereas in England only a bidding paper is signed. See *Daniel's Chy. Prac.* p. 1161, and *Daniel's Forms*, p. 1328, and G. O. 384; that the English

Chan. Cham.]

NOTES OF CASES.

[Master's Office.

authorities are opposed to the plaintiff's contention, see *Ex parte Minor*, 11 Ves. 559, and *Twig v. Fifield*, 13 Ves. 518, which have been practically overruled by the cases of *Anson v. Towgood*, 1 Jacobs & Walker, 637, and *Vesey v. Ellwood* 3 Drury & Warren, 77; see also *Fry* on Spec. Perfor. p. 264, and *Brady v. Keenan*, 6 P. R. 262.

Plumb for infants.

R. M. Fleming, for the purchaser, relied on *Ex parte Minor* and *Twig v. Fifield*, above quoted.

THE REFEREE—Held that the interest contracted for passed to the purchaser on the signing of the agreement to purchase; and that the cases of *Ex parte Minor*, &c., were overruled by the later cases.

Blake, V.C.]

[December.

CAMPBELL V. CAMPBELL.

Partition—Commission under G. O. 641—Discretion of Master as to disbursements.

This was a partition suit under G. O. 641. The property sold for \$2400. The plaintiff was entitled to six-eighths of the net proceeds, and two infants to one-eighth each. The total commission amounted to \$199.15. which the Master divided in the following proportions, viz.:—Seven-eighths to the plaintiff, and one-eighth to the guardian.

The Master also fixed the disbursements, which were not revised.

The guardian for the infants appealed from the order of the Master on the following grounds:—1. That one-eighth of the total commission was too little compensation. 2. That the disbursements ought to be revised.

Hoskin, Q. C., for appellant.

*Hoyle*s, for the plaintiff, contended that under G. O. 643 the division of the commission among the solicitors of the different parties was entirely in the discretion of the Master; and that under G. O. 640 and 643 only actual disbursements were allowed, and, consequently, no revision was necessary.

BLAKE, V.C., allowed the appeal on both grounds, holding that a Judge in Chambers

might properly review the distribution of compensation made by a Master; that the question as to what are or are not disbursement is a very difficult one, and these bills should still be referred as ordinary ones to the Master in Ordinary for revision.

MASTER'S OFFICE.

Taxing Officer.]

[October.

JACKSON V. HAMMOND.

Proper parties by bill—Mechanics' Lien Acts—Costs.

The plaintiff Jackson was mortgagee of the lands in question, the defendant Hammond and the other defendants being the holders of liens registered under the Mechanics' Liens Act against the premises.

The bill was an ordinary mortgage bill for sale, but contained the following allegations as to the lien holders: "The defendants, John Anderson and others have lately filed in the Registry Office, in and for the County of Huron, statements of their respective claims of liens to which they claim to be entitled under the Mechanics' Lien Act, by virtue of doing work upon, and furnishing material in the erection of a certain house upon the said lands. The said mortgage to the plaintiff was executed and duly registered in the Registry Office in and for the County of Huron, before the commencement of the work done, or the placing of the materials aforesaid, upon the said lands, in respect whereof the defendants, John Anderson and others claim such liens as aforesaid."

MR. THOM (Taxing Officer) held, on revision of taxation of plaintiff's costs, that the lien holders should not have been made parties by bill, but should have been added as parties in Master's Office, after decree, by notice T.

This ruling was subsequently approved of by BLAKE, V.C., and PROUDFOOT, V.C.

LAW STUDENTS' DEPARTMENT.

LAW STUDENTS' DEPARTMENT.

We continue the publication of the Law Society's Examsnation Questions :—

SECOND INTERMEDIATE.

Leith's Blackstone, Greenwood on Conveyancing.

1. What portions of the English law are in force in this Province?
2. What is the comprehensive legal signification of the term *land*?
3. What is an advowson, and what are the various kinds?
4. State shortly some of the most notable features of the feudal system.
5. What do **you** understand by the expression in reference to estates in land that holders have not *allodium*?
6. What were the natures of the tenures in knight-service, fee socage and villien socage?
7. Give the rules of descent among collaterals as at common law.

Snell's Equity—Stat. Can., 29 Vict. cap. 28.

