The Legal News.

VOL. I. FEBRUARY 16, 1878. No. 7.

DISSENTIENT OPINIONS.

The view is strongly expressed by a Toronto contemporary that the opinions of Judges of the Supreme Court who differ from the majority should not be reported, should not even be stated in court,—nay more, that the very names of the dissentient Judges should be suppressed. The advantages of unanimity are manifold, and the profession are in a position to appreciate them at their just worth. But we must take care that unanimity, or rather the semblance of unanimity, is not purchased at too high a rate. We shall quote part of the article to show the reasoning by which the proposition is supported:

"It is evident that one good end which would result from the suppression of dissentient opinions would be the reduction in bulk to that extent of the yearly volumes of the Reports. A very much overruled judge might then imitate the example of the Pennsylvania justice, who published at his own charges, in a volume by themselves, his own dissenting judgments, and so sought redress at the hands of posterity. It is further evident that if the reporters do their duty, and give a proper synopsis of the arguments of the opposing counsel, it is unnecessary to set forth the grounds of dissent on the part of any of the judges. Any attentive student of the case will see where doubts may arise. But when a judge has fully combatted his brethren in the conference room, and been voted down, it is better that his reasons for withholding assent should not be reported, so as to cast disrespect on the considered judgment of Courts of last resort. We think we speak advisedly when we say that the little weight possessed by decisions of Lower Canada Courts is partly owing to the diverse views entertained and expressed by the different judges who take part in the disposition of the case. Much better to suppress the disagreement and not to give prominence to it by publishing *in extenso* all that can be said against the opinion of the majority. As in family matters, if there be disturbances, better not aggravate the trouble by taking the public into your confidence. When Mr. Justice Maule, according to the well-known story, gave judgment, after Judge A. and Judge B. had just delivered conflicting opinions, by saying that he agreed with his brother B., for the reasons given by his brother A., he never intended that the views of the Court should be published for the benefit of the profession, or the confusion of suitors.

"The object of all decisions is to settle the law—to determine the just rule fitted to the existing state of things, and it is most important that the conclusion should be reached with such precision and unanimity, as not to provoke litigation. In the Court of final appeal for this Dominion, we think that the ancient customs of the Privy Council, and the well-considered practice of the Supreme Court of the United States, may well be recognised and adopted. The opinion of the Court should be composed and delivered by one member, and no dissenting judgment should be pronounced or reported."

The gratuitous sneer at the decisions of "Lower Canada" Courts may pass. A Bench which has been adorned by men like Sir James Stuart, Sir Louis Lafontaine, Sir A. A. Dorion, Aylwin, Badgley, Meredith, and others still holding office, needs no apologist. The opinions of the Quebec Bench have invariably been treated with respect by their Lordships of the Judicial Committee of the Privy Council, and in very few of the 2,113 cases heard and decided on the merits by the highest Provincial Court during the last sixteen years, have the judgments been set aside on appeal to England, as the reports of the Privy Council show. If the judgments of Quebec Courts are not appreciated or cited at Toronto, the reasons are probably the same as account for the fact that, while the decisions of English and United States Courts are constantly referred to at Montreal or Quebec, it has been a rare event to hear a reference to the opinion of an Ontario Judge in the latter cities.

But the question of present moment is this: Ought the opinions and the names of dissentient Judges to be withheld? The example of the Judicial Committee is referred to by our contemporary, as one to be imitated. It is true that the opinions of the minority of the Judicial Committee are withheld. But there is a special reason for this. The decision of the Judicial Committee is in the form of a recommendation to Her Majesty by certain members of Her Privy Council, and falls within the same rule and etiquette as other business before the Privy Council. Now that the work of the Judicial Committee is performed by paid judges, and the Committee has become very much like other Courts of Appeal, there is an element of fiction in the form, still retained, of presenting the decision as a recommendation to Her Majesty, and it may possibly in time be abandoned. At all events, there is good reason to believe that the suppression of dissentient opinions has proved highly inconvenient in several cases, and probably accounts for the

unsatisfactory nature of some of the judgments of this tribunal, in passing over important issues on which both parties desired an opinion, the generally accepted explanation being that it was impossible to reconcile the views of the Committee on such points.

Then, again, the practice of the Supreme Court of the United States is referred to, where the names of the dissentients are mentioned and no more. If the fact of a dissent is expressed at all, we think it follows that the grounds should be briefly stated, for the dissent might apply to only a small part of the case, and the announcement of a dissent generally would mislead. The point to which the dissent refers should at least be given, and we have already intimated our opinion (*ante*, p. 2) that very little more is desirable in any Court whatever.

It is said, "if reporters do their duty, "and give a proper synopsis of the argu- "ments of the opposing counsel, it is un- "necessary to set forth the grounds of dis- "sent on the part of any of the judges." This argument will not bear scrutiny. The dissent may be based on any one of half a dozen points raised at the bar,—indeed we have sometimes heard it confined to a point entirely novel. Why should the reader of the report be left to so doubtful a source of information? Would not the argument of counsel on the other side be equally explicit as to the views of the majority?

The main objections to the suppression of the dissent seem to us to be these: Such an ostrich-like proceeding would be a deception in itself, it would be an injustice to the Judges who are unable to concur in the decision of the majority, and it would tend to retard and affect injuriously the growth of the science of jurisprudence, and its progress towards perfection. The reasons which appear to us to sustain this view may be more conveniently stated in our next issue.

The advocates of woman's rights are not idle. A bill has been introduced in the U. S. House of Representatives, providing that women should be admitted to practise in all the Federal Courts; and by a bill before the N. Y. Assembly, it is proposed to enable married women to contract in the same manner as if single.

