THE

CANADA LAW JOURNAL.

(NEW SERIES.)

VOLUME IX.

FROM JANUARY TO DECEMBER, 1873.

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TABLE OF CASES REPORTED AND CITED.

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DIARY FOR JANUARY.

1. Wed... *Circumcision.* Master and Registrar in Chancery and Clerks and Deputy Clerks of Crown to make returns. Taxes computed from this date.
5. SUN... *2nd Sunday after Christmas.*
6. Mon... *Epip.* Er. and Ap. sit. Co. Ct. T. begins. Heir and Div. sit. begins. Christmas Vac. in Chancery ends.
7. Tues... Last day for Tp., Vil. and Tn. Clks. to make Asst. returns to Co. Clerk.
8. Wed... Winter Assizes (York) beg. Meet. Ont. Leg.
9. Thurs.. Clks. Crown pay over fees to Prov. Tr.
10. Fri.... Last Day for Master and Reg. in Chancery and Clerks & Dep. Clk. C. to pay over fees.
11. Sat..... County Court Term ends.
12. SUN... *1st Sunday after Epiphany.*
15. Wed... Treas. and Cham. of Muns. to make ret. to Board of Audit.
18. Sat.... Candidates for Attorney to leave Articles, &c., with Sec. of Law Society.
19. SUN .. *2nd Sunday after Epiphany.*
20. Mun ... Coun. (Ex. C. Coun.) & Trus. Pol. Vil. hold first Meeting.
21. Tues .. Heir and Divisee Sittings end. Primary Examination of Articled Clerks & Students.
26. SUN .. *3rd Sunday after Epiphany.*
28. Tues .. First meeting of County Councils.
30. Thurs.. Last day for Non-Residents to make ret. of their lands to Clk of Mun. Candidates for call to pay fees and leave papers.
31. Fri.... Last day for Councils to make ret. to Gov.-Gen. Co. and City Clks. to make yearly ret. to Prov. Sec. Exam. for call to Bar. Law School Lectures begin.

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THE
Canada Law Journal.

Toronto, January, 1873.

The Sheet Almanac for the year 1873 is mailed to subscribers with this number. We hope that it may be found as useful as ever.

Our readers will notice some alterations in the present number. We trust they will be found changes for the better. A circular to the profession gives further explanations on the subject. Desiring as we do to make the *Canada Law Journal* as useful as possible to our readers, we shall be glad to hear from them on subjects of general interest.

A curious misprint occurs in the columns of the *Chicago Law Times* set apart for advertisements of "New Law Books." There is advertised, a new American edition of the "Law of Vendors and Purchasers" by *E. B. Snyder* (Lord St. Leonards.) Evidently the Dutch *Snyder* is a more familiar name in that region than the English *Sugden.*

Corporal punishment is a most desirable penalty in a certain class of cases. A return to an address, recently published, but giving stale information, would show that the cat-o'-nine-tails has been used frequently, though we apprehend not at all too often, in this Province, but does not seem to meet with favor in the Provinces east of us. Probably cases of personal assault on women are not so common there.

Judge Ladd of the Supreme Court of New Hampshire has resigned, because the salary attached to the office is inadequate for his support. Judge Barnard, the

celebrated granter of injunctions, in the name of the people of the State of New York, "by the grace of God free and independent," having been disrobed and disbarred, has gone into the tobacco business, where he can more safely indulge his propensity of rendering a *quid pro quo*.

The Court of Appeal has given judgment in the *Goodhue Will Case* in favor of Mr. Becher's appeal from the order of the Court of Chancery. Our readers will remember that on 16th January, 1872, the judges were divided in opinion, (see 8 C. L. J. N. S. 38), and the case was consequently re-argued. The decision just given did not turn upon the power of the Legislature to pass the Act, but upon its construction. It is rumoured that an explanatory or amending act may be applied for this session by the petitioners for the former Act. But public opinion is strongly opposed to such objectionable legislation as this, and we have no fear that any such attempt will prove successful. The Premier at least is not likely to give it countenance, holding views opposed to the propriety of Legislative interference in this case.

In the Supreme Court of Pennsylvania Mr. Justice Agnew lately delivered the opinion of the Court upon a review of the old English statutes relating to costs which appear to be in force in that State to the effect that a judgment for the defendant upon an issue of *nul tiel record*, entitles the successful party to his costs. *Steele* v. *Linebergers: Pittsburgh Legal Journal, Dec.* At the close of his judgment he makes the following observations, which lose none of their point when read as if levelled at the state of practice in Ontario on the vital subject of costs:

"From the examination I have been under the necessity of giving to this case I have been led to the conclusion that an act of assembly to consolidate and simplify the whole law upon the subject of costs in different actions and legal proceedings is much needed, and if some gentleman of the bar, of sufficient practical experience, would prepare such an act for consideration and adoption by the Legislature, it would confer a great service on the profession, the courts and the public."

The Solicitor-General of England, Sir George Jessel, made the following remarks upon the question of law reform, in addressing his constituents at Dover:

To shew them that he really was in favor of law reform, he would tell them that he believed that the only law reform that could be effectual was the simplification of the usages not suited to the present age. As regarded the form of procedure, let them be able to transfer land cheaply and economically, which would be done by a proper Land Transfer Bill. The law of mortgage should be simplified; the law as to succession of land should be exactly the same as the succession of personal property. He would blot out the laws which prevented a woman after marriage enjoying the benefit of her landed property just as before, unless she chose to settle it on her husband or any one else. He would also alter the law of limitations."

We copy from the English *Law Journal*, which seems to regard Sir George Jessel as a true law reformer, in opposition to others whom it calls law revolutionists.

The complications of modern society are now occasioning no small trouble in legal circles, in view of the possible and actual *status* of the softer sex. Take the case of a woman fully divorced. What is her proper "addition" in law? Is it "spinster"? Take the still more puzzling case of a woman not fully divorced, who has only a decree *nisi* for the dissolution of her marriage. How is she to be styled? In the Nisi Prius case of *Fletcher* v. *Krell*, the point was raised as to the effect of the word "spinster," if used as descriptive of a woman in a contract. The defendant maintained that it was in effect a warranty of her condition, and that consequently the plaintiff, who had entered his employ-

ment as governess under the title of "spinster," when in fact she was a woman divorced from her husband, had committed a breach of warranty, and was not entitled to recover for her services.

So in *Munt* v. *Glynes*, 20 W. R. 823, the Master of the Rolls refers to the anomalous position in which a lady is placed by a decree for judicial separation: "She is at once divorced and not divorced; no longer a wife, and yet not an unmarried woman." The *Solicitor's Journal* dives into the old cases on the subject, and inclines to the conclusion "that a divorcee (this is nearly as bold a coinage as the famous Belleville term, "*seductee*") might be properly styled 'single woman,' which in strict technicality is applicable to an unmarried woman who is not a virgin." Among other notable things is pointed out that a woman's degree would not be sufficiently stated by styling her "wife of A. B.," unless her husband's mystery or estate were alleged (*Re Gardner*, 1 C. B. N. S. 215), but that the curious description, "spinster, otherwise wife of A. B." has been held sufficient: *Anon.* 3 N. P. C. 19; Dyer, 88, *a.*

On the 13th of December last, His Excellency the Governor-General was pleased to appoint the following Barristers-at-Law to be Her Majesty's Counsel learned in the law, in and for the Province of Ontario, viz: Daniel McMichael, D. C. L., of Toronto; Christopher Salmon Patterson, of Toronto; Edmund Burke Wood, of Brantford; and John T. Anderson and Thomas Moss, of Toronto. All these gentlemen had already received patents from the Lieutenant-Governor of Ontario.

On the 18th December the following gentlemen received a like distinction at the hands of the Governor-General:

Robert Stuart Woods, of Chatham; James A. Henderson, of Kingston; D'Arcy Boulton, of Toronto; Alexander Leith, of Toronto; Thomas Robertson, of Dundas; The Honorable John O'Connor, of Windsor; Hector Cameron, of Toronto; James Beaty, Junior, of Toronto; George A. Drew, of Elora; James Maclennan, of Toronto; David Tisdale, of Simcoe; Dalton McCarthy, of Barrie, and Hewitt Bernard, of Ottawa, Deputy of the Minister of Justice.

On the 26th December His Excellency appointed the following Barristers of Nova Scotia as Queen's Counsel for that Province, viz:

Alexander James, and James Thomson, of Halifax; The Honorable Henry Williams Smith, Attorney-General of Nova Scotia, of Liverpool; William Almon Johnstone, of Halifax; Hugh McDonald, of Antigonish; Joseph Norman Ritchie, of Halifax; Nathaniel Whitworth White, of Shelburne; Newton Le G. McKay, of Sidney, Cape Breton; the Honorable William Miller, of Halifax: and Alfred William Savary, of Digby.

CHANCERY APPOINTMENTS.

The loss of a valuable public servant is always a matter of regret. We felt this when Mr. Mowat left the Bench, though in that case the feeling was not unmixed with regret at the manner in which that retirement took place. We cannot, however, lose sight of the fact, that in Mr. Mowat the country has lost the services of a most able and learned Equity Judge, whose judgments have always been received with confidence by the Bar, and who devoted himself with untiring and patient industry to the very arduous duties of his high position.

Swiftly following on this resignation we have to notice that of Mr. J. A. Boyd, the Master in Ordinary of the Court of Chancery. During the comparatively short time that he held that office he exhibited in a marked manner the best qualities of

a Judge—ability, industry, and an eminently judicial mind. Conscientious and painstaking, his decisions gave general satisfaction. Admitted on all hands to be a sound lawyer, promotion would in his case seem to be only a question of time. We regret that his services are lost to the public in the important position which he has occupied.

Of Mr. Mowat's successor we have already spoken. Mr. Taylor, the Referee in Chambers, takes Mr. Boyd's place, and the vacancy caused by this promotion has been filled by the appointment Mr. George S. Holmested. We entirely approve of this principle of promotion where the public can thereby receive no detriment, and in this case we are confident that Mr. Taylor will well and diligently perform the duties of his office. It was said at one time that he took rather a technical view of cases before him in Chambers, but that is a thing of the past, and was mainly owing to a determined and a successful effort on his part to establish some regularity in a practice which was notoriously irregular and devoid of system. Mr. Taylor has a very good standing as a lawyer, and has had large experience in the business of the Court, and in questions of title under the Quieting Titles Act. The appointment of Mr. Holmested is a good one, as well as a popular one in the profession, and there will be every desire on the part of practitioners to give him every assistance, and make every allowance in matters of detail, where he may feel at a loss from a want of experience.

THE LAW SCHOOL.

The Law Society under the powers conferred upon them by an Act passed in the last Session of the Ontario Legislature have established a Law School, and appointed four Lecturers, one of whom is the President of the School, they have also decided on awarding as a special honor, to those who go through the School and pass the requisite examinations, exemption from service as students or articled clerks for periods of six, twelve and eighteen months.

The Barristers who have been appointed Lecturers, are Mr. Leith, Q. C., who is also the President of the School, and Messrs. Jas. Bethune, Z. A. Lash, and C. Moss. The several subjects of the Lectures are Real Property, General Jurisprudence, Commercial and Criminal Law, and Equity. We believe all these gentlemen to be thoroughly competent for the work allotted to them. But we cannot help expressing our regret that the Benchers did not continue the services of Mr. Anderson, Q. C., who has no superior in the profession in the knowledge of Commercial and Criminal Law, subjects in which he has been for so long a period Lecturer or Examiner for the Law Society.

It has always been a matter of great satisfaction to those who have been interested in the legal profession in Upper Canada, that so much attention has been given by the Law Society to the preparation of students both for the study and practice of the Law; and that in this Province alone of all the British Dominions, for a long series of years, was a compulsory examination required before call to the Bar. No one can doubt the beneficial effect of the system, and its adoption now by all the Inns of Court in England is abundant proof of the wisdom of its establishment by our Law Society nearly half a century ago.

The course in the Law School will be for six months, from November to May. There will be two classes, Junior and Senior, the first open to all clerks and students, the second open only to those, who have gone through the first, or have been two years engaged as clerks or students.