1. "*Equity imputes an intention to fulfil an obligation.*" Explain this maxim. What chief doctrines of equity find their places under this maxim?
2. Discuss the question, "What consideration is sufficient in equity to rebut a resulting use?"
3. In how far is the purchaser of the personality of a testator from the executor exonerated from misapplication of the proceeds by the executor?
4. Define reconversion.
5. In what respects does a mortgage of personality differ from a pledge?
6. Under what circumstances will Court of Equity decree specific performance of a partnership agreement?
7. Under what circumstances will Court of Chancery relieve against forfeiture for breach of a covenant in a lease to insure against fire? Give reasons for answer.

EXAMINATION FOR CALL.

Best on Evidence—Smith on Contracts—Blackstone, Vol. 1.

1. What are, according to Mr. Est, the chief abuses to be guarded against by the legislator in dealing with judicial evidence?
2. What is the rule at Common Law as to the admissibility in evidence of the husband

and wife of a party to a suit? How is this varied by statute? Explain fully.

3. Discuss the question whether counsel in a cause can be sworn as a witness (a) on behalf of his client, (b) on behalf of the other side.

4. Distinguish as to the effect of self-serving statements made (a) under a mistake of fact, (b) under a mistake of law. By whom may such statements be made?

5. Explain, after Mr. Smith, what is meant by the expression "Policy of the law" as used in connection with the question of validity of contracts.

6. If an agreement entered into between two persons is subsequently avoided on the ground of fraud how will this affect (a) the parties to the agreement, (b) third parties who have acquired rights under the agreement before its avoidance?

7. With what restrictions must the rule be taken that the principal may declare himself and take advantage of his agent's contract made without naming him?

8. A employs B to carry a bale of goods from Toronto to Oshawa, and on the way B sells them to C, who pays for them. Define shortly the rights and liabilities of the various parties.

9. What powers had the Crown apart from statute (1) as to forbidding a subject to leave the Kingdom, (2) as to compelling him to leave?

10. Define the power and jurisdiction of the Parliament of Great Britain according to Blackstone, mentioning any limitation to which it is subject.

Stephen on Pleading—Byles on Bills—Common Law pleading and practice—The statute law.

1. Explain the method by which issues in law are arrived at and tried in our Common Law Courts.

2. What is meant by a *judgment non obstante veredicto*? Under what circumstances may it be obtained? By what other name is it called, and why?

3. To a declaration on an indenture of covenant a plea of release is pleaded and to it a replication of duress. What facts are in issue and what stand confessed on such a record? Refer to any general rules given by Mr. Stephen which are called in requisition in arriving at your answer.

4. What is the rule as to pleading acts valid at Common Law, but regulated as to mode of performance by statute? Illustrate your answer by an example.

5. What is the effect of persons who fill official situations signing promissory notes

LAW STUDENTS' DEPARTMENT.

on which they describe themselves in their official capacity?

6. What are circular notes and letters of credit, and what liability is incurred by the issuer of the same?

7. What is the effect on a bill or note of part of the consideration being fraudulent or illegal? What would be the effect in case of a renewal of the note for the whole amount or in part? Explain fully.

8. A is holder of a dishonoured bill, and receives other bills for the sum due the old bill remaining in his hands: state fully the effect of this transaction.

9. Sketch shortly the practice with respect to references to Masters in Chancery from Common Law Courts, including the report and the methods of appeal from such report.

10. State accurately the changes that have been made by statute in the former right of the parties to a Common Law action to have all issues in fact tried by a jury.

Taylor's equity—Lewis' equity pleadings—Pleading and practice.

1. What was, in Equity, and what is now the law as to employing puffers at auction sales?

2. Will agreements among persons attending a sale not to bid against one another vitiate the sale? Answer fully.

3. Distinguish between the relationships of solicitor and client, and guardian and ward, as to the validity of dealings between the parties so related. State the position of the parties accurately.

4. State with particularity the steps necessary to bring on a case for re-hearing.

5. Give in detail the usual course of proceeding in mortgage cases (1) where there are subsequent encumbrances, (2) where there are none.

6. What is the present law as to the necessity of pleading equitable defences in an action at law? Give the effect of any recent statute upon the subject.

7. What special statutory mode is there for enforcing payment of money ordered to be paid to a plaintiff in an alimony suit?