REPORTS AND NOTES OF CASES.

SUPERIOR COURT.

Montreal, December 29, 1877.

JOHNSON, J.

THE WINDSOR HOTEL CO. v. MURPHY.

Corporation—Alleged Forfeiture of Charter.

JOHNSON, J. The plaintiff is a corporation by statute of the Province of Quebec, and sues the defendant to recover $400, being the sixth, seventh, eighth and ninth calls upon the stock he had taken in the concern, on which the first five calls have already been paid. The defendant pleaded first by exception to the form, that he was not a shareholder in the corporation as described; that he had taken stock in a company with the same name which, however, had forfeited its charter and had ceased to exist, the preliminary conditions of the act of incorporation not having been duly observed or complied with. The specific grounds upon which this pretension is set up by the defendant are that the company has not opened and kept the necessary books containing the names and addresses of the directors, and the dates at which they became, or ceased to be, so; that some of the directors have not paid their calls; and that the $400,000 mentioned in the 5th section of the act of incorporation, and the $40,000 of it that ought to have been actually deposited in some chartered bank had neither been subscribed, nor deposited. The defendant also set up that before the necessary number and amount of shares had been subscribed, and the required amount paid in, directors were elected in violation of the act; and that the meeting of shareholders for the election of directors, being called by the provisional direction, was illegal, and the subsequent acts of the directors were void. There was an amendment made to the declaration after the production of this *exception à la forme*, and it was made for the purpose of setting up the right of the plaintiff to recover under the provisions of the "Joint Stock Companies' General Clauses Act." The plaintiff contended at the hearing that the exception as to form having been taken before the amendment, did not apply to the declaration as now amended; but that, I think, is a mistake, as the exception attacks what still remains independently of the amendment; but really it is

not a matter of substantial importance, as the subsequent pleas raise precisely the same points. It struck me, when the case came on, that the pretensions of the defendant were quite untenable, and I only allowed evidence of the facts under reserve of the point of the law, whether all that was set up constituted a defence to the action; and a certain proof was made by parole testimony which, even admitting it to the fullest extent, does not by any means prove the facts alleged; but on the contrary fairly disproves them. I do not therefore think it necessary now to go elaborately into the question on which my opinion has not changed since the argument. It must be observed that the defendant's pleas asked for the dismissal of the action on the ground that the company or corporation in question was extinct, and its charter and powers forfeited. The *exception à la forme* was not then before me; the inscription did not reach it; therefore I said then, as I say now, that I have no power, sitting here, to say that a public statute incorporating the plaintiff is to have no effect; and some act of forfeiture ought to be proved under the special laws relating to this subject. I said further that in a suit by a corporation against one of its shareholders for calls due on his stock, it is no answer on his part to say that the corporation is non-existent, if no such proceedings have been taken. It exists in relation to all its members until it has been dissolved by judgment of a competent court. I asked for authority, and was told I should be furnished with authorities against my opinion; but not only are none forthcoming, but, as the defendant's counsel must know, there is an accumulation of direct decisions against him. I have had a list of them before me, and have referred to them to satisfy myself that I was right; and while I was occupied on the subject, I found a case directly in point decided in our own courts. It is a case of *The Connecticut and Passumpsic Rivers Railroad Co.* v. *Comstock*, in which many points were settled, and among them, this one in particular. It was decided by Judges Caron, Drummond, Badgley, and Monk. A case was referred to by the defendant's counsel—a case of *The Union Navigation Company* v. *Couillard* (21 L. C. J. 70); but there, it was only held that a subscriber to a company to be incorporated by letters patent; but who never subscribed nor paid calls after incorporation, is not liable for calls. There is an obvious and essential difference between the two cases. That was an incorporation under the Joint Stock Companies' Incorporation Act (31 Vic. c. 25). The subscriber was misled, and induced to subscribe for stock upon false representations, and the prevailing motive and consideration of the subscription proved unfounded. Here there is nothing of that kind. The 5th section, which is relied on by the defendant, did not operate as a forfeiture, if its provisions were not fulfilled; it only operated as invalidating the proceedings, such as meetings, &c., which should take place contrary to the directions of that section. Therefore, it seemed important that the *exception à la forme* should be properly before the Court, for though the defendant could not ask that the action should be forever dismissed under a forfeiture of the charter that had never been adjudged upon, I would not be prepared to say that he could not ask that the demand *quant à présent* should be stayed, if the proceedings under which these calls have been made were irregular. On that, however, I do not now pronounce; 1st. Because I hold the proof is insufficient; and 2ndly. The preliminary plea only asks for the dismissal of the action for the present, on the ground of an extinction and forfeiture of the charter, which, if true, would deprive the plaintiff of any right of action whatever; and, therefore, it is not properly the subject of a preliminary plea, but is a plea *au fond*. Again, this defendant has paid five calls already, which constitutes an acquiescence as to their being due (for the only ground on which payment was objected to was that these alleged irregularities of the proceedings had extinguished the charter, which is not the case.) The nineteenth section of the joint stock companies' general clauses act, which by one of its provisions is made part of every such charter as this, provides that the certificate of the officer (which is produced) shall be sufficient to entitle the plaintiff to judgment. Judgment, therefore, goes for plaintiff for the amount demanded. There being no motion to reject the evidence, I take it as evidence by consent.

Judgment for plaintiff.

Abbott & Co., for plaintiff.

Loutre & Co., for defendant.

BANK OF MONTREAL v. THOMSON.

Corporation, Endorsement of Note by.