The course will consist of lectures, dis-

cussions on moot points, and examinations; and the examinations of every kind, except the primary, will be conducted in the Law School, in some cases in the presence of the Benchers, in other cases by the Lecturers alone.

We trust that we shall see a very large class of the young men, who are preparing for the profession, in attendance upon the School. The advantages to any sincere student of the laws are very great, not only in the direction of his studies, but in the practical benefit to be obtained by proficiency, in abridging his term of service. The two years that are gained now by an University degree, may be granted, less six months, under the rules adopted by the Law Society, and the time thus saved may be regarded as more than an equivalent for the expense that a student or clerk from the country may have to incur by his temporary residence in Toronto, whilst attending the School.

We hope that the School will be in every respect a success. We shall watch its progress with great interest, and be happy at any time to chronicle any of its proceedings that may appear to us to be of special importance to the profession.

We understand that the opening lecture will be delivered at Osgoode Hall, on Monday evening, the 3rd February, at 8 o'clock, by the Treasurer of the Law Society, the Hon. J. H. Cameron, to whom the profession is so largely indebted for his exertions in this and all other matters affecting their welfare.

CONTEMPT OF COURT.

A case has lately occurred in the State of Illinois, involving the power of the Supreme Court to punish the editors of a newspaper for constructive contempt, which has occasioned no small stir among the *corps editorial*. It is known as "The Journal Contempt Case," and arose upon an information by the Attorney General against the proprietor and the chief editor of the Chicago *Evening Journal*, based upon an editorial article which appeared in that paper. The article referred to the conduct of the Supreme Court in awarding a writ of *supersedeas* in the case of the murderer Rafferty, intimated that now-a-days money was all that was wanted to enable a man to purchase immunity from the consequences of any crime, and went on to state that "the Courts are now completely in the control of corrupt and mercenary shysters,—the jackals of the legal profession, who feast and fatten on human blood spilled by the hands of other men." At the date of the publication of this article a writ of error in the Rafferty case was pending and undetermined by the Court. It was held by four judges against three dissenting, that a writ of attachment should issue. The majority of the Court proceeded upon the rule as stated in various American cases referred to, that all acts *calculated to impede, embarrass or obstruct* the Court in the administration of justice, and any publications pending a suit reflecting upon the Court, &c., in reference to the suit, tending to influence the decision of the controversy, were to be considered as done in the presence of the Court, and therefore within the scope of the jurisdiction which Courts have, under the Revised Code, of punishing by attachment contempts offered by any person to them while sitting. One of the judges says:

"If the court is scandalized and its integrity impeached while a cause is pending before it: if the counsel are grossly libelled, and low and obscene terms are applied to them, which may have the effect to intimidate, the consequences must be the same as if direct contempts are offered. The administration of the law is embarrassed and impeded, the passions, often unconsciously, are roused, the rights of parties are endangered, and a calm and dispassionate discussion and investigation of causes are prevented."

The dissentient judges rested their opinion on the ground that the power to

commit for contempt should be limited to cases where the offence was committed in the actual presence of the judges.

One of the judges in the minority gives expression to opinions which have met with great popular and journalistic approval in the States. He says:

"I am not, however, unmindful that courts of the highest authority in this country and in England have assumed jurisdiction to punish in a summary manner, and on their own motion, what are termed constructive contempts, such an one as is sought to be set forth in the information filed. The exercise of this extraordinary power by a court of final jurisdiction has ever been regarded as of questionable authority, and one liable to great abuse, and which might become dangerous to the liberty of the citizen. The objection proceeds on the ground that the court ought to assume to be the best judge of the offence against itself, and of the mode and measure of redress where the law has provided, and where in the very nature of things there can be no mode of reviewing the action of the court in the premises. There has always existed jealousy against the exercise of arbitrary power by any tribunal supposed to be derived from common law sources, and not expressly granted by constitutions or the laws enacted by legislative assemblies. It must be conceded that public journals have the right to criticise freely the acts of all public officers, executive, legislative and judicial. It is a constitutional privilege that even the legislature cannot abridge. Such criticisms should always be just, and with a view to promote the public good. In case the conduct of any public officer is wilfully corrupt, no measure of condemnation can be too severe; but when the misconduct is simply an honest error of judgment, the condemnation ought to be mingled with charity. The public have a profound interest in the good name and fame of their courts, and especially of the courts of last resort. Everything that affects the well-being of organized society, the rights of property, and the liberty of the citizen, is submitted to their final decision. The confidence of the public in the courts should not be wantonly impaired. It is all-important to the due and efficient administration of justice that the courts of last resort should in a full measure possess the entire confidence of the people whose laws they administer. All good citizens will admit that he who wilfully and wantonly assails the courts by groundless accusations, and thereby weakens the public confidence in them, commits a great wrong, not alone against the courts, but against the people of the commonwealth. But who shall furnish the remedy? Shall the court that is assailed or shall the legislative power of the State? In my judgment, there are many and politic reasons why the legislative power alone should provide the remedy, if any should be found to be necessary. It is far better that the judges of the courts should endure unjust criticism and even slanderous accusations, than to interpose of their own motion to redress the offence against themselves, where the offence complained of is not committed in their immediate presence. It is a matter of public history that it has been the policy of the press in this country to uphold and maintain the dignity of the courts. If a contrary policy should ever be inaugurated in the state to such an extent as to seriously affect the reputation or impair the efficiency of the courts in the administration of the law, I have no doubt that the Legislature can afford an appropriate remedy. It was said by this court in the case of Stuart *v.* The People, that "respect to courts cannot be compelled; it is the voluntary tribute of the public to worth, virtue and intelligence, and whilst they are found on the judgment seat, so long and no longer will they retain the public confidence."

The *Chicago Legal News* (from which we take our report of the case) pronounces the whole proceeding "tyrannical and arbitrary, and contrary to the spirit of the Constitution," and it advocates the passing of an act by which the power of the State Courts to punish for contempt should be defined by statute, and their common law powers in that respect be abolished. This it appears is the position of the Supreme Court of the United States.

However republican license may be offended at the decision of the Court in the Journal Contempt Case, we think there is no reasonable doubt that it is in harmony with the spirit of the English decisions, though none are cited therein, and there is equally little doubt that the tenor of the whole article was a gross insult to the Court. When the power of the press is so much exalted as it is now-a-days, there is a tendency to make it, as "The

Fourth Estate," superior to the Courts of Justice. There is the ambitious desire to control, not only the public, but judicial opinion by the views of publicists, who not unfrequently rush to crude conclusions upon imperfect or one-sided information. A satirical suggestion for the amendment of the law was once made, that it be enacted that henceforth on trials for murder there shall be no judge, but the jury shall consist of upwards of five thousand volunteers who are not to be sworn, nor be allowed to see the prisoners or witnesses, nor hear the evidence, but shall be required to read every casual observation published on the subject, and write letters thereon to the newspapers. This is, after all, merely a somewhat exaggerated statement of the right which gentlemen of the press arrogate to themselves when they assume to control or regulate the course of judicial procedure. There may be cases where the Court can pass over in silence the impertinent observations of journalists upon pending suits, but there are other cases where the interference is so gross and insulting that the dignity of the Court requires to be vindicated. Of this kind was the slanderous article in the Journal Contempt Case.

Among analogous English precedents we may refer to the following, where the contempt to the court was rather constructive than actual, and consisted in acts and words of indignity spoken and done not in the presence of the Court. Many old cases are to be found in the books where contemptuous expressions and acts of the defendant, on being served with the process of the Court, have been punished by attachment: *Rex* v. *Crown*, 6 Mod, 67.

So in the "St. James' Chronicle Case," called *Roach* v. *Garvin*, 2 Atk. 470, the motion was to commit the printers of that journal for publishing a narrative of the facts of the cause, while yet pending, in the course of which they applied opprobrious epithets to some of the parties and witnesses. In *Charltors Case*, 2 M. & Cr. 316, the act of contempt was in writing a threatening letter to the Master of the Court of Chancery, to influence his decision in a matter then in progress before him. Contempt was also adjudged to have been committed in the *Tichborne Case*, L. R. 7, Eq. 55, by the printer of the *Pall Mall Gazette*, in publishing an article commenting on affidavits filed in a cause which was about to be brought before the Court. Among other late cases of a like kind we may just note the following: *Robson* v. *Dodds*, 17 W. R, 782; the *Cheltenham Waggon Company*, L. R. 8 Eq. 580; *Felkins* v. *Hubbert*, 12 W. R. 241, and the recent case in this Province of *Wilkinson* v. *Belford*, wherein the editor of the *Daily Telegraph* was held guilty of a contempt in publishing the bill of complaint with certain depreciatory comments.

LAW STUDENTS AND DEBATING SOCIETIES.

[communicated.]

Heneage Finch, the "silver-tongued" Nottingham, used to advise the law-students of his day to read all the morning, and talk all the afternoon. Such advice would be lost on the Canadian student, for the way in which he shall spend his mornings and his afternoons, is not a matter upon which he can exercise much discretion. Acting in the many-sided capacity of apprentice to a solicitor, whose instruction is too often limited to an occasional reprimand, or in that of a paid clerk, a "small salary" being the one thing sought for—the routine of office-work must employ the best hours of his day. The student's reading must be accomplished in the hours he may snatch from the night, or, it may be, from the early morning. The student's talking, the exercise of speaking

in public, the discussion of questions of higher and more general importance, is too often discouraged, because, perhaps, it is thought that his training is such as to preclude him from knowing anything about questions of higher and more general importance; and too many in truth mistake their vocation, and had better be content with a less ambitious career, where their hands may be as much brought into play as their heads. To try and persuade some men in the profession that their students should exercise themselves in public discussion, and that a debating society is the proper place for such exercise, would be a hopeless task. They are apt to despise the cultivation of oratory as a weakness. They almost contemplate with horror a young lawyer with a taste for polite literature, and prophesy for him a melancholy future. They are prone to advise their young friends to depend entirely upon Practice Reports, and deeds of settlement, for intellectual refreshment. They remind one of the Fellow at Cambridge, who pictured to himself the seventh heaven as a region of pure mathematics.

But though there are some people of the class just alluded to, there are others with more liberal views; and, encouraged by them, the writer ventures to assert that Debating Societies offer the best, and, in truth, the only school, for that early practice in speaking, which is so essential to an advocate. Such societies tend to enlarge and freshen the minds of those whose daily pursuits have a tendency directly the reverse. They encourage and foster the three habits, which, according to the old saying of Bacon, should go to form a lawyer: the habit of reading, which makes a full man; of writing, which makes an accurate man; and of speaking, which makes a ready man. It is the habit of speaking, of course, in which the element of association is especially needful. Few men can become speakers by private exercise. In learning to speak, the student wants the extrinsic aid of an audience and an opponent. You may guide his attention to the best models of eloquence; you may impress upon him the necessity of diligent study of these models; you may assist him with many a hint. But he must teach himself to address numbers without hesitation; he must teach himself to think upon his legs; to detect in an instant the fallacy of an argument, and with equal readiness to expose it. A Cicero, or a Pitt may, after private study and observation, appear before the world as finished orators. Average mortals can only hope to become speakers after repeated efforts, and many failures in a public arena. "A Debating Society," says a Barrister, writing of an advocate's training, "is the only school for a beginner. An assembly of men met for the purpose of business, will not endure to be made the subject of a tyro's first steps in talking, and it would be an impertinence on his part so to use it. He must take his lessons for some time amongst those who meet with the same object, self-instruction; each enduring the others that he may he endured in turn. There he may venture to fail and dare to try again."

At a meeting lately held in Dublin of the Law Students' Debating Society, there were present the Lord Chancellor, and most of the prominent lawyers in Ireland. Mr. Butt, Q. C., proposed a resolution "that this Society deserves the support of the Benchers, the Bar and the Law Students," and spoke in eloquent terms of the aims, utility and success of the Society. The Lord Chancellor expressed his gratification at being present at the proceedings of a Society which, he believed, to be a most valuable adjunct to the education of young men intending to go to the Bar. He agreed with Mr. Butt that one great advantage of the So-

ciety, and of similar associations, was their instrumentality in bringing together in harmonious and friendly intercourse young men of different opinions and creeds, who in its relations, formed friendships which were destined, perhaps, to prove life-long. Genius and learning and zeal were sometimes thrown away, he said, from the simple want of the training and experience obtained in such arenas.