8. An answer neither traverses nor confesses and avoids the plaintiff's bill. What course should the plaintiff adopt? Explain.

9. A wife joins with her husband in a mortgage upon certain real estate. Are you aware of any reason why it seems to be now proper to make the wife a party to a bill to foreclose the mortgage filed during the life of the husband?

10. In what form is a partial demurrer to a bill filed?

Dart on Vendors and Purchasers.

1. Three parties were seized of land which was acquired and held for partnership purposes. After the death of one partner it becomes necessary in winding up the estate to sell the land. Who are the necessary parties to the conveyance?

2. A mortgagee having sold the mortgaged land under a power of sale contained in the mortgage, has in his hands, after paying the mortgage debt, a certain surplus to which there are various and conflicting claims. What course would you advise him to pursue?

3. There may be contracts with reference to land upon which actions at law may be successfully maintained, but of which a court of equity will not decree specific performance. Give an example and explain the principle.

4. Under what circumstances can evidence be given of verbal declarations made at an auction sale which are inconsistent with the written conditions? Is there any distinction as to such admissibility between an action at law and a suit for specific performance? Answer fully.

5. What is the method suggested by Mr. Dart as the most convenient plan of perusing abstracts?

6. Will inadequacy of consideration in any case form a sufficient defence to a bill for specific performance? Explain.

7. What is the distinction between wills and conveyances *inter vivos* with regard to their impeachment upon the ground of undue influence?

8. What are the tests for determining whether precatory words do or do not create a trust?

9. What is nuncupative will? What, generally, were the provisions of the Statute of Frauds respecting them? What is now the law?

10. What circumstances were formerly and what are now (apart from cancellation) sufficient to revoke a will?

Professional Courtesy.

To the Editor of THE LAW JOURNAL.

SIR,—Does a student in doubt as to any question of law presume too far, or deserve to be treated with contumely, when he applies to a senior in years and experience for advice?

REVIEW—CORRESPONDENCE.

The enquiry is suggested by an incident which occurred in Osgoode Hall, at the Scholarship Examination, lately. A question arose and opinions differed. One of the students at the request of the others, approached a learned Q. C. hailing from the Ambitious City. He stated his question and how it arose. His Q.C.'ship answered, as an Irishman does, by a question, whether his enquirer came from the country, or had not learned better than to seek information for nothing, and then, did not stay for an answer. Do students deserve such treatment from those to whom they look for at least ordinary courtesy in such matters?

Yours &c.,

A STUDENT.

[We can hardly suppose that the Q. C. knew that the person seeking information was a student asking a *bona fide* question. If he was aware, however, of that fact, we can only in charity suppose that he did not feel competent to answer the question and had not moral courage to say so. There are a few Q. C.'s of that sort in Canada. Eds. L. J.]

REVIEW.

THE DOMINION ANNUAL REGISTER AND REVIEW. Montreal: Dawson Eros, 1879.

This is a new publication edited by Mr. Henry A. Morgan, assisted by the Hon. Wm. Macdougall, C.B., Alex. M. Burgess, Dr. Robt. Bell, John Maclean, and John A. Phillips. Its design is to give to the politician, the journalist, the man of business and the student of history, in an accessible, though necessarily in a condensed form, information of an accurate and reliable character, touching the present political and domestic concerns of the Dominion and its several provinces. The intention is to publish a similar Register annually.

The book, which does not pretend to give any information prior to 1867, appropriately commences with a list of the delegates from the various provinces which culminated in Confederation. This is followed by a short summary of the political events from the 1st July, 1867 to the end of 1877. This is by way

of introduction, for we now come to a review of the political history of the Dominion for the year 1878; and we assume that a similar yearly review will be the main feature of each succeeding volume.

The general reader will be interested by the "Journal of Remarkable occurrences for the year 1878;" and it may here be remarked that there are remarkably few remarkable occurrences in our quiet-going Dominion which strike one as worthy of record, except in a local and personal sense. There will always be in such a journal as this, questions as to whether the selection is always the best that could be made; but we venture to say that the task is one vastly easier to criticise freely than to do satisfactorily. We need only say that the editor has evidently sought to note the items which would be most interesting to the greatest number of readers.

The volume concludes with a sketch of the Vice-Regal reception in 1878, notes on scientific matters for the year, a business retrospect, public appointments, obituary, &c.