JOHNSON, J. This is an action by the holder against the maker of a promissory note, and the plea is that the endorsement by the Windsor Hotel Company, who were the payees, was ineffectual on the same grounds that have just been discussed in the case against Murphy for calls. The power to endorse notes is given by section 31 of the joint stock companies' general clauses act, and has been exercised as there prescribed. The validity of the exercise by the Windsor Hotel Company of this power to endorse is attacked on the same grounds as the validity of the calls was questioned in the other case, by alleging the forfeiture of the charter, only here it is done by exception *au fond* instead of to the form; and on the grounds that have just been explained there the pleas are dismissed and judgment is given for plaintiffs.

Judgment for plaintiffs.

Dunlop & Lyman, for plaintiffs.

Doutre & Co., for defendant.

FARRELL v. RITCHIE et al.

Broker—Purchase of Shares—Delivery.

JOHNSON, J. The plaintiff brings his action against the defendants—a firm of brokers—to recover $112.50 and interest and costs. He employed them to purchase for him fifty shares of the stock of the Royal Canadian Insurance Company, and they sent him, on the 12th of February, the broker's note for the price, $100, and the brokerage, $12.50 more, and a memorandum at the foot: "Terms, cash; 13th inst." The plaintiff paid them the whole amount on the 13th February; but they did not transfer the stock to him; and on the 22nd of March they were written to by the plaintiff's attorneys to pay back the money in default of the transfer; and again, on the 4th of May, to the same effect. Their plea to the action is that there was a call of five per cent. on the stock made on the 12th, and notified on the 13th, and payable on the 15th May; and all transfers were subject to this call, and could not be made without payment; of all which they notified the plaintiff, and he requested them to carry it for him till the 15th of May, which, however, they refused to do, and repeatedly asked him to pay the call. On the 16th of May, finding that the stock was getting lower in the market, they notified him to pay up at once, or they would sell at his cost and charges, and hold him liable for all loss. That in consequence they sold the stock at a loss; and reserving their right to recover this loss, they ask for the dismissal of the action. There is a letter from Farrell to the defendants of the 20th of March, which, I think, seriously affects the case. I had, in fact, expressed my opinion to that effect when I was induced to take the case back on the representation that there was no proof of the letter. It is now proved, however, and I must look at the transaction by the light thrown on it by that letter. It is as follows:—

"MY DEAR RITCHIE—I paid $112.50 on 50 shares of Royal Canadian Insurance Co., and which we afterwards found could not be transferred until 15th May. Please apply this amount on the 25 shares Richelieu and Ontario, as it is not necessary to pay for Royal Canadian until transferred. Please let me know if this is satisfactory. I will hand you the receipt of above amount on Royal Canadian Insurance Co. when I see you.

"Yours, &c.,

"P. FARRELL."

The plaintiff in this letter plainly says that he knows the stock can't be transferred till he pays the call; that is the evident meaning of it. He asks for his money back because the defendants have made default to deliver the stock; but that is unfounded in point of fact. There is no default of the defendants. They have done all they were employed to do. He can only ask for the money, because he did not get the stock. He can't have both. The defendants were employed as brokers; they were bound to deliver in the ordinary course by transfer, but they were not bound to any more onerous terms of delivery than usual, and payment of the call of 5 per cent formed no part of their contract.

Action dismissed.

Bethune & Bethune, for plaintiff.

Ritchie & Berlase, for defendants.

ROSS et al. v. MCGILLIVRAY.

Procedure—Depositions taken in short hand without consent—Acquiescence.

JOHNSON, J., in the course of his judgment in this case (a contested action for goods sold, involving a simple question of fact), remarked:—The evidence has been taken perhaps in an irregular manner. There are no depositions

signed by the witnesses; but only notes of a short hand writer without any written consent: both parties, however, have participated in this mode of proceeding, and are bound by it.

Abbott & Co., for plaintiffs.

Laflamme & Co., for defendant.

SUPERIOR COURT IN REVIEW.

Montreal, Jan. 31, 1878.

MACKAY, TORRANCE, DORION, JJ.

In re TURGEON, Insolvent, and COUPAL, Intvg.

[From S. C. St. Francis.

Insolvent Act — Fraudulent issue of Attachment.

MACKAY, J. Jacques Turgeon made affidavit under the Insolvent Act of 1875, against his son Pierre, and an attachment issued. Coupal, a creditor of Pierre, intervened, and alleging that Pierre never was a trader, and that there was fraudulent concert between father and son, petitioned to quash the attachment. Subsequently, by an intervention, he asked the same thing for the same reasons. The intervention was contested by Jacques Turgeon, but the judgment *à quo* maintained the intervention, and declared that plaintiff had no right to sue out the attachment. This judgment must be confirmed. All that I see of the transactions between father and son were in fraud of the intervenant, and the insolvency proceedings were meant to work fraud against him and to hinder him.

Judgment confirmed.

L. C. Belanger, for intervenant.

Brooks & Co., for contestant.

MACKAY, DUNKIN, RAINVILLE, JJ.

FAIR v. BALDWIN.

[From S. C. St. Francis.

Insolvent Act—Fraudulent Secretion.

MACKAY, J. This is an appeal from the district of St. Francis. Fair is the assignee of Lathrop & Hazeltine, insolvents. In October, 1875, the firm conceived the idea of spoiling their creditors (other than their relatives); so they made away with almost all they had of value—store buildings to one relative, the stock in store to another, a valuable mortgage to defendant, uncle of Lathrop's wife. When almost naked they called a meeting of creditors, at which what little remained was put into a trusteeship for the creditors, the trustee being defendant's son. The judgment is evidently right. The transfer to defendant was one of a lot of fraudulent transfers and secretions of property to cheat creditors perpetrated in the most hardy manner by the firm of Lathrop & Hazeltine, and all who took those transfers had presumably knowledge that the firm was insolvent.