The greatest masters of eloquence have not disdained the practice of a debating club. Erskine, before he rose, unknown and friendless, from the back seats of the Queen's Bench, and delivered an oration which filled Westminster Hall with rapture, had constantly declaimed to an audience of Quakers and Shoemakers at Coachmaker's Hall. Burke prepared himself for Parliament in a Debating Club, and is said to have bestowed the same pains-taking care on the subjects there discussed, that afterwards characterized his speeches on India or America. Murray, Law, Wedderburn, Thurlow, Dunning, are instances of great lawyers and powerful orators, who in their younger days practised assiduously in a Debating Club. Lord Campbell, "plain John Campbell" then, used to harangue a Club at St. Andrews, of which the late Bishop Strachan was a member. Lord Brougham was a great believer in Debating Clubs, and used to urge law students to talk about everything. The argument from authority in favor of these Societies is a strong one.

But, it may be objected that the audience who listened to, and criticised the oratory of these great lawyers and their contemporaries, was a much more cultivated and critical one, than can be collected in a Canadian Club: the speaker will adapt himself to his hearers: an audience not highly educated will encourage a vapid and objectionable style of ratory. Granted that our students have not, as a rule, enjoyed the same liberal training as the young men who frequent the English University 'Unions,' or the London 'Forensic' Clubs; still, we believe them as a class to possess a very considerable degree of enlightenment. If, however, a consideration of this nature is to enter into the question, it will be extremely difficult to fix the exact period when Debating Societies, as an instrument of education, may be safely introduced into this country. But the truth is, a man need not be elaborately educated to justly estimate an orator. Nor does it require an extraordinary gift of native acuteness to distinguish between argument and mere assertion, between good taste and gaudy ornamentation, between sober sense and folly; and the audience which can discriminate between good and bad speaking, will applaud the former and ridicule the latter. Experience shows, that even if a man has not enough in him to discover and try to correct his faults, his audience will not be slow to discover and try to correct them for him. A Debating Club, and the writer ventures to maintain, a Canadian Debating Club, is not a place where a young man commences to talk nonsense, is encouraged to persevere in talking nonsense, and becomes irrevocably committed to talking nonsense all his days. It is a place where he may, and probably will, talk nonsense for a time. But it is just the place where he may, unless nature has been singularly unpropitious to him, advance beyond the initial stage of imbecility, instead of reserving that interesting transition for the Senate or the Courts of Law. Of course, success or failure rests with himself. The Society will not force him to be a speaker. It will only afford those opportunities, a conscientious use of which will be of immense benefit. But if he has the ambition to excel, with moderate parts, untiring industry, and a spirit not easily cast down by failure, he

may become, after diligent study and intrepid practice, not perhaps an *orator*, but a ready and effective *speaker;* a speaker who shall express his thoughts in a lucid, accurate, and collected style, so as to penetrate even to the understandings of juries at Nisi Prius, and fill the hearts of judges in Banc with unutterable gratitude.

LAW SOCIETY OF ONTARIO.

Michaelmas Term—36 Victoria.

The following is the *resumé* of the proceedings of the Benchers during last Term, published by authority :—

Monday, 18th November.

The resignation of George Palmer of his seat as a Bencher received and accepted.

The several gentlemen whose names are published in the usual lists were called to the Bar and admitted as Attorneys.

A call of the Benchers was ordered for last Friday of this Term, for the election of a Bencher in the place of Rolland Macdonald, Esq., who resigned last Term.

Tuesday, 19th November.

Examining Committee appointed for next Term, and report of Examining Committee for this year received and adopted.

Balance sheet and Auditor's report laid on the table. Report of Library Committee received and adopted.

A call of the Bench declined in the matter of S. J. Vankoughnet, Esq., but compensation ordered to be paid to him under the late statute, of $2,000, being one year's allowance according to former arrangement, if he declines the appointment of Reporter of the Court of Common Pleas, under the new arrangement.

Ordered that a grant of forty dollars be made to Mr. Joshua Rordans on the publication of a new edition of his Law List.

Thursday & Friday, November 21 & 22.

Intermediate Examinations.

Saturday, 23rd November.

The Treasurer reported result of Intermediate Examinations.

Letter from Mr. S. J. Vankoughnet, acknowledging receipt of resolution read.

Memorial from Mr. J. C. Cooper, assistant in Library read, and ordered that an additional allowance of one dollar per week be granted, together with a gratuity of twenty-five dollars for his efficient services.

Special case agreed to, if desired by Mr. S. J. Vankoughnet, before compensation resolution is acted on.

Committee on the rules, appointed in Michaelmas Term last revived and reconstructed.

Fifty dollars ordered to be paid to Mr. Evans as Examiner this Term.

Adjourned until Thursday next.

Thursday, 28th November.

Several gentlemen called to the Bar and passed Intermediate Examinations.

Friday, 29th November.

Scholarship Examinations held.

Fourth Year :

No Scholarships awarded.

Third Year :

Scholarship awarded to Mr. McMillan.

Second Year :

Scholarship awarded to Mr. Pepler.

First Year :

Scholarship awarded to Mr. McColl.

Saturday, 30th November.

The Treasurer reported result of Scholarship Examinations.

The following rules were adopted for examination of Articled Clerks:—

Notice to be given by a Bencher in one term for the next term, but notice for next February examination may be given by 1st January next.

Examinations by Examining Committee to be on same days as the examinations of Students.

A fee of one dollar to be paid to Secretary with notice.

A fee of forty dollars to be paid on presentation for examination, of which thirty dollars will be returned on failure to pass.

Time under articles to count only from time of passing.

Letter from S. J. Vankoughnet, Esq., accepting compensation and declining office of reporter read.

Mr. Proudfoot resigned his office of Examiner in Equity.

Mr. Rowsell ordered to be paid an additional sum of seventy-eight dollars per volume for printing the reports, on the recommendation of the Committee on Reporting.

The expense of entertaining the Governor General at Osgoode Hall ordered to be paid.

A call of the Benchers ordered for Saturday, 7th December, for election of Reporter of the Common Pleas, and of Lecturers.

Ordered that an exchange of the reports of the Courts be made with the Courts of Maryland.

Friday, 6th December.

J. A. Henderson, of Kingston, elected a Bencher in the place of Rolland Macdonald, Esq., resigned.

Rules for establishment of a Law School adopted.

Mr. Pardee was appointed a member of Reporting Committee in place of Mr. S. H. Blake.

Rule for meetings in vacation introduced and read a first time.

Saturday, 7th December.

Ordered that such cases in Practice Court and Chambers shall be published with the current reports, as the Committee on reports, or the Editor-in-chief may consider advisable.

Mr. George F. Harman was elected Reporter of the Common Pleas.

The following gentlemen were elected Lecturers: Mr. Alex. Leith, on Real Property; Mr. Jas. Bethune, on General Jurisprudence; Mr. Charles Moss, on Equity; Mr. Z. A. Lash, on Commercial and Criminal Law. Mr. Alex. Leith was appointed President of the Law School.

Messrs. Armour, Becher and Bell, were appointed a Committee to attend examinations for next Term.

The resignation of Mr. S. H. Blake as a Bencher, on his appointment as a Vice-Chancellor, received.

The Treasurer and Messrs. Crawford, Patton, Moss and Maclennan, were appointed a Special Committee to confer with the Attorney General in relation to the existing agreement between the Government and the Law Society, as to the accommodation of the Courts.

J. Hillyard Cameron,
Treasurer.

Osgoode Hall,
7th December, 1872,

LAW SCHOLARSHIPS.

The examinations for the Law Scholarships last term shew that there has been no lack of work on the part of the competitors. Mr. McColl especially distinguished himself, and passed one of the best examinations ever held at Osgoode Hall. No Scholarship was awarded for the Fourth year.

The other scholarships were awarded as follows.

Third year.

Scholarship awarded to	*Marks.*
Mr. McMillan,	292

Maximum number of marks, 370.

Second year.

Scholarship awarded to	*Marks*
Mr. Pepler,	266
Honorable mention,	
Mr. Cameron,	254
Mr. Creelman,	230
Mr. O'Leary,	224

Maximum number of marks, 320.

First year,

Scholarship awarded to	*Marks.*
Mr. McColl,...	303
Honorable mention,	
Mr. Ebbals,...	265
Mr. McWhinnie,...	259

Maximum number of marks, 320.

COURTS OF MANITOBA.

The intimate relations which will, we hope, spring up between Ontario and Manitoba, will make the constitution of the courts of the latter province a matter of interest to us. An Act was recently passed by the legislature of Manitoba, assented to 21st February, 1872, which amended the Act establishing a Supreme Court, and changed its name to that of the "Court of Queen's Bench."

We give a copy of this Act in full, except as to certain formal matters of no interest to us. It is as follows:—

1. The Court of Justice established by the Act hereby amended, shall be styled the "Court of Queen's Bench" (or King's) instead of the "Supreme Court."

2. The Court shall consist of a Chief Justice, and two puisné judges, any one or more of whom shall form a quorum, and may exercise all the powers and jurisdiction of the Court, except when such shall sit as a Court of Error and Appeal, when two or more of them shall form a quorum, and the said Court, and the judges thereof, shall have, hold, and exercise an appellate, civil, and criminal jurisdiction, and also the jurisdiction of a Court of Error, with full power to take cognizance of, hear, try and determine in due course of law, all causes, matters, and things, appealed or removed by suit of Appeal or Error, from all Courts and jurisdictions wherefrom an Appeal or writ of Error by law lies or is allowed, and an Appeal shall lie to the said Court from all judgments rendered in the first instance by any one judge, and from all judgments rendered in the County Court as hereinafter provided.

3. In the absence of the Chief Justice, the Court shall be presided over by the senior justice, or in the case of two puisné justices being appointed on the same day, by the one first named in the notice of appointment in the *Canada Gazette*, published by authority at Ottawa.

4. Whenever, in the Act hereby amended, anything is authorised to be done by the Chief Justice, it shall be understood to mean, unless the sense be repugnant thereto, that the authority is given to the Court.

(1). [Grand and Petit Jurors' lists to be made up, and English and French jurors to be called alternately.]

5. So soon after this Act has come into operation, as a Chief Justice, or one or more puisné justice or justices shall have been appointed under this Act, a term of the Court of Queen's Bench shall be held, and not till then, and notice thereof shall be given by proclamation under the hand and seal of the Lieutenant-Governor, fixing the time and place of holding such Court; and no person shall be appointed under this Act as chief justice, or puisné justice, or as prothonotary of the Court, unless such person is able to speak both the English and French languages.

6. From and after the publication of such proclamation, so much of the Act hereby amended, as provides for the holding of Courts of Petty Sessions, shall be repealed, and the said Courts of Petty Sessions shall be abolished, and in place thereof there shall be held County Courts in and for each county of this Province, at some central place, to be fixed and appointed by the Lieutenant-Governor in Council.

7. A County Court shall be held in each County, six times in each year, on days and at places to be fixed by the Lieutenant-Governor in Council, in such manner as not to interfere with the sittings of the Court of Queen's Bench at Winnipeg, and so that Court shall not be held in more than one county at any one time.

8. Each County Court shall be presided over by the Chief Justice, or one of the justices of the Court of Queen's Bench.

9. The County Court shall have jurisdiction over all debts not exceeding one hundred dollars, Canada currency.

10. It shall also have jurisdiction of petty assaults and batteries, where the damages claimed do not exceed twenty-five dollars, Canada currency.

11. The jurisdiction shall be exercised in a summary manner, without jury.

12. No action shall be brought in the Court of Queen's Bench, for any matter in which the County Court has jurisdiction.

13. An appeal shall lie to the Court of Queen's Bench, from all judgments of the County Court, where the judgment amounts to forty dollars or upwards.