The surprise is, not that such a book as this is should be published, but that it was not published years ago. Mr. Morgan who has evidently taken up the subject with his usual industry and intelligence has conferred a favour on the public which doubtless will be fully appreciated.

CORRESPONDENCE.

Unlicensed Conveyancers.

To the Editor of THE LAW JOURNAL.

DEAR SIR,—I have a difficulty which I desire to bring before you and your readers for a solution. I presume it is useless for the profession to agitate for any restrictions upon the so-called "Conveyancers" that flourish in our land. Assuming this, the next question is whether lawyers are not as a rule too Quixotic in their treatment of this class. To explain my meaning more fully, I will in a few words describe the difficulty I have to meet with. I have been practising law for the last nine years in a country town. Besides myself there are

CORRESPONDENCE.

two other professional men, and three (at least) so called "conveyancers." Since coming here I have invariably charged three dollars for drawing an ordinary deed or mortgage. Not an outrageous charge you will admit. Our so called "conveyancers" charge \$1.50 for the same work. What is the consequence. The Registrar informs me that any one of these "conveyancers" draws in a year more conveyances than the three of us professional men put together. Now then, I think it is about time a stop was put to this. How? you will ask. My answer is, By doing the work for the same money. But some one replies. "By doing so, you lower the dignity of the profession." And here is where my difficulty arises. For nine years I have endeavoured to uphold the dignity of the profession at a great loss to myself, and the consequence has been that, instead of the profession being more dignified, it has suffered in reputation and dignity by its members being charged with a desire to collect more for their work than others are willing to do it for.

Of course we are well acquainted with the common charge made against these "Conveyancers" that their mistakes lead to a great deal of litigation. I very much doubt that the profession make more than they lose in this way. The special conveyancing in the country forms but a very slight proportion of the conveyancing done.

Now, sir, if you think this letter will do any good I would like you to publish it and if not I would like you to give me your views on the propriety of taking the bold step I have pointed out. By doing so you will much oblige,

Yours, &c.,

AN OLD SUBSCRIBER.

[This opens up a subject of a good deal of practical difficulty. It is one not felt to any appreciable degree in large cities. But the evil spoken of is well known in all country places. We feel some hesitation in expressing an opinion on the point. Men in other professions, physicians for example, have obtained from the Legislature a very stringent measure which practically gives a monopoly of all business in their line to re-

gistered practitioners. We see no difference in principle between their position and that of the legal fraternity. There is, however, a practical difference in this, that there is a large liberality of thought amongst the latter, and the reverse amongst the former. It would seem that Doctors, Registrars, Sheriffs and Official Assignees, can succeed in "lobbying" through the Legislature any measure which tends to their own advancement. Lawyers, however, devote their energies more to the interests of their clients than to their own and they do not seem to possess that cohesiveness which would be necessary to ensure success, were they to attempt similar legislation on their own behalf. This is a matter which in our opinion should engage the attention of the Attorney-General for Ontario, at the coming Session of the Local Legislature. There are lawyers enough in the House to carry some protective measure to the profession, even were it a less evidently just thing than in truth it is.

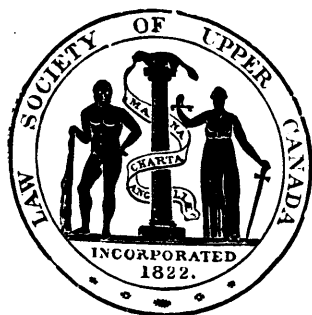
As to the propriety of taking the step suggested by our correspondent, we shall speak further hereafter. In the meantime, we shall be glad to hear the opinions of some of our subscribers, to whom the subject is one of considerable interest.]

ERRATUM.—An error crept into the letter from a correspondent signed "D. E. T." on the subject of composition and discharge published last month, the word "confirmation" being used instead of "consideration."

FLOTSAM AND JETSAM.

The following is a new way of answering an old question.

At an examination for admission to the bar, the question was asked. "What is the rule in Shelley's case?" One of the class answered: "The rule in Shelley's case is the same as in any other man's case. The law is no respecter of persons." We trust the possessor of the well-balanced mind that conceived this answer was promptly admitted.



Law Society of Upper Canada.

OSGOODE HALL,

TRINITY TERM, 43RD VICTORIAE.