Judgment confirmed.

Ives & Brown, for plaintiff.

Doak & Co., for defendant.

MACKAY, TORRANCE, DORION, JJ.

MACMASTER *et al.* v. ROBERTSON.

[From S. C. Montreal.

Insolvent Act—Art. 825 C. C. P. not repealed thereby.

MACKAY, J. The defendant, who was capiassed, is now moving under Art. 825 C. C. P., furnishing sureties before the Prothonotary. Under that article he has offered bail before the Prothonotary, but the latter seems to have halted. It is opposed by plaintiffs that under sect. 127, Insolvent Act of 1875, 825 C. C. P. is repealed. We hold the contrary. The defendant has two remedies, and may pursue the one of the Code. The judgment so holding we confirm.

DORION, J. There is another reason. This is not a final judgment susceptible of revision. It is on a simple petition.

Judgment confirmed.

Davidson & Co., for plaintiffs.

L. N. Benjamin, for defendant.

MACKAY, DUNKIN, RAINVILLE, JJ.

MARTIN v. MUNICIPALITY OF TOWNSHIP OF ASCOT.

[From C. C. St. Francis.

Negligence, Contributory—Drunkenness.

MACKAY, J. The defendants have been condemned in $200 damages suffered by plaintiff through alleged defect in a road. The declaration says that defendants were negligent in keeping up the road; that on the day of the accident plaintiff was driving a team and pedler's sleigh, and the sleigh was upset, and plaintiff's rib broken, causing him to be laid up six weeks in bed. The plea, denying these

allegations, says that the road was kept in as good a state as possible, that the overseer had shovelled there that day, and that the plaintiff was drunk. The evidence established that plaintiff was addicted to drink, and was drunk at the time of the accident. Had he been sober the accident would not have occurred. The plaintiff in his factum does not grapple with the defendants' plea of contributory negligence. The judgment complained of is reversed, and the action dismissed.

Judgment reversed.

Ives & Brown, for plaintiff.
Brooks & Co., for defendants.

MACKAY, DUNKIN, RAINVILLE, JJ.

MONGEAU et vir v. LAROCQUE, and GIGAULT, Petitioner.

[From S. C. St. Hyacinthe.

Insolvent Act—Assignment by Non Trader—Assignee's claim to monies rejected.

MACKAY, J. On the 11th Feb., 1875, defendant Larocque made a cession under the Insolvent Act to Gigault. At the first meeting of creditors called nobody appeared, so Gigault became assignee. It is not surprising that no creditors appeared, for Larocque was not a trader and the assignment was undoubtedly a fraud. Larocque before that had been condemned in a suit by plaintiff against him and his lands were under seizure by the Sheriff. The Sheriff's sale took place in June, 1875, and on the 28th August the Sheriff returned the writ and reported the sale. In September, 1875, several oppositions *à fin de conserver* were filed. Only on the 9th November did Gigault petition the Superior Court at St. Hyacinthe, asking for the money levied, that he as assignee might distribute it. On the 1st Feb., 1876, plaintiff presented a counter petition, alleging that Larocque never was a trader, and that the proceedings in insolvency were a fraud. Gigault answered by a general denial and insisting that the sheriff should pay him over the money. Judgment has gone against Gigault, and with reason we think. Nobody is hurt by it. Larocque is insolvent, and all he had is before the Court, and creditors more than enough to consume it all. Gigault, who might have moved in July, August, September or October, kept inactive and did nothing, and allowed things to take their present shape, and for this reason, in addition to others, we hold that the judgment complained of ought to be confirmed. Gigault's claim is unreasonable. He seems to represent nobody but Larocque, and all Gigault's creditors are content. Upon a mere technicality Gigault would have all the proceedings going on before the Superior Court transferred to his office, and would draw all the parties now before the Superior Court before him, delaying affairs, and all to the end that he might pocket a small amount of commission.

Judgment confirmed.

Bourgeois & Co., for plaintiffs.
Sicotte & Co., for petitioner.

MACKAY, DUNKIN, RAINVILLE, JJ.

ALCOCK v. HOWIE.

[From C. C. Iberville.

Suit upon Ontario Judgment where service was personal.

MACKAY, J. The action was brought on a judgment in Ontario. Plea, that the judgment is a nullity; because the defendant never was summoned in Ontario. But what of that, seeing C. S. L. C. cap. 90, sec. 2? The defendant was personally served in his domicile, and ought to have contested as he pleased in Ontario. The judgment dismissing the action ought to be reversed. As to place of contract, or place at which debt was contracted, there is not certainty; the exemplification does not state places as well as it might have done. But under sec. 2, ch. 90, C. S. L. C., the defendant ought to have pleaded preliminarily, or as he pleased, in Ontario.

Judgment reversed.

J. J. McLaren for plaintiff.
Chartrand & Paradis and *Lacoste & Co.* for defendant.

Note.—In *Baylis* v. *City of Montreal* (*ante* p. 62), the grounds assigned in the judgment for the dismissal of the action are as follows:—"Considering that to recover the money he seeks by his declaration, plaintiff had burden to prove that it never was due by him, and to do this had to prove that the roll called 'a pretended assessment roll, distributing, &c.,' was irregular, illegal, or null and void; that the

plaintiff's declaration, though so charging nullity of the roll referred to, does not go into any particulars, or specification of how, or why, the roll is irregular, illegal, or null and void; that in the absence of the roll it cannot be determined what illegalities, irregularities or nullities affect it, and that plaintiff had burden to prove them, as so much condition precedent to getting a judgment against defendants in an action like the present one *en répétition de l'indu*; that plaintiff has not made such proofs, and therefore *non constat* that the money claimed by him is legally due to him, or that there was not cause lawful for the payment by plaintiff to defendants, doth dismiss the plaintiff's action."