14. No appeal shall be allowed unless the appellant shall, within ten days after judgment, file with the prothonotary an appeal bond, with

two sufficient sureties conditioned to abide by and satisfy the judgment of the Court of Queen's Bench.

15. The Lieutenant-Governor in Council may appoint a clerk for each County Court, who shall issue all summonses and other process therein.

16. Such Clerk shall be *ex officio* Clerk of the Peace.

17. Until constables shall be appointed under the authority hereinafter conferred, the Lieutenant-Governor may appoint one or more constables to serve process, and discharge other the duties of constables in respect of such County Courts.

(1.) The High Sheriff of the Province may, from time to time, appoint bailiffs, and such bailiffs so appointed shall have power and authority to serve all writs issued from the Court of Queen's Bench or County Court, and to execute all orders of the said Courts directed to the sheriff, and the sheriff shall be responsible for the acts of the bailiffs appointed by him, as if they were his own acts, and the sheriff may, and is hereby fully authorized to take bonds from all bailiffs so appointed by him, and he may act in all matters appertaining to his office, personally or by deputy.

18. The fees of the clerk, constables, and other officers of such Court shall be regulated by the judges.

19. Parties may appear in the County Courts, and their causes may be pleaded either in person or by any duly admitted attorney and barrister of this Province.

20. The judge shall tax the costs of all judgments, and may include therein, as a fee for counsel employed in the cause, such sum as, in the opinion of the judge, is proportioned to the importance of the cause, and the necessity of professional assistance therein.

21. At the first meeting in each year of the County Court of any county, the court shall open as a Court of Sessions, and the justices and the grand jury of the county shall be required to attend thereat.

22 to 26—[Grand Juries.]

27. When the said Court shall sit as a Court of Sessions, the judge shall preside, and with the majority of the justices of the peace of the county, and the county grand jurors, shall transact the business in connection with the municipal affairs of the county.

28. The proper business of the County Court shall be proceeded with on such first term, after the municipal business shall have been completed, and the Court of Sessions shall have been adjourned.

29. [Appointment of Treasurer.]

30. The county grand jurors shall present any sums of money necessary, in their judgment, for any public purpose within the county, which, on being confirmed by the Court of Sessions, shall be binding on the county, and assessed and collected under the Act relating to County Assessments.

31. The grand jurors shall furnish to the Court the names of nine assessors for each county, of whom the Court shall select three, who shall be sworn into office before acting as such assessors.

32. The county grand jurors shall nominate three collectors of county rates for each electoral division of the county, of whom the Court shall appoint one for each division.

33. The county grand jurors shall present the names of three surveyors of highways, three pound-keepers, and three constables from each electoral division of the county, of whom the Court shall appoint one for each such division.

34. [In case of non-appointment of officers, Lieut.-Governor to appoint.]

35. The Lieutenant-Governor in Council may appoint, in each County of the Province, a suitable person or persons to take affidavits in any cause pending in the Queen's Bench or County Court, or to take affidavits to hold to bail, and to take recognizance of bail, or any other affidavit in any civil matter.

36. It shall be lawful for the Chief Jutices and the puisné judges of the Queen's Bench, or any one or more of them, to hold in or for the North-West Territories, any Court or Courts which may be created under the authority of the Governor-General, or of any Act of the Parliament of Canada and in or for such territories, or in respect of matters arising or transpiring therein, to discharge all such judicial functions as may be assigned to them or one or more of them by the Governor-General or the Parliament aforesaid.

37. The puisné judges of the Court of Queen's Bench [as amended by chapter 4], shall be *ex officio* Stipendiary Magistrates throughout the Province, and, with that view they shall make arrangements for the attendance, alternately, of one of their number at the police-station at Winnipeg, at such stated periods as the Lieutenant-Governor in Council shall from time to time prescribe, and shall take all examinations and hear all cases which can be taken or heard by or before a stipendiary justice, or any two or more justices of the peace.

SELECTIONS.

JOHN WILLIAM SMITH.

"I have done nothing worthy of being remembered for," said John William Smith to a friend, shortly before his death; but such has not been the verdict of those who have survived him, and who have known and appreciated his labours. Had he accomplished nothing else, his "Leading Cases" would have been a monument which would have perpetuated his name and memory when most of his contemporaries were forgotten. There is naturally a desire to know something of the men who have connected their names with, and impressed their thoughts upon the best of our legal literature. Among these, few deserve a higher rank than Mr. Smith. We have prepared the following brief sketch of his life in the belief that it will be found interesting to all, and in the hope that it will prove instructive to the young lawyer in teaching him to wait and prepare for *his opportunity* with modest patience and fortitude and indomitable industry and energy, and that other important lesson, so often forgotten, the necessity of *moderation* in the pursuit of the distinctions and emoluments of his profession. To memoirs by two of Mr. Smith's friends—one by Mr. Phillimore in the *Law Magazine* for February, 1746, and the other by Mr. Samuel Warren in *Blackwood* for February, 1867, we are indebted for most of the facts of this article.

John William Smith was born of Irish parents, in London, on the 23d of January, 1809. He displayed, even in his early years, a precocious intellectual development, not often to be highly valued, but which proved, in his case, an accurate indication of the great mental powers which he displayed in maturer years.

In 1826 he entered Trinity College, Dublin, where his whole career was one of easy triumph. In 1829, he gained a scholarship, and, the year following, the gold medal for classics, the highest honor in the gift of the college. So little, however, was he elated by this distinction, that it was not until some years afterward that, happening to be in Dublin, he called for and received his medal. Having determined to go to the bar, he was entered at the Inner Temple in 1827, though still pursuing his course at Trinity. The ease with which he got through his collegiate studies left him leisure for the acquisition of legal knowledge, and he procured a copy of Blackstone, and read it through several times with deep attention. Cruise's Digest, in seven volumes, octavo, he also read twice over, and Coke upon Littleton—an "uncouth, crabbed author," as Lord Mansfield said—he studied carefully. This would be a rather formidable course for leisure hours at college, but so rapidly and attentively did Mr. Smith read, and so tenaciously did his memory retain, that it was to him no difficult task. In 1830, he began keeping terms at the Inner Temple, and his appearance then was described by a fellow student as that of "a bashful, awkward person, dull and taciturn, with a formal, precise way of speaking, and a slight abruptness of manner." "His personal appearance was, it must be candidly owned, certainly insignificant and unprepossessing. He was of slight make, a trifle under the middle height; his hair was rather light, and his complexion pale. He wore spectacles, being excessively nearsighted, and had a very slight cast in his eyes, which were somewhat full and prominent. The expression of his features, at all events when in repose, was neither intellectual nor engaging, but they improved when he was animated or excited in conversation." Not a prepossessing picture, surely, but then it is only of the exterior, the physical. His mind proved to be as wonderful and beautiful as his body was plain and ungainly, and it did not take very long for the worthier of his fellow students to discover this.

In the same year he entered the chambers of Mr. Richard Blick, one of the most eminent special pleaders in the Temple, and after reading Tidd's Practice and Selwyn's Nisi Prius, concluded that "he had not a sufficient knowledge of pleading to get any benefit from the business which he saw." He therefore absented himself from chambers for a time, and after having read most thoroughly Chitty on Pleadings and Phillips on Evidence, returned to avail himself of the advantages offered by Mr. Blick's extensive practice. Here he laid the basis of an extended, profound and scientific knowledge of the law. With a wonderful memory, a clear, vigorous and disciplined

understanding and close application, he was, at the early age of twenty-two, a more thorough lawyer than most men ever are, and had become greatly skilled in that most difficult branch of English law—special pleading. After a year's pupilage, he left Mr. Blick and commenced his career as a special pleader. But admirably qualified as he was, he met with no success, having no connections and little tact to make them. Says Mr. Warren: "I question whether, during this two or three years' bitter, disheartening probation, he made more than thirty or at least forty guineas; his annual certificate for leave thus to do nothing cost him, nevertheless, $12." But though without business, he was not idle nor disheartened, but devoted himself to laying broader and deeper the foundations of a splendid legal knowledge. Warren and Phillimore, and others of his associates and friends, began a little weekly periodical called the "Legal Examiner," to which he was a constant contributor, "his papers being always characterized by point and precision though the style was dry and stiff." During this time, also, he prepared and published his treatise on "Mercantile Law," which, as soon as it became known, raised him to the very highest rank of legal writers. Though the production of an unknown youth of scarcely twenty-five, it was at once accepted as high authority, not only in England but in this country, and his opinions on controverted questions have often been received in the highest judicial quarters in preference to those of learned judges, as in the case of *Tanner* v *Scovell*, 14 M. & W. 37.

Finally, despairing of getting business as a pleader, he determined to try his fortune at the bar, and was called in 1834, selecting the Oxford circuit. But, notwithstanding some success at the sessions, he gained no foothold at the assizes, and at one time, seriously contemplated entering the Church. He had a fondness for theological studies and was said to be remarkably well read in them.

In 1835 Mr. Warren published his "Introduction to Law Studies," in which was urged upon the student, the necessity of mastering a few "leading cases" as *nuclei* of future legal acquisitions. Mr. Smith at once seized upon this suggestion and conceived the idea of preparing a book under the name of "Selection of Leading Cases." There was no work of the kind, and much learning and judgment were requisite to accomplish it successfully. He began about the middle of 1835, and published the first volume in March, 1837. The great value of the book, and the consummate ability and skill with which it had been prepared, were at once acknowledged on every side. Mr. Warren says: "Almost all the judges and the most eminent members of the bar, wrote to him in terms of warm respect and approbation." And even from this side of the Atlantic did he receive high commendation, for Mr. Justice Story wrote him: "I consider your work among the most valuable additions to judicial literature which have appeared for many years. The 'Notes' are excellent, and set forth the leading principles of the various cases in the most satisfactory form, with an accuracy and nicety of discrimination equally honorable to you and our common profession. I know not, indeed, if any work can be found which more perfectly accomplishes the purpose of the authors."

The demand for the work was so great that he at once set to work on the second volume, and succeeded by great energy and industry in bringing out the first part of it by May, 1838, although his time was partly occupied by his duties as Common Law lecturer to the Law Institute, a position which he had accepted in November, 1837. He now met with considerable annoyance and some delay from a firm of law booksellers, the publishers of his "Mercantile Law," and to whom he had offered his "Leading Cases." Mortified at the success of a work which they had refused, they took measures to restrain its sale on the ground that the author had been guilty of piracy in selecting some few cases from "Reports," published by them, as texts for his masterly legal discussions. Mr. Smith and his publisher contested the matter with triumphant success, both before the Vice-Chancellor and Lord Chancellor.

Of the "Leading Cases" it is not necessary to speak. They are known wherever the common law of England is known and studied. They have had many imitators, especially in this country, of late years, but they stand immeasurably superior to any of their followers. Six large editions of them have been published here, and the seventh will shortly appear.

As a law lecturer, Mr. Smith won great distinction. "He had a great talent," says one of his biographers, "for communicating elementary information; and even the most ignorant and stolid of his listeners could scarcely avoid understanding his simple and lucid explanations of legal principles." One series of his lectures on "Contracts" was published after his death, and though never designed nor prepared for publication, they may be justly regarded as models of a lucid and concise exposition of the subject.

His "Leading Cases" was, however, the key that opened the gate to fortune, and business began to come to him. The leaders of the Oxford circuit took every occasion to name him as arbitrator when the more important cases at the assizes were agreed to be so disposed of, and he invariably gave the highest satisfaction to both parties. Shortly, he made his way to a large and important junior business on circuit, and "few cases of great importance were tried in which Mr. Smith was not early engaged, and the entire conduct of the cause, up to the hour of trial, confidently intrusted to his masterly management." Mr. Warren pronounced him, without exception, one of the ablest *pleaders* that he ever came in contact with. He seldom used precedents (often observing that "no man who understood his business needed them, except in very special occasions"); but he seldom erred even in merely formal matters, while he was quick to detect any inaccuracy on the part of his opponent. Of his manner in court Mr. Warren says: "When he rose to speak his manner was formal and solemn, even to a degree of eccentricity, calculated to provoke a smile from the hearers. His voice was rather loud and hard, his features were inflexible, his utterance was exceedingly deliberate, and his language precise and elaborate. His motions were very slight, and, such as he had, ungraceful; for he would stand with his right arm a little raised and his hand hanging down passively by his side for a long time together, except when a slight verbal motion appeared—he the while unconscious of the indication—to show that he was uttering what he considered very material." But his great ambition was to have a first-class pleading business, and so rapidly was it gratified that in 1843 he was compelled to resign his lectureship at the Law Institute.