During this Term, the following gentlemen were called to the Bar:—

- HENRY THEOPHILUS WARING ELLIS.
- PETER L. PALMER.
- GEORGE TATE BLACKSTOCK.
- ALEXANDER JACKSON.
- JAMES ALEXANDER WILLIAMSON.
- GEORGE R. WEBSTER.
- DUNCAN ARTHUR MCINTYRE.
- THOMAS W. CROTHERS.
- CHARLES W. MORTIMER.
- FRANK EGERTON HODGINS.
- JAMES MORRISON GLENN.
- CHARLES WESLEY COLTER.
- GEORGE CLAXTON.
- HUBERT L. EBBELS.
- ANGUS JOHN MCCOLL.

The names are given in the order in which they appear on the Roll, and not in the order of merit.

The following gentlemen were admitted as Students and Clerks.

Graduates.

- JOHN YOUNG CRUICKSHANK.
- THOMAS ARTHUR ELLIOTT,
- JOHN CAMPBELL FERRIE BROWN.
- RICHARD SCOUGALL CASSELS.
- JOHN WALTER DELANEY.
- FREDERICK WILLIAM APLIN G. HAULTAIN.
- CHARLES COURSOLES McCAUL.
- JOHN D. CAMERON.
- THOMAS P. CORCORAN.
- JOHN CARRUTHERS.
- JAMES CHISHOLM.
- GHEAT DAVIS.
- JOSEPH ALEXANDER CULHAM.

Matriculants of Universities.

- JOHN FRANKLIN PALMER.
- JAMES DUNCAN S. C. ROBERTSON.
- WILLIAM STREET SERVOS.

Graduate.

- HENRY JAMES CAMPBELL.

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

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

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

Articled Clerks.

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

Students-at-Law.

CLASSICS.

- 1879 { Xenophon, Anabasis, B. II.
Homer, Iliad, B. VI.
- 1879 { Cæsar, Bellum Britannicum.
Cicero, Pro Archia.
Virgil, Eclog., I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.
- 1880 { Xenophon, Anabasis, B. II.
Homer, Iliad, B. IV.
- 1880 { Cicero, in Catilinam, II., III., and IV.
Virgil, Eclog., I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.
- 1881 { Xenophon, Anabasis, B. V.
Homer, Iliad, B. IV.
- 1881 { Cicero, in Catilinam, II., III., and IV.
Ovid, Fasti, B. I., vv. 1-300.
Virgil, Æneid, B. I., vv. 1-304.

Translation from English into Latin Prose.

Paper on Latin Grammar, on which special stress will be laid.

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.
Composition.

Critical analysis of a selected poem :—

1879.—Paradise Lost, Bb. I. and II.

1880.—Elegy in a Country Churchyard and
The Traveller.

1881.—Lady of the Lake, with special refer-
ence to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek.

FRENCH.

A Paper on Grammar.

Translation from English into French Prose—

1878 }
and } Souvestre, Un philosophe sous les toits.
1880 }

1879 }
and } Emile de Bonnechose, Lazare Hoche.
1881 }

or GERMAN.

A Paper on Grammar.

Musaeus, Stumme Liebe.

1878 }
and } Schiller, Die Bürgschaft, der Taucher.
1880 }

1879 }
and } Schiller { Der Gang nach dem Eisen-
1881 } { hammer.
{ Die Kraniche des Ibycus.

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

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination, to be passed in the third year before the Final Examination, shall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C.S.U.C. c. 12), C. S. U. C. caps. 42 and 44, and Amending Acts.

The Subjects and Books for the Second Intermediate Examination to be passed in the second year before the Final Examination, shall be as follows:—Real Property, Leith's Blackstone, Greenwood' on the Practice of Conveyancing

(chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law, C. S. U. C. c. 88, and Ontario Act 38 Vic. c. 16, Statutes of Canada, 29 Vic. c. 28, Administration of Justice Acts 1873 and 1874.

FINAL EXAMINATIONS.

FOR CALL.

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

FOR CALL, WITH HONOURS.

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

FOR CERTIFICATE OF FITNESS.

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

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

SCHOLARSHIPS.

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

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

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

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

The Law Society Matriculation Examinations for the admission of students-at-law in the Junior Class and articulated clerks will be held in January and November of each year *only*.