CURRENT EVENTS

CANADA.

SPEECH FROM THE THRONE.—On Friday, Feb. 3, the Fifth Session of the Third Parliament of the Dominion of Canada was opened by Lord Dufferin, with the following Speech from the Throne:—

Honorable Gentlemen of the Senate,

Gentlemen of the House of Commons:

In again summoning you for the despatch of business, I am glad to be able to say that nothing beyond the ordinary business of the country requires your attendance.

It afforded me great pleasure to have had an opportunity before my departure from Canada of visiting the Province of Manitoba and a portion of the outside Territories, which visit I accomplished during last Autumn. I have now had the advantage of visiting every Province in the Dominion during the term of my government in Canada.

I am happy to be able to say that the arbitration on the Fishery claims, under the terms of the Washington Treaty, has been concluded. An award has been made by the Commission of $5,500,000 as compensation to Canada and Newfoundland for the use of their fisheries during the term of the present treaty. This amount is much less than that claimed by my Government, but having assented to the creation of the tribunal for the determination of their value, we are bound loyally to assent to the decision given.

The exhibition of Canadian manufactures and products at Sydney, New South Wales, was successfully carried out. I trust that the result will be the opening up of a new market for Canadian goods even in so remote a region as the Australasian colonies, shipments of Canadian productions having already been made. The expenditure will slightly exceed the estimate, but I doubt not the cost to Canada will be amply repaid by the extension of her trade.

Preparations have been uninterruptedly carried on, during the last six months, for securing an ample but select exhibition of Canada's products and manufactures at the great exhibition to be held at Paris during the current year. A further estimate will be required to meet the expenditure. His Royal Highness the Prince of Wales, as chairman of the British Commissioners, has assigned a most prominent place to Canada in one of the main Towers, where a Canadian Trophy is now being erected.

A very disastrous fire occurred in June last in the city of St. John, which caused the destruction of a large portion of the city, including all the public buildings owned by the Dominion Government. My Government deemed it necessary to contribute $20,000 to assist in relieving the immediate wants of the people who were rendered destitute by so appalling a calamity. I also sanctioned the appropriation of some public money, with which to commence the erection of new buildings for the public business, which acts you will be asked to confirm in the usual way.

During last summer my Commissioners made another Treaty with the Blackfeet, Blood and Piegan Indians, by which the Indian title is extinguished over a territory of 51,000 square miles west of Treaty No. 4, and south of Treaty No. 6. The Treaty has been made on terms nearly the same as those under Treaty No. 6, though somewhat less onerous. The entire territory west of Lake Superior to the Rocky Mountains, and from the boundary nearly to the 55th degree of North latitude, embracing about 450,000 square miles, has now been acquired by peaceful negotiation with the native tribes, who place implicit faith in the honour and justice of the British Crown.

Early in the past summer a large body of Indians, under Sitting Bull, from the United States, crossed into British territory, to escape

from the United States troops, and have since remained on the Canadian side.

The United States Government made a friendly but unsuccessful attempt to induce these Indians to return to their reservations. It is to be hoped that such arrangements may yet be made as may lead to their permanent and peaceful settlement, and thus relieve Canada of a source of uneasiness and a heavy expenditure.

The surveys of the Pacific Railway have been pressed to completion during the past season. A complete instrumental survey of the route, by the valleys of the North Thompson and Lower Fraser Rivers, has been made with a view to ascertain definitely, whether that route presents more favourable features than the routes already surveyed to Dean Inlet and Bute Inlet, respectively. It is believed that the additional information now obtained will enable my Government to determine which route is the most advantageous from Tête Jaune Cache to the sea. Full information will be laid before you at an early day, of the season's work in this and other directions.

I am happy to be able to congratulate you on the abundant harvest reaped in all quarters of the Dominion; and I rejoice that under this and other influences there has been some improvement in the Revenue returns, thus indicating, I trust, that the commercial depression that has so long afflicted Canada, in common with other countries, is passing away.

My attention has been called to some imperfections in the existing system of auditing the Public Accounts, and a measure providing for their more thorough and effective supervision will be submitted for your consideration.

The prospect of obtaining, at an early day, greater facilities for reaching the North Western Territories and the Province of Manitoba, is sure to attract a larger number of settlers every year, and, as much of the prosperity of the Dominion depends on the rapid settlement of the fertile lands in those Territories, it is desirable and necessary to facilitate such settlement as much as possible. In order to effect this, measures will be submitted for your consideration concerning the registration of titles, the enactment of a Homestead Law, and the promotion of Railway enterprise in districts not touched by the Canada Pacific Railway.

Your attention will be called to a measure for better securing the independence of Parliament.

Experience has shown that certain changes may advantageously be made in the departmental arrangements existing at present. A bill will be submitted to you for accomplishing this purpose without increasing the expenditure, or the number of Departments.

It is very desirable that there should be uniform legislation in all the provinces respecting the traffic in spirituous liquors. Hitherto that trade has been regulated by Provincial laws, or laws existing before the Confederation of the Provinces, although there has been lately a conflict of authority as to the jurisdiction of the local authorities. A bill making the necessary provision will be submitted for your consideration.

Various measures found necessary for the amendment of existing laws will also be submitted for your approval.