His success was, however, his destruction, for his unflagging devotion to business undermined a constitution never very vigorous, and consumption set in.

During the last three or four years of his life he was rarely in bed before two and sometimes three, and even four o'clock, having, nevertheless, to be at Westminster or Guildhall by half-past nine or ten in the morning.

In 1844 his physician pronounced his disease incurable, and that his death was only a matter of months, but he never flagged in his attention to business. In 1845 he went to the spring circuit, being retained in some of the heaviest causes. In July he appeared for the last time in the court of Exchequer, and he remarked to a friend, afterward, "The judges must have thought me talking great nonsense; I was so weak that it was with very great difficulty I could keep from dropping down, for my legs trembled under me all the time violently, and now and then I seemed to lose sight of the judges." Yet, there was no failing of the mind, and his argument on the occasion was "distinguished by his usual accuracy, clearness and force of reasoning." A couple of months later—weaker and near the end—he said, "I have none to thank but myself; I have killed myself by going the last circuit, but I could not resist some tempting briefs which awaited me." But even then he *would* work, though unable to sit up; and he worked over his briefs, cases and pleadings with an attention and devotion that could have come from nothing but love for the labor. Even on the morning of his death when, as he said, he heard "strange human voices speaking to him intelligibly," he dictated "not only an appropriate, but a correct and able opinion on a case of considerable difficulty." But the wasted lamp could not longer hold out to burn, and on the 17th of December, 1845, in the thirty-seventh year of his age, John William Smith died. It was his desire to be buried in the little burying ground of the Temple Church, but the Benchers, though anxious to fulfil his wish, could not comply, and he was interred at Kensal Green. A little stone at the head of the grave gives his name, age and profession, and the day of his death. A more pretentious tablet of white marble,

containing an appropriate inscription, written by his friend Mr. Phillimore, stands in the Triforium of the Temple.—*Albany Law Journal.*

THE PERSONAL CHARACTER OF OBLIGATIONS.

CONTRACT: EFFECTS ON THIRD PERSONS.

The original and simplest form of contract is that which is made between certain persons, and the effects of which are strictly confined to those persons or their representatives.* It is still the most frequent, and may be taken as the general type. In such a case the persons who actually negotiate the contract are the same who are bound by the consequent obligation; moreover they appear as individual persons acting each in his individual capacity, and not as members of a class answering to a general description.† Assuming this as the rule, we have two conceivable kinds of departure from it.

1. Where the persons who act in concluding the contract do not coincide with the ultimate parties to it: that is, where immediate rights or duties are created in persons not parties to the transaction.

2. Where the parties are not completely ascertained at the time of making the contract: that is, when there is a contract.

(*a.*) Either with any person indefinitely who shall satisfy a certain condition or answer a certain description.

(*b.*) Or with the person who for the time being shall satisfy some condition or possess some attribute which may continue to subsist in a succession of different persons.

All these variations from the normal type of contract are treated as exceptional, and cannot be introduced except with certain limitations, and in certain classes of cases. This will appear by taking in order the several branches of the rule and the exceptions which are recognised.

1. There is no doubt that in general a contract cannot be made to confer rights or impose duties on a person not a party to it. As to duties, it is clear on principle that individuals cannot be allowed at will to subject others without their assent to personal liabilities.* It is not so immediately obvious why it should not be competent for them to confer rights on third parties; and, in fact, the law was for a considerable time far from completely settled on this head. It was held sometimes that any third person for whose personal benefit such a contract was made might sue upon it;† sometimes that near relationship at all events was a ground of exception;‡ though the weight of authority seems to have been on the whole in favor of the view which ultimately prevailed.§

But (to use the words of a judgment which finally overruled the older authorities relied on for the supposed class of exceptions in favor of near relationship) "it is now established that no stranger to the consideration can take advantage of a contract although made for his benefit;" so that if one person makes a promise to another for the benefit of a third, that third person may not maintain an action upon it, even if the parties expressly

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* *I.e.*, those who succeed to their legal existence as representing them by force of some general operation of law, independent of the particular transaction.

† Savigny, "Obligationenrecht," sec. 53, vol. 2, p. 16. The general principles being identical, I follow Savigny's arrangement, and several paragraphs are in effect free translations from him.

* It is true that in quasi-contracts (which we still persist in calling by the cumbrous name of contracts implied in law) the one party may be placed by acts of the other of which he is at the time wholly ignorant in a position analogous, but only analogous, to that of one who has entered into an actual agreement.

† Dictum of Buller, J., 1 B. & P., 101 *n.* "If one person makes a promise to another for the benefit of a third, that third may maintain an action upon it."

‡ *Dutton* v. *Poole*, 2 Lev. 210, Vent. 318, 322, approved by Lord Mansfield, Cowp. 443, is the type of these anomalous cases. It was not decided without much difference of opinion at the time.

§ *See* Evans, Appx. 4 to Poth. Obl., a short but very well considered essay; judgment of Eyre C. J., in *Company of Feltmakers* v. *Davis*, 1 B. & P., 98, who inclined to think B might sue on a promise made to A for his, B's, benefit by laying the promise as made to himself and giving in evidence the promise actually made to A.; and note *a*, 3 B. & P., 149: the older authorities are collected in Vin. Ab. 1, 333-7, Assumpsit Z; two or three of these are cases of agency, which (as will presently be observed) is no real exception.

agree that he may.* And it was laid down by the Court of Chancery many years earlier to the same effect, that "when two persons, for valuable consideration between themselves, covenant to do some act for the benefit of a mere stranger, that stranger has not the right to enforce the covenant against the two, although each one might as against the other.† On the other hand, it does not appear that an arrangement made between the contracting parties for their own convenience has ever been allowed to give a right of action to a person not a party; the person suing must show a promise made immediately to himself.‡ But as regards contracts under seal, the rule of the common law has always been clear and inflexible (even where simple contracts admit,§ or have been supposed to admit,‖ of exceptions), that on a deed made between parties no stranger can have an action, or join in any action for non-performance of covenants contained in it.¶ "Those parties only can sue or be sued upon an indenture who are named or described in it as parties."

The principle has been carried out consistently and even rigorously in modern times. An agreement for hiring the tolls of certain fen lands at a rent "to be paid to the treasurer of the commissioners," gave no right to the treasurer to sue for payment of the rent, for the contract was with the commissioners only, independent of the further objection that the true meaning of the agreement was to secure payment to the treasurer *for the time being*, which it was admitted would be bad as an attempt to contract with an uncertain person.* In an action on a by-law of a company imposing a fine to be paid to the master and wardens for the use of the master wardens and company, the right to sue was determined to be in the master and wardens only.† And an agreement by co-adventurers amongst themselves that the amount of calls due from any one of them shall be considered as a debt due to an officer of the partnership, who shall have power to sue for it, is in violation of the law, and gives no right of action to such officer.‡

On the whole then the rule is firmly established; and there is good ground in reason for it. The obligation of contracts is a limitation imposed on what

* *Tweddle* v. *Atkinson*, 1 B. & S., 393,

† *Colyear* v. *Mulgrave*, 2 Keen, at p. 98. The right of the parties themselves is perhaps over-cautiously expressed. It was in truth but an instance of the "elementary principle that will not enter into an inquiry as to the adequacy of the consideration" (per Byles J., 5 C.B., N.S., 265): it is presumed that the party who wants a thing done finds some benefit in it (8 A. & E., 743), and there need not be any apparent benefit at all. The doctrine is not new: cp. Ro. Abr. 1, 593, pl. 7, Y.B. 17 E, 4, 5: if I promise to pay vi *s.* a week for the commons of another "la ley intend que il est un tiel per que service jeo aie avantage." In other words, that which a man has with his eyes open chosen to treat as valuable is conclusively taken as against him to be of the value he has put upon it. But this belongs to the general doctrine of consideration.

‡ *Price* v. *Easton*, 4 B. & Ad., 433.

§ *Beckham* v. *Drake*, 9 M. & W., at p. 95, per Parke B.; 1 Wms. Saund., p. 477.

‖ *Gilly* v. *Copley*, 3 Lev. 140, on a demurrer: as to the end of the cause itself the reporter adds: "I suppose the parties agreed, for I never heard more on't."

¶ *Lord Southampton* v. *Brown*, 6 B. & C., 718.

* *Pigott* v. *Thompson*, 3 B. & P., 147.

† *Company of Feltmakers* v. *Davis*, 1 B. & P., 98. In a case the converse of this, there being a joint contract by several persons for a payment to be made to one of them, the Court of Exchequer inclined to think "the action ought to have been by all upon the promise made to all, though only one was to receive the money:" *Chanter* v. *Leese*, 4 M. & W., 295; but no judgment on that point. *Jones* v. *Robinson* (1. Ex. 454), is rather the other way: that case was in effect as follows:—the purchaser of a business from two partners promised them in consideration of the assignment of the partnership effects to him to pay the debts of the partnership; one of the late partners who had himself advanced money to the partnership was not repaid, and thereupon sued the purchaser on the promise made to both partners; and it was held well.

[But the decision is not easy to understand. For—

1. It seems hardly doubtful on principle that both the late partners must have joined as plaintiffs, if the partnership debt the defendant refused to pay had been due to a stranger.

2. The circumstance of the suing partner himself having been the creditor ought to have made no difference, for there was no separate promise to pay him in his capacity of creditor. How far this did in fact influence the judgment is not clear.]

Spurr v. *Cass*, L.R., 5 Q.B., 656, goes on the ground of Agency, and is, therefore, not decisive on this point.

‡ *Hybart* v. *Parker*, 4 C.B., N.S., 209; Cp., *Gray* v. *Pearson*, L.R., 5 C. P., 568.

would be in its absence the lawful freedom of action of the party bound by it, and the law will not enforce such limitations beyond what is required to carry on men's ordinary affairs: now, it cannot be said that for this purpose it is generally necessary† to give the parties to a contract the power of conferring rights on third persons.

Exceptions.—The exceptions real or apparent to this rule are now to be shortly considered.

1. The most obvious is Agency. A contract made by an agent within his authority, or even made without authority and subsequently ratified, is binding on the principal: and this at first sight looks like an exception to the rule confining the legal effect of contracts to the actual parties. But the exception is only apparent, for the true party is the principal, and the agent is only the instrument by which the intention of the principal is expressed.

There are several conceivable degrees of agency according to the relative importance to the agent's part in the transaction; but the same principle runs through all.

If I discuss with another party an offer made by him, and we come to no final agreement, but afterwards I send a messenger to signify my assent, the messenger has only to deliver that, and is not concerned to know the matter to which my assent relates; he is just as much a passive instrument as a letter would be.

Nor does it make any difference in the nature of his instrumentality if the terms of the message are so full and explicit that he understands what it is about, but still has no choice. Again, if I empower him to exercise a strictly limited discretion (as to propose giving a certain pr and increase it up to a certain limit if necessary) it is impossible to treat this as a substantial distinction. Again, if we go yet a step farther and consider what happens when I employ the agent not merely to act, but to judge, and leave the choice of several courses to his discretion, it still appears that he is in the same situation touching the ultimate contract as the mere messenger. For though it is in his discretion to determine against several possible alternatives that one which is to constitute the intention on my part to be declared in the final contract, yet the intention is mine when determined. I may tell him to buy these or those goods for me according to the best of his judgment, but it is I who am the real buyer of the goods he decides upon.

In short, it matters not for this purpose whether the agent is the bearer of only one certain resolve of the principal, or of several alternative resolves amongst which he is to choose.*

The case is somewhat less simple when the agent contracts nominally for himself, but really for an undisclosed principal. But here the rule of law still rests upon the ground, "that the act of the agent was the act of the principal, and the subscription of the agent the subscription of the principal."† The principal has effectually and truly contracted, and "the parties really contracting are the parties to sue in a court of justice, although the contract be in the name of another."‡ Accordingly, if any agent makes a contract in his own name, the principal may sue and be sued on it,"§ except in the case of contracts under seal, when a technical doctrine, applicable to deeds only, prevents this.‖ And the fact of the agent expressly signing his own name makes no difference in this respect.¶ The peculiarity is that the introduction of the principal as a party is possible only, not necessary. In fact, there are two alternative and mutually exclusive** obligations, the principal being a party in one, the agent in the other. "Whenever an express contract is made, an action is maintainable upon it either in the name of the person with whom it was actually made or in the name of the person with whom in point of law it is made,"†† and

† Savigny, Obl. 2, 76; D. 44, de O. et A. 11 45, 1, de v. o. 38, sec. 17. Inventæ sunt enim hujosmodi obligationes ad hoc, ut unusquisque sibi adquirat quod sua interest: ceterum ut alii detur nihil interest mea.

* Savigny, Obl., sec. 57 (2, §57-59); Cp. *ib.* sec 51 (2,19).

† Per Parke B., *Beecham Drake*, 9 M. & W., 96.

‡ *Ib.* p. 91, per Lord Abinger C. B.

§ *Cothay* v. *Fennell*, 10 B. & C., 671.

‖ *Beekham* v. *Drake*, 9 M. &. W., 95.

¶ *Ib.* 91.

** Leake on Cont., 300, 304.

†† *Cothay* v. *Fennell*, 20 B. & C., 6.

by the other contracting party against either of them.* The alternative character of the obligation is made clearer by considering the case of a contract made with an agent in the agent's name, the principal also being made known: then the other contracting party has still a right to sue the agent or the principal at his election.† As for the analogous cases where parties not named in a transaction conducted by some of their number, are nevertheless treated as parties to it, "all questions between partners are no more than illustrations of the same questions as between principal and agent." ‡

The legal aspect of the matter is the same when the principal's authority is given by subsequent ratification, and this whether the other party at the time of making the contract knows that he is dealing with an agent or not.§

2. There is another class of apparent exceptions when contractual relations exist between two persons, and one of them acquires new rights by the dealings of the other with a third person; and in the case of principal and surety.‖ But these new rights, though immediately acquired in consequence of a transaction to which the party acquiring them is no party, are really incidental to the prior contract to which he was a party, and may therefore be properly referred to it; so that the case is analogous to a conditional contract depending on a collateral event, the difference being that here the condition is annexed to the contract, not by the will of the parties but by judicial rules.

Generally speaking,¶ A and B may make a contract conditional on any collateral event; and they may choose for that purpose the event of a certain transaction taking place between C and D, or between A and B, as well as any other; and this may or may not be connected with the principal matter of the contract. Then the mutual rights of A and B under their contract depend on and are to be determined by a transaction between different parties; but their foundation is not in that transaction, but in the agreement of the parties themselves. But the creation or modification of the rights arising out of a contract may be annexed to a collateral event by the law as well as by the agreement of the parties, and will still be no less referable to the original contract. However the event invested with such consequences by the law will naturally be something affecting the matter of the principal agreement, and thus a confusion may arise at first sight which cannot present itself in the simpler case above stated.

3. Again, the powers of a majority of creditors in bankruptcy proceedings and compositions to bind the rest may be considered as forming an exception to the rule in question.* But it is to be observed that such proceedings are really not so much independent transactions as steps in a judicial process, or an arrangement carried out by machinery made capable by special legislation of taking its place, the ultimate result of which, as of every litigation carried out to its end, is a complete transformation of the previously existing rights on which the process was founded.

4. There exists, however, a real and important exception in the case of trustees. The equitable obligations of a trustee are partly in the nature of contract, partly analogous to the class of obligations known in the common law as duties founded on contract: and he may become bound by these to persons, who not only are not parties to the contract from which their rights are derived, but are not and cannot be in existence when it is entered into, and whom, indeed, it often taxes the utmost ingenuity of judicial interpretation to ascertain.

It is not usual either in practice or in books† to regard the relations of trustee and *cestui que trust* in this light; nor perhaps is there very much to be gained

* The limitations to which this is subject are not material for the present purpose.

† *Calder* v. *Dobell*, L. R., 6 C. P. 486.

‡ *Beckham* v. *Drake*, 9 M. & W., 98, *per* Parke B.

§ *Bird* v. *Brown*, 4 Ex. 798.

‖ Pothier, Obl. s. 89, who treats this as a real exception. The doctrine as to co-sureties rests on the general principle of *quasi*-contract: 1 Wms. Saund., 267 f. (The equitable principle of *Dering* v. *Lord Winchelsea*, 1 Wh. & T., L.C. 89, 95, is differently expressed but in substance the same, and therefore gives rise to no difficulty here.)

¶ *I.e.*, subject to the restraints imposed by public policy, which need not be now considered.

* Pothier, Obl., sec. 88.

† Mr. Story in his work on Contracts has a chapter on Trustees, but gives no explanation of the ground on which it is inserted, nor does he discuss this aspect of the matter.

by it in considering the equitable jurisdiction apart from the general body of law, since Equity has developed a terminology for its own peculiar purposes which has attained a very creditable amount of definition, at least taking into the account the difficulties it had to contend with in starting from random talk about conscience. But if we want to be in a position to compare accurately the operations of Common Law and of Equity (which it may before long become necessary to do), it is important to have a clear view of the bearing of general legal * ideas on the special institutions of Equity.

We are accustomed to speak of equitable estates, interests, and ownership. But it must not be forgotten that the analogy consists only in the practical result to the beneficiary. He obtains through the medium of his trustee advantages of the same kind as are incident to actual ownership and other real rights: but his actual rights are not merely subject to a different jurisdiction, but of a different nature. Speaking broadly, equitable ownership is in truth a personal obligatory relation between the trustee and the beneficiary. Without discussing this in detail, it may be observed that the doctrine, now more fully established than ever, of purchase for valuable consideration without notice being "an absolute, unqualified, unanswerable defence"† in equity is alone sufficient to show that this point of view is the right one. For when a right, good against all the world, such as legal ownership, is in question, the existence of notice may indeed be a ground of interference against the person affected with it, but the absence of notice is, in itself, immaterial, and cannot, save in certain exceptional cases, produce any positive advantage.‡

The converse doctrine as to the effect of giving or omitting to give notice to the trustee on assignments of equitable interests are also important in this point of view. Comparing the position of the original debtor on an equitable assignment of a debt with that of the trustee on an assignment of an equitable interest, it is easy to see that the essential character of the two transactions is the same. The trustee is in the same relation to his apparent *cestui que trust*, as a debtor to his apparent creditor or a lessee to his apparent reversioner. It falls under the "rule of general jurisprudence not confined to choses in action . . . that if a person enters into a contract, and, without notice of any assignment, fulfils it to the person with whom he made the contract, he is discharged from his obligation:"* and all the distinctions as to the circumstances under which priority is or is not gained by notice are or ought to be matters of deduction from this rule. The other class of cases as to equitable assignments, which rests on the principle that a man cannot assign any interest except such as he has,† do not really interfere with its generality. The rights of a purchaser of an equitable interest are of course equally personal, being derived from the original personal obligation between the trustee and the beneficiary, and it is only as "the implied agent of the *cestui que trust*,"‡ that he has any recognizable interest before the novation is complete.

It is hardly necessary to observe that the personal character of the whole law of trusts is grounded not merely in theory, but in the historical origin of the institution; and that, while subject to some qualifications in its wider bearings, it is still carried out to various collateral consequences with an inflexible logic sometimes involving no small hardship.

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* One must either use the adjective *legal* in two senses, viz., sometimes (as here) corresponding to law in general, sometimes to Common Law as opposed to Equity, or have recourse to the cumbrous term *juristic*, which I think ought not to be introduced into English if ambiguity can by any other possible means be avoided.

† Per James L. J., in *Pilcher* v. *Rawlins*, L.R. 7 Ch. 269, where an attempt to give a new artificial development to the doctrine of constructive notice is completely disposed of.

‡ The equitable obligation towards the *cestui que trust* of other persons deriving title from the trustee with notice, must be considered as quasi-contractual. Of course those rights must be distinguished which are truly real rights as between themselves at all events though not generally recognised by the common law: such are the rights arising from equitable liens and equitable encumbrances created by the owner of the legal estate.—See, *e. g. Newton* v. *Newton*, L.R., 4 Ch., 145.

* Per Willes J., in *DeNicholls* v. *Saunders* L.R., 5 C.P., 593.

† Lewin on trusts, pp. 496-7 (5th ed).

‡ Lewin, 501.

It would be a matter of some interest, and probably also of some difficulty, to determine the true character of the relation between persons claiming adversely to one another as *cestuis que trust* under the same disposition; but this does not fall within the scope of the present discussion.—*Law Magazine.*

CORPORATE SEAL—HOW FAR ESSENTIAL TO A CONTRACT.

The recent case of *Crampton* v. *The Verna Railway Company*, decided by Lord Hatherley (L. Rep. 7 Ch. App. 562), in affirmance of the Master of the Rolls, furnishes an unpleasant illustration of the difficulties, or, perhaps, we might say, the absolute denial of justice which may result from the rule that a corporation can contract only under its common seal. Notwithstanding the numerous and important exceptions which have been established, the rule is still a rule, though in many cases it will be found very difficult to determine the line at which the rule ends and the exceptions begin. In *Crampton* v. *The Verna Railway Company*, the agent of the company which was constructing a railway in Turkey, agreed verbally with the contractors, through whom the plaintiff claimed, that if the plaintiff would build on the company's land certain cottages, in a substantial manner, and leave them for the use of the company, the company would pay them 5000*l.* The cottages having been accordingly built, the agent of the company agreed with the contractors that they should be paid 500*l.* annually, by way of rent, and that the company should have an option to purchase for 5000*l.* The agreement was confirmed by a resolution from the board of directors, and the company paid the 500*l.* a year for some years, and then refused to make any further payment. The court holding that the claim of the plaintiff was only a money demand, also held that the fact of the agreement not being under seal, constituted no ground for the interference of a court of equity to compel performance of the contract, and a demurrer for want of equity was consequently allowed.

This decision was fully in accordance with that of Lord Cottenham in *Kirk* v. *The Guardians of the Bromley Union* (2 Phil. 640), and there can, we think, be little doubt that the plaintiff's remedy, *if any*, was either at law under the contract, or in equity to the extent, and only to the extent of the benefit conferred. The remarks of Lord Hatherley, in the conclusion of his judgment, are interesting, as indicating the consequences which, in his Lordship's opinion, result from the absence of the corporate seal. He says:—"The truth is, that every one who deals with corporations like these, must be taken to know what are their powers of contracting, and must take a contract accordingly; and when there is only a money demand, and there is no valid contract, then this court cannot interfere in the matter. I certainly was impressed with the consideration of the length to which these doctrines might be carried; but I think the arm of the court is always strong enough to deal properly with such cases. There might be a contract without seal, under which the whole railway was made, and of which the company would reap the profit, and yet it might be said that they were not liable to pay for the making of the line. When any such case comes to be considered, I think there will be two ways of meeting it. It may be (and perhaps is so in this case) that the contractor has his remedy against the individual with whom he entered into the contract, although he may have no remedy against the company; or it may be that the court, acting on well recognised principles, will say that the company shall not in such a case be allowed to raise any difficulty as to payment. But the matter in question here is collateral to the main object of the company, and is not essential to the existence of the railway for which the company was incorporated; and in that respect this case differs from the case I have supposed, and does not call for the interference of the court. I think the position of the plaintiff is very unfortunate; but subject to that remedy he may have at law against the persons who entered into the engagement with him, it appears to me that he is left without remedy."