Gentlemen of the House of Commons:

The Estimates for the ensuing year will be laid before you at an early day. They have been prepared with an anxious desire to provide for all the branches of the public service and the execution of pressing public works within the limits of the expected revenue, without increasing the burden of taxation.

I have directed that the Public Accounts of the past financial year shall be laid before you.

ENGLAND.

THE NEW MASTER OF TRINITY.—The London *Law Journal* speaks in warm terms of the election of Sir Henry Maine to the office of Master of Trinity Hall, Cambridge. It says: "In the present day, the career in the world of great mathematicians and classical scholars does not, as a rule, correspond with the expectations formed in the Senate House or the Sheldonian Theatre. The 'Honour men' do not shine as brightly as they ought to do in the real battle of life. But Sir Henry Maine affords a remarkable instance of persistent success. As an under graduate he won the Craven Scholarship, and he graduated as Senior Classic and Chancellor's Medallist. He was Regius Professor of Law at Cambridge for some years, and after that he was Reader in Jurisprudence and Civil Law at the Middle Temple; while he

won acquaintance with the practical part of a lawyer's learning as an equity draughtsman and conveyancer, and even as a revising barrister. For seven years he served on the Council of the Governor-General of India, and for seven years he has sat on the council board at the India Office. He has also held the appointment of Corpus Professor of Jurisprudence at Oxford, with a fellowship at Corpus College. His works on 'Ancient Law' and 'Village Communities' are perhaps the most notable, and certainly the most readable of modern law books. The degree of Doctor of Laws, and the dignity of a Knight Commander of the Order of the Star of India, are rightly borne by this distinguished man. Trinity Hall has for many years maintained its reputation as the cradle of lawyers, and under Sir Henry Maine it ought to flourish with renewed vigour. His appointment reflects the highest credit on the Fellows of the College, and we doubt not that results will justify their selection."

REMINISCENCES OF THE ENGLISH BAR.

The memoirs and letters of the late Senator Sumner, which have recently been published, contain an unexpected fund of information concerning many distinguished members of the bench and bar whom the deceased statesman had the fortune to meet during his visit to England in early life. We avail ourselves of the following notice from the *Albany Law Journal*:—

The affection and favor which young Sumner met from the English bar and bench were quite remarkable. Judges made him sit at their side on the bench,—a distinction which he was loth to accept, deeming that 'the Queen's counsel row is surely enough.' He usually sat in the Common Pleas with Talfourd and Wilde, or in the Queen's Bench with Pollock and the Attorney-General. He writes: 'I will not quit the Bench and Bar without speaking of the superior cordiality, friendliness and good manners that prevail with them in England as compared with ours. They seem indeed a band of brothers. They are enabled to meet each other on a footing of familiarity, because all are gentlemen. This division of labor sets apart a select number, who have the recommendations, generally, of fortune or family, and invariably of education, and who confine themselves to the duties of a barrister. In social intercourse the judges always address each other by their surnames, without any prefix; and they address the barristers in the same way; and the barristers address each other in this style. Thus, the young men just commencing their circuits addressed Taunton, the old Reporter, who was on his seventy-fifth circuit, simply as Taunton. I believe I have already written you that I was received as a brother, and was treated with the same familiarity as the other barristers.'

Of Talfourd, the author of "Ion," we get some interesting views. We see him stopping at the Garrick Club (of which Sumner was made an honorary member), to get his 'negus' on his way to Westminster Hall in the morning, and his midnight potation with a grilled bone and Welsh rare-bit, on returning from Parliament. Sumner calls him a 'night bird.' Of a dinner at Sir William Follett's he writes: 'Talfourd outdid himself; indeed, I have never seen him in such force. He and Pollock discussed the comparative merits of Demosthenes and Cicero; and Talfourd, with the earnestness which belongs to him, repeated one of Cicero's glorious perorations. Pollock gave a long extract from Homer; and the author of 'Ion,' with the frenzy of a poet, rolled out a whole strophe of one of the Greek dramatists.' When Sumner spoke to Talfourd of Mr. Montague as a person whom he liked, Talfourd replied: 'He is a humbug; he drinks no wine.' Whereupon the correct young Charles remarks, 'Commend me to such humbugs!' As an advocate, Sumner says of him, 'He is a good declaimer, with a good deal of rhetoric and feeling. I cannot disguise that I have been disappointed in him.'

Pollock 'is deemed a great failure' in the House of Commons, although he was leader of the Northern Circuit. 'He has a smooth, solemn voice,' but 'is dull, heavy, and they say often obtuse at the bar.' At dinner on one occasion Sumner sat between Follett and Pollock. 'To the first I talked about law, and his cases; to the latter about Horace, and Juvenal, and Persius, and the beauty of the English language.' Sumner gives us no account of Pollock's personal appearance, but the author of 'The Bar' has a few lines on it:

"Pale Pollock, who consumes the 'midnight oil,'
And plies his task with unremitting toil,
Till, as the life-drops from his cheeks retreat,
He looks as though he had forgot—to eat."

Follett, Sumner says, is 'a consummate lawyer,' 'the best of all,' 'a delightful man, simple, amiable, and unaffected as a child.' 'He has extended the hand of friendship to me in a most generous way. His reputation in the profession is truly colossal, second only to that of Lord Mansfield; in his manners he is simple and amiable as a child; he is truly lovable.' Brougham said in 1838 there were no good speakers at the bar except Follett and Pemberton. Talfourd's first acquaintance with Follett was when the latter was a student, or just after his call to the bar, in getting him released from arrest early one morning for scaling the walls of the Temple. Follett's perception of legal principles and reasoning was intuitive, apparently almost without effort. 'With all the praise accorded to him from judges, lawyers, and even from Sir Peter Lawrie (ex-mayor), who thought him the greatest lawyer he ever knew, it does not seem to be thought that he has remarkable general talents or learning. They say he has 'a genius for the law;' but Hayward, of the *Law Magazine*, says he is 'a kind of law-mill; put in a brief, and there comes out an argument, without any particular exertion, study, or previous attainment. I have heard him several times. He is uniformly bland, courteous, and conversational in his style; and has never yet produced the impression of power upon me.' Sumner attributes Follett's early success to his amiability. As a speaker he was fluent, clear and distinct, with a beautiful and harmonious voice. His business was immense—£15,000 annually—and many of his briefs he hardly read before rising in court. He was equally successful in the House of Commons, where Sumner often heard him called for. His early death prevented his probable elevation to the Lord Chancellorship.

Of Wilde, afterward Lord Chancellor, Sumner speaks as the most industrious person at the English bar, often working from six o'clock in the morning until two the next morning; a man of great power, but harsh and unamiable, with an immense practice; supreme in the Common Pleas, with a great influence over Chief-Justice Tindal; in person short and stout, with a vulgar face; his voice not agreeable, but his manner singularly energetic and intense; reminding Sumner of Webster; his language having none of the charms of literature, but correct, expressive, and to the purpose; in manners, to his friends, warm and affable; entertaining very elevated views of professional conduct. He told Sumner that he should not hesitate to cite a case that bore against him, if he thought the court and opposite counsel were not aware of it. Early in his career he had taken advantage of a trust relation and purchased for himself, and in consequence was banished from the circuit table, and after did not mingle with the bar, or if he did, it was with a downcast manner. Sumner predicted that the government, anxious to avail itself of his great talents, might overlook his offense, but that society would not. As to the government, Sumner was right, for Wilde afterward became Solicitor-General, Attorney-General, Chief Justice of the Common Pleas, and Lord Chancellor, with the title of Baron Truro.

Charles Austin, the great parliamentary lawyer, Sumner describes as 'one of the cleverest, most enlightened, and agreeable men in London,' and in his judgment the first lawyer in England; a fine scholar, deeply versed in English literature and the British Constitution; a more animated speaker than Follett, perhaps not so smooth and gentle, nor so ready and instinctively sagacious in a law argument, but immeasurably before him in accomplishments and liberality of views; the only jurist in Westminster Hall; in conversation very interesting, full of knowledge, information, literature, and power of argument; in politics a decided but rational liberal; brilliant and clever, all informed, and master of his own profession, take him all in all the greatest honor of the English bar.

Campbell, the Attorney-General, afterward Lord Chancellor, and author of the 'Lives of the Lord Chancellors and Chief Justices,' gets a passing notice. A very powerful lawyer, laborious, plodding, with great natural powers, unadorned by any of the graces, able, dry, and uninteresting. His manner was coarse and harsh, without delicacy or refinement, his accent marked Scotch. Not liked by the bar, all bowed to his powers. As to his politics, the best account is derived from one of Sumner's stories. Lord Plunkett inquired of him the meaning of 'locofoco,' and he defined it 'a very ultra-radical;' whereupon Follett and Pollock both laughed, and cried out to the Attorney-

General, 'Campbell, you are the locofoco!' Sumner tells us that the *p* in Campbell's name was enunciated, and not omitted, as with us.

Of the judges we have some sharp portraitures. Lord Denman he deemed quite an ordinary lawyer, but 'honest as the stars,' and impartial. In person, every inch the judge, 'he sits the admired impersonation of the law;' tall and well-made, with a grave voice and manner; somewhat impatient at times, we infer. 'Bland, noble Denman! On the bench he is the perfect model of a judge,—full of dignity and decision and yet with mildness and suavity which cannot fail to charm. His high personal character and unbending morals have given an elevated tone to the bar, and make one forget the want, perhaps, of thorough learning. In conversation he is plain, unaffected and amiable.' He thought Brougham one of the greatest judges that ever sat on the woolsack. The wig he considered the silliest thing in England. He was trying to carry a bill through the Lords, allowing witnesses to affirm, in case of conscientious scruples, and asked Sumner what the American practice was, but said he could not venture to allude to it, for it would tell against his measure. We have changed all that, and now John Bull adopts our law reforms and eats our beef!

We have a graphic picture of Tindal, Chief Justice of the Common Pleas, the model of a patient man, who sits like Job, while the debate goes on; very quiet, bent over his desk, constantly taking notes; eyes large and rolling, stature rather short; manner singularly bland and gentle, deficient in decision; learning, patience, and fidelity of the highest order; one of the few judges who study their cases out of court; 'one of the kindest men that ever lived.' The author of 'The Bar' also gives us a glimpse of him:

"Tindal, beneath whose sleepy lurking eye
A fertile mind Lavater would descry,
A treasury filled with intellectual store,
From which, the more he takes, it grows the more,
A thing unheard of in historic fame,
Would the King's treasury always did the same!"