In regard to the remedy suggested by proceeding against the agent of the company, it is difficult to see in what way an agent acting *bonâ fide* and professedly as such, and making no false representations of any matter of fact, could by possibility

be held liable for the contract being held invalid for want of a seal. The very recent case of *Beattie* v. *Lord Ebury* (Notes of the Week, Aug. 10, 1872), before the Lords Justices of Appeal, is entirely opposed to any such notion. The case suggested by Lord Hatherley, of a contract without seal under which an entire railway was made, we think would be almost certainly within the principle of the *South of Ireland Colliery Company* v. *Waddle* (L. Rep. 4 C. P. 617), where Lord Chief Justice Cockburn, in delivering the judgment of the Court of Exchequer Chamber, spoke of the old rule "as a relic of barbarous antiquity," and refused to re-introduce it by disregarding a long series of decisions in which it had been held not to apply to corporations or companies constituted for the purpose of trading, and where the contract was necessary for the purpose of such corporations or companies.

So in the court below (18 L. T. Rep. N. S. 403; L. Rep. 3 C. P. 474), Mr. Justice Montague Smith, says:—"The modern doctrine, as I understand it, is, that a company which is established for the purpose of trading may make all such contracts as are of ordinary occurrence in that trade, without the formality of a seal, and that the seal is required only in matters of unusual and extraordinary character, which are not likely to arise in the ordinary course of business." It would thus appear probable that in the case put by Lord Hatherley, the contractor would have an adequate remedy at law, and on that ground would be precluded from resorting to equity.

Assuming, however, that from the special constitution of the defendant company, or from the general law, the plaintiff is without legal remedy, it appears to us that he is not entirely without an equitable remedy—not indeed on the contract, but under the head of equity, stated in paragraph 22 of Mr. Shelford's book on Joint-Stock Companies, second edition, viz,:—"That companies which have derived benefits from dealings on their behalf, beyond their powers, or on which they cannot be sued at law, or for some other reason, are liable in equity to recoup the persons from whom they have derived such benefits, to the extent they have benefited;"—a proposition amply supported by recent authorities.—*The Law Times.*

CONCERNING THE READING OF MANY BOOKS.

Hobbes, of Malmesbury, used to say: "If I had read as many books as other persons I should, probably, know as little;" and the saying had a sermon in it which we have, most of us, been very slow to learn. We read too many books, and especially is this true of lawyers and law students. We remember to have seen a "course of law reading for students," recommended in some old book which, it was remarked, "could be accomplished in about *ten* years," and to an edition of Wynne's Eunomus there is prefixed a "plan of reading for special pleaders" that makes one's head ache simply to contemplate. Such a legal ground plan is not unlike Robinson Crusoe's goat pen, so large as to give him as little property in his flock as though he had no pen at all.

And the worst of it is that most law students pursue their studies, or rather reading, for it is not study, much on the same principle. One book after another is gone through hastily, mechanically, little remembered and less understood, and after a certain time they come to the bar with no clear, well-defined knowledge of any thing. In thinking of the average law student's career, one is reminded of Swift's witty remark, that the reason a certain university was a learned place was, that some persons took some learning there and few brought any away with them, so it accumulated.

A late learned professor in a law school used to remark to his classes that any man who *knew* the contents of three books, which he named, would be a better lawyer than there was in the State; and we do not doubt he was correct. The usual method of a law student is to read *seriatim* Blackstone, and Kent, and Greenleaf, and Washburn on Real Property, and Parsons on Contracts, and works on Practice, Bills and Notes, Partnership, Easements, Domestic Relations, Pleadings, Commercial Law, Agency and what not, until he has a sufficient smattering to enable him to pass a meagre examination and take his place at the bar. But after all this, how much does he really know, as a rule, on any one of the subjects named? Certainly not much. Now, had he devoted all his time to carefully reading and re-reading

Blackstone or Kent, can there be a reasonable doubt that his knowledge on all or nearly all the subjects would have been ten or twenty fold? Mr. Warren tells, in his admirable work on "Law Studies," that he once asked one of the most eminent political writers of the day, one who had been, on several occasions, signally successful in attacking the opinions of lawyers in parliament, how it was that, not being a lawyer, he was completely *at home* on legal subjects. "Why," was the reply, "I *study* a book which you lawyers only talk about or look down upon, Blackstone's Commentaries."

It is a conceded fact in military science, that a few disciplined forces are far more efficient than a much larger number of undisciplined men, and the same is true in the law. A few books, thoroughly mastered, will furnish a knowledge that will make one stronger and better able to cope with difficulties, than any number of books but half understood or remembered; or, as the Germans put it—and none better understand practical education—"nothing is so prolific as a little known well." The old Latin proverb reminds us of this fact—*Cave ab homine unius libri*—beware of the man of one book. He will always be found to be a formidable antagonist. His intimate knowledge of one great author will saturate his mind with the excellencies of that author's genius, will shape and sharpen his faculties, and he will be like a man who sleeps with armor on, ready at the moment. While, of course, in the law it is impossible to be a "man of one book" literally, yet, in its spirit and true meaning, it is not only possible, but desirable; that is, to pursue one system, to choose a few authors and to be thorough in a limited sphere, rather than superficial in one more extended. Sir William Jones, it is said, *invariably* read through every year the works of Cicero; Demosthenes copied and re-copied the history of Thucydides eight times: Montesquieu was a constant student of Tacitus; Chatham read Barrow's sermons until he could repeat most of them from memory; Webster read Plutarch's lives every year. These are but few of the hundreds of worthy witnesses who have, by example, testified to the value of iteration and reiteration. Each had his particular object, and how well he accomplished it we know. If logic or style or diction can be thus best acquired, so can the law. The student who shall take Blackstone or Kent and make that *his book*, who shall have it ever at hand, read, re-read, "marked and quoted;" who shall make incursions into other treatises and the reports, only to illustrate it and trace its doctrines, will have a more thorough, practical and comprehensive knowledge of the law than though he had gone through the entire curriculum of the law schools. In re-reading a book a man does not get precisely the same information that he did on the first reading, for the interval between the readings will call attention to a new order of facts, and, like the bits of glass in the kaleidoscope, they will assume new combinations and make new impressions.

There are very few legal text-books that should be read through, "from cover to cover." The others ought to be studied on particular topics in connection with the few aforesaid. It is a well-known fact that Dr. Johnson said he never read any book through but the Bible, yet Adam Smith said, "Johnson knew more books than any man alive." The secret of this is easily found in Boswell's remark: "He had a peculiar facility in seizing at once what was valuable in any book without submitting to the labor of perusing it from beginning to end."

This faculty of getting directly at what one desires in a book is of supreme value to the law student, and one which he can cultivate and greatly improve by confining his chief attention to a few books and using the others only as adjuncts. We are not speaking of the reports, for to them the student should constantly turn, but, as a rule, only in connection with the particular topic that he is pursuing in his text-book. He should carefully examine the authorities cited by his author and what later leading cases he can find on the subject, should master the facts and the reasons on which the decisions are based, and should then write out his results as a kind of annotation to his treatise. This process will make "every man his own author," will train his intellect, develop his reasoning powers, fix legal principles in his memory and make him a more thorough lawyer than any number of years' careless, half-interested, reading "by course," could do. He will have the substance instead of the shadow of real knowledge.—*Albany Law Journal.*

LIABILITY OF ATTORNEYS FOR THE ACTS OF CLERKS.

"Ye Gods!" cried Thackeray, "what "do not attorneys and attorneys' clerks "know in London! Nothing is hidden "from their inquisition, and their fam- "iliars mutely rule our city." In truth, not only in the "great metrolopus," as Mrs. Malaprop has it, but wherever law exists, the law-clerk is omniscient, and his activity all-prevailing; as Morris, J., puts it, "Law-clerks busy themselves in "everything, and are the best-known "people in every town." (*M'Cue* v. *James*, 5 Ir. L. T. R. 89). And although what songs the syrens sang, or what name Achilles assumed when he hid himself among women may now be accounted puzzling questions, as Sir Thomas Brown concedes, yet, we cherish the conjecture that, to the law-clerks of antiquity these matters were perfectly familiar. But of course, it is in the legal world especially that the law-clerk is master of all he surveys. He is the little wheel that makes the works move. "Lord Mansfield was in the habit of "saying, that the *quicquid agunt homines* "was the business of Courts of Justice: "if I may venture to extend the senti- "ment," adds Park, J., "the same may "perhaps be said of attorneys' clerks." How far an attorney is responsible for and bound by the acts of his clerks, is a question which we must answer by referring to the result of the authorities.

When a clerk, directed by his employer to have a defence prepared by counsel, signs it in the name of counsel without his authority, though not so prepared, the defence will be set aside, and the attorney, though unaware of the act of the clerk, will be ordered to pay the incidental costs. So it was held by the Court of Common Pleas, in a case decided on this day week. And certainly, as a general rule, the principle involved would seem to be commended by practical considerations. When Constable Staff, as Fielding relates, arrested "*inter alios*" a half-pay officer and an attorney's clerk, "discharge the officer and the law clerk," "said Squeezum, J.P., "there is noth- "ing to be got by the army or the law— "the one hath no money, and the other "will part with none." Indeed, in such case the learned justice might well have followed the precedent made by Wonter Van Twiller, condemning the constable to pay the costs. Again, when a clerk fraudulently simulated the seal of the Court to a writ, the writ was set aside, and the attorney was ordered to pay the costs (*Dunkley* v. *Ferrers*, 11 C. B. 457.) And so, when the clerk of the plaintiff's attorney extorted an excessive sum for costs, on a false statement that judgment had been signed, the Court ordered the attorney to refund the overcharge, and to pay the costs of an application against him personally, although he was proved to have had no actual knowledge of the intention (*Palmer* v. *Evans*, 1 C. B. N. S. 151). When the clerk of the plaintiff's attorney, having called at the office of the defendant's attorney, and received a sum of money in settlement of debt and costs in an action, embezzled the amount, the responsibility of his employer to recoup the loss to the plaintiff was held to turn on a question of fact, whether or not the clerk was the agent of the attorney for the purpose of receiving the money (*Re Geoghegan*, 32 L. T. R. 301.) A clerk has not necessarily *ex officio* authority to receive payment of claims sued for. As Littledale, J., observes, "Although a party puts his "case into the hands of his attorney, "who thereby becomes authorised to "accept payment, it by no means follows "that all the attorney's clerks have such "an authority also" (*Bingham* v. *Allport*, 1 N. & M. 398). There, it was held that a tender made to a managing clerk, who at the time disclaimed authority from his master, the plaintiff's attorney, to receive the debt, was insufficient (see *Marks* v. *Lahee*, 6 L. J. C. P. 69). Yet, in a more recent case, it has been held that a managing clerk, having the general conduct of the business, has authority to bind his employer and his employer's client, by such a compromise as would be within the scope of his employer's authority to make. (*Prestwitch* v. *Poley*, 18 C. B. N. S. 806). A great deal depends on whether the clerk is conducting clerk or otherwise, as well as on the extent to which a particular business may have been entrusted to his management. Thus, if the management of a trial were confided to him, he could con-

sent to admissions, &c., as if he were attorney (*Baker* v. *Black*, 8 L. T. Ex. 398). And the fact of his acting as conducting clerk, in his master's absence, would furnish ground for imputing authority to him to give an extension of time for pleading. So, an attorney was held bound by the undertaking of his conducting clerk to this effect, given to the defendant's attorney, although on the same day, in another place, the plaintiff's attorney refused himself to give the same undertaking to the agent of the defendant's attorney; and a judgment marked notwithstanding the clerk's undertaking, was set aside, the attorney having to pay the costs (*Young* v. *Power*, 7 Ir. Jr., N. S., 388, 9 L. T., N. S., 176). So again, notice of an act of bankruptcy given by one attorney's clerk to another would be insufficient, unless indeed in particular circumstances, and the clerk receiving the notice being managing-clerk (*Pennell* v. *Stephens*, 7, C. B. 987; *Prestwitch* v. *Poley*, 18 C. B. N. S., 806). Much also, as regards the binding character of acts of clerks, would turn on the place where they occurred—whether at the attorney's office, or elsewhere. Thus, where a judge's order was made for payment of debt and costs, with leave to sign judgment on default in payment, and, the costs being taxed by a clerk attending for the purpose, the amount was demanded from the clerk in the master's office, but was not paid; held, that this did not constitute a default, and that judgment thereupon marked was premature. (*Perkins* v. *National Invest. Soc.*, 26 L. J. Ex., 182). But *semble*, the clerk would have had authority to pay or receive costs at the office of his employer (*ib.; Re Geoghegan, ante*). Where, however, a rule of court, calling on an attorney to deliver a bill of costs to the attorneys of a former client, was served by their clerk, who demanded the bill, this was held insufficient as ground for an attachment, on his refusal to give the bill (*Ex p. Briggs*, 18 L. J. C. P., 184). An attorney may also be stopped from setting up the absence of authority on the part of his clerk, as when a clerk, by mistake, after the time limited received the debt and costs as indorsed on the writ, the attorney, not having offered to return the money, was held not entitled to go on with the action (*Hodding* v. *Sturchfield*, 7 M. & G., 957).