Then we have Park, the oldest judge on the bench, fifty-eight years in the profession, petulant, puritanical, a staunch Tory, who believed in wigs and hated Jack Campbell. He attributed Denman's dislike of wigs to his coxcombery, and desire to show off his person, and when a wig was invented to present the appearance of powder, without its dirt, he resisted its introduction as an innovation on the Constitution, and refused to recognize his own son when he appeared in one. And then comes Vaughan, who was made a judge, it was said, by George IV., at the instigation of his favorite physician, Sir Henry Halford, and hence was called a judge by prescription. With the smallest possible allowance of law for a judge, he abounded in native strength, sagacity, and freedom of language. He troubled himself very little out of court with his cases. Fond of sports, he showed Sumner four guns, and told him with great glee, how he persuaded Wilde not to make any motions on a certain day, got court adjourned at noon, went fifteen miles into the country, and before four o'clock shot four brace of pheasants, sitting on horseback, as from lameness he was unable to walk to any great extent. A great lover of Shakespeare, he would often interchange notes with Sumner about the great poet's works, while Follett or Wilde was making a long argument, the spectators of course supposing that it was all about the case under discussion. Seventy years of age, rheumatic and gouty, beside being lame; tall and stout; plain, hearty and cordial in his manners; on the bench, bland, dignified, yet familiar, exchanging a joke or pleasantry with the bar on all proper occasions; less eminent for book learning than for strong sense, knowledge of practice and of human nature. The author of "The Bar" thus depicts Vaughan at the bar:

"Grisly and gruff, and coarse as Cambridge brawn,
With lungs stentorian bawls gigantic Vaughan;
In aspect fearless, and in language bold,
'Awed by no shame—by no respect controlled,'
Straight forward to the fact his efforts tend,
Spurning all decent bounds to gain his end.
No surgeon he, with either power or will,
To show the world his anatomic skill,
Or subtle nice experiments to try—
He views his subject with a butcher's eye,
Nor waits its limbs and carcase to dissect,
But tears the heart and entrails out direct."

In the Exchequer, we have Abinger, Parke, and Alderson described. The first was Scarlett, the greatest advocate of his time, yet never eloquent. Sumner calls him 'the great failure of Westminster Hall." Too old to assume new habits when he reached the bench, he lacked the judicial capacity and was jealous of his associates. 'Brougham says that Scarlett was once speaking of Laplace's 'Mécanique Céleste' at Holland House as a very easy matter; Brougham told him he could not read it, and

doubted if he could do a sum in algebraical addition. One was put, and the future Lord Abinger failed; and as Lord B. said, he did not know so much about it as a 'pot-house boy.' In politics a thorough Tory; in society cold and reserved; in person the largest judge on the bench. Sumner writes of Abinger: 'I was not particularly pleased with him: he was cold and diffident, and did not take to me, evidently; and so I did not take to him. Neither did I hear him, through a long evening, say anything that was particularly remarkable; but all the bar bear testimony to his transcendency as an advocate.'

To Parke, afterward Lord Wensleydale, Sumner says the palm for talent, attainments and judicial penetration is conceded by the profession, who regard him as *facile princeps*. About fifty-six years old, above the common size, erect, 'with the brightest eyes I ever saw;' dressed with great care, and in the evening wearing a blue coat and bright buttons; a man of society, 'not a little conceited and vain.' Not fluent, but with no particular want of words; a well-read lawyer, yet not a jurist. Alderson comes next. He was an excellent scholar, carrying off the highest mathematical and classical honors at Cambridge. In person awkward, in voice abrupt and uneven, with light hair, and a high forehead. Hasty and crotchety, he was thought an unsafe judge. He had more enemies than any other judge in the Hall. Sumner says he heard from him a higher display of judicial talent than from any other judge in England. Elsewhere he says, in a letter to Story: 'Baron Alderson is the first equity judge in the Court of Exchequer, and unquestionably a very great judge. I have sat by his side for three days on the bench, and have constantly admired the clearness, decision, and learning which he displayed. In one case of murder, where all the evidence was circumstantial, I sat with him from nine o'clock in the morning till six at night. His charge to the jury was a luxury. I wish you could have heard it. It was delightful to hear an important case, so ably mastered by one who understood his duty and the law, and did not shrink from laying before the jury his opinions. Alderson's voice and manner remind me of Webster more than those of anybody I have seen here; his features are large, but his hair, eyes, and complexion are light.' The author of 'The Bar' has a drive at Alderson, when young, pointed at his triumphs as senior wrangler at Cambridge:

> "Aspiring Aldeerson—a sessions 'star,'
> Already 'cuts a figure' at the Bar,
> Maintains his academic honors past,
> And every subject *wrangles* to the last."

Baron Maule was 'a very peculiar person.' Distinguished at Cambridge both in classics and mathematics, he kept up his acquaintance with those studies. He was confessed on all hands to be the first commercial lawyer in England, but his moral character rendered him in some respects a strange person for a judge. He always took porter before an argument, he said, 'to bring his understanding down to a level with the judges.'

Patteson, 'the ablest lawyer in the Queen's Bench—some say the first in all the courts,' was short and stout, his face heavy and gross, and was very deaf. 'Little Johnny' Williams, an excellent classical scholar, had little legal talent, and was principally noted for early rising and for falling asleep in company.

It is curious to note how many of the legal celebrities described by Sumner were concerned in the trial of Queen Caroline—Brougham, Lushington, Wilde, Denman, Tindal.

Comparing the English with the American lawyers, Sumner says: 'The English are better artists than we are, and understand their machinery better; of course, they dispatch business quicker. There is often a style of argument before our Supreme Court at Washington which is superior to anything I have heard here.' In regard to the character of the bar and their relations to the bench in England he says: 'I know nothing that has given me greater pleasure than the elevated character of the profession as I find it, and the relation of comity and brotherhood between the bench and bar. The latter are really the friends and helpers of the judges. Good will, graciousness and good manners prevail constantly. And then the duties of the bar are of the most elevated character. I do not regret that my lines have been cast in the places where they are; but I cannot disguise the feeling akin to envy with which I regard the position of the English barrister, with the intervention of the attorney to protect him from the feelings and prejudices of his client, and with a code of professional morals which makes his daily duties a career of the most honorable employment.'