But, as a rule, the clerk has not, like his employer, a general discretion over an action or suit (thus to consent to an irregularity: *Hodson* v. *Dreury*, 7 Dow. 769). He is deemed, however, an authorised agent to receive service of notices, &c., and what is said by him in his office as to acceptance of process, &c., may be taken to be said by him as agent (*Fowler* v. *Roe*, 4 D. & L., 639). And a clerk in the employment of a defendant's attorney, coming from his office to the plaintiff's attorney, and offering payment of a bill of exchange, before action, has been held *prima facie* authorized to make the offer, amounting thereby to a waiver of the defendant's right to notice of dishonor (*Ryan* v. *Seymour*, A. M. & O., 181). If consulted confidentially, the clerk stands in the same fiduciary position as his employer, and communications to him will generally be governed by the same rules as to privilege. But communications made by an attorney's clerk, in reference to the execution of a *ca. sa.*, would seem to be outside the ordinary scope of his employer's duty in respect of the conduct of the action, and so not privileged (*Caldbeck* v. *Boon*, C. P., Trin. T., 1872). Where a clerk, in his master's absence and by his authority, received money for a client, but refused to pay the client, it was held that the clerk was only answerable to his employer and he to the client (*Stephens* v. *Badcock*, 3 B. & Ad., 354). In *Re Garbutt* (9 Moore, 157), the court refused to strike an attorney off the roll, on an affidavit stating that a former clerk, living in a town eight miles from the attorney's residence, carried on business at an office over the door of which the attorney's name was affixed; it not being shewn either that the clerk participated in the profits or carried on business on his own account (see also 115 G. O., 1854). Happily now-a-days, frauds of this description are unknown. Elevated by culture, and strengthened by the bands of social organization, attorneys' clerks, as a body, are above reproach; and, so applied, the climax of the Athenian orator's vituperation, of old applauded to the echo, were now tame indeed, "a rascal and villain, and—clerk" (*De falsa Legat.*, s. 98).—*Irish Law Times.*

CANADA REPORTS.

ONTARIO.

MUNICIPAL CASES.

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

Reg. ex rel. Lachford v. Frizell.

Municipal Law—Property Qualification—Occupant. —Construction of Statute.

A person having the mere possession of a lot vested in the Crown, determinable at any moment, has not such an estate in it as will qualify him under the Municipal Act; but he is nevertheless rightly assessed, under 32 Vict. cap. 36, sec. 9, ss. 2 (Ont.)

A lot was assessed thus:—"No 25, H. B., Yeoman, &c," under the head "name of taxable party," and then under the heading "name and address of the owner, where the party named in column 2 is not the owner," appeared the name of the respondent. His name was not bracketed with that of H. B., nor was it stated in any way to be a separate assessment. *Held*, that the roll shewed that the respondent was assessed for this lot and could qualify upon it.

[Chambers, 1872,—*Mr. Dalton.*]

The relator complained that the respondent, who claimed to be the Reeve of Tyendinaga, was not entitled to hold the office, on the ground that he had not the necessary property qualification. He was assessed on Lot 24, Con. A, Tyendinaga, as house-holder, and on Lot 40, in Con. 48, as a freeholder. Lot 24 was part of the Indian Reserve, and the respondent, being Indian agent, was allowed, in addition to his salary, to occupy this lot. The land was held by the Crown in trust for the Indians, and the respondent had possession determinable at any moment. As to Lot 40, he owned the fee, but had a tenant in possession. The assessment of this lot was as follows:—

Name of taxable party—

No. on Roll.	Name of Taxable Party.	Occupation.	H. or F.	Age.	Name of Owner, &c.	School Section.
25	Bowen, H'y	Yeoman		28	Well'gton Frizell	14

As to Lot 24, it was contended that the respondent was not the legal or equitable owner, proprietor or tenant.

As to Lot 40, it was urged that by the assessment as above set out, the names not having been bracketed, and there only being one number, the respondent was not rated in his own name on the last revised assessment roll, as required by 29, 30 Vict., cap. 51, section 21 and 32 Vict., cap. 36, shed. B. (Ont.)

C. S. Patterson, for the respondent.

R. A. Harrison, Q.C., for the relator.

Mr. Dalton.—As to Lot 24, Con. 4, Tyendinaga,—the defendant has in my opinion no property qualification in respect of it.

There is, I believe in this case, no one fact in dispute, and Mr. Frizell himself gives this account of his occupation of this land. It is Indian land vested in the Crown for the benefit of the Indians, and he, being Indian agent in that district, is allowed besides his income otherwise, to occupy this land, which he has accordingly occupied for nearly two years—not for any public use or purpose, but for his private advantage—the use of the land being given to him by the Indian Department, as a part of his salary in fact. I think the assessment against Mr. Frizell in respect of this lot was right, so as to bind him personally, but not the land, under sec. 9, sub-sec. 2, of the last Assessment Act, for he was in occupation for his own interest and advantage. But the assessment cannot qualify him, for he had not at the time of the election, as proprietor or tenant, a legal or equitable freehold or leasehold. He had no estate whatever, but a mere possession, which might be determined in an hour. See *White* v. *Bayley*, 10 C. B. N. S. 227 and *Mayhew* v. *Suttle*, 4 E. & B., 347, 357.

As to the other Lot, No. 40—The defendant is the owner in fee simple. It was in possession of a tenant at the time of the assessment. The amount of the assessment is sufficient, and the only question is, whether in point of form the assessment on the roll, if it be an assessment at all, is a sufficient rating under sec. 70 to qualify the defendant. Whether it is sufficient to render him liable for the taxes is, I suppose, the same question. It is singular that the form which is given in the Ontario Statute, 32 Vict., schedule B, is not followed—a thing so easy to be done. By the 26th sec. of 32 Vict. it is provided: "When land is assessed "against both the owner and occupant, or "owner and tenant (as is the case here), the "assessor shall place both names within brackets "on the roll, and shall write opposite the name "of the owner the letter F, and opposite the "name of the occupant or tenant the letter H "or T, and both names shall be numbered on "the Roll." This direction has not been followed here. It is in this way:—"No. 25, —Bowen, Henry—Yeoman—H.—(aged) 38"—then under the heading "Name and address of the owner where the party named in column 2 is not the owner," "William Frizell." The name of the defendant is not set down under that of Henry Bowen and bracketed with it, nor is the assessment against the defendant sepa-

rately numbered on the roll. Some other deviations from the proper statutory form will be observed. The defendant's name, however, is written in a column embraced by the general heading "Names of taxable parties," and that it was so written for the purpose of assessing him, is known from the other facts. Are these deviations then so essential as to render the assessment void? After examining the English cases and our own, as far as I have been referred to, or have been able to find them, I have come to the conclusion that the assessment is good. It would certainly seem an extraordinary thing, considering the class that assessors must necessarily come from, that variances from the form of the assessment should vitiate it. Suppose all the numbers of the assessments were left out for instance, must the municipality lose the taxes?

In *Cole* v. *Green*, 6 M. & G., 872; by a Paving and Lighting Act, Commissioners were empowered to enter into contracts: "Provided "that no such contract should be made for a "longer term than three years, and before any "such contract should be entered into, ten days' "public notice should be given, in order that "persons willing to undertake the same might "make proposals to the Commissioners, at a "time and place in such notice to be specified; "and all such contracts should specify the "works to be done and the prices to be paid for "the same, and the times when they should be "completed, with the penalties to be incurred "in case of non-performance; and the same "should be signed by the Commissioners, or by "any three of them, or by their clerk, and by "the person contracting to do the work; and "copies of such contracts should be entered in "a book to be kept for that purpose by the "clerk." It was held that the proviso applied to the duration of the contract only, and that the subsequent provisions were not essential, but directory, and that a contract signed, not by the commissioners or their clerk, but by their road surveyor, was not therefore void under the Act.

Then in *Morgan*, Appellant, v. *Parry* Respondent, 17 C. B. 334, it was held that an English Act which required the lists of voters prepared by the overseers *to be signed by them*, was in that respect directory only, and that a list not signed was nevertheless good. And, in *Brumfit* v. *Bremner*, 9 C. B. N. S. 1, it was held under the same statute, that the directions to the clerk to sign and deliver the book (the revised list of voters), to the sheriff, "*on or before the last day of November*," was not a condition precedent to the validity of the Register (which was not delivered till 13th January).

The cases in 6 M. & G. 872 and 17 C. B. 334, contain a great collection of the English cases on the subject.

There are several cases in our courts where the effects of deviations from the prescribed forms of the statute, in assessments, are considered. I refer to *Applegarth* v. *Graham*, 7 U.C. C. P., 171; *Reg. ex rel. McGregor* v. *Ker*, 7 U. C. L. J., 67; *Laughtenborough* v. *McLean*, 14 C. P., 175; *DeBlaquiere* v. *Becker*, 8 U. C. C. P. 167. I think they warrant the conclusion that the enactments as to the form of the assessment (in such particulars at any rate as are here in question), are directory only.

I think the roll in this case does show that the defendant is assessed for Lot 40, and that it is sufficient to charge him, and therefore to qualify him.

Judgment for defendant.

Application was subsequently made to the Chief Justice of the Common Pleas and to Mr. Justice Galt for a summons to set aside the judgment of Mr. Dalton; but they declined to interfere.

COMMON LAW CHAMBERS.

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

In re B. & S., Attorneys, &c.

Attorney and client—Taxation—Substituted bill.

On an application to refer an Attorney's bill to taxation, an amended bill of costs was allowed to be substituted for the bill delivered to the client; the Attorneys undertaking to receive in full of their fees, charges, &c., the amount of the original bill, or the amended bill as taxed, whichever might be the least.

[Chambers, 1871,—*Mr. Dalton.*]

A summons was obtained to tax the attorney's bill of costs for services in four interpleader suits.

Stephens shewed cause, and asked leave to substitute another bill, which, though for a larger amount, he claimed was only an amplification and more detailed statements of the same charges as were in the original bill which then were not given in detail. The original bill was not delivered for the purposes of taxation, but as shewing the amount which the attorneys were willing to accept as a cash payment.

O'Brien, contra, contended that the bill delivered must be the one referred to taxation, citing *Re S. & M.*, 8 C.L.J.N.S. 245, and cases there referred to.

Mr. Dalton.—I think the proper order to make under the circumstances would be to refer the substituted bill to taxation, upon the attorney's undertaking to accept such sum as it may be taxed at, or the amount of the original bill, whichever may be the least. It would often be inequitable to compel attorneys to have incomplete or defective bills referred to taxation.

Order accordingly.

CHANCERY CHAMBERS.

(Reported by T. Langton, M.A., *Barrister-at-Law.)*

Jackson v. Harriman.

Changing reference—Evidence of preponderating convenience necessary—Practice.

Upon an application by a defendant to change a reference, upon the analogy of applications at Common Law to change venue, the balance of convenience in favor of the change must be great and obvious; must be made to appear upon the affidavit, and upon a consideration of the plaintiff's as well as the defendant's witnesses and costs.

[Chambers.—November 21, 1872.—*Mr. Taylor.*]

A bill had been filed for the settlement of partnership matters and a decree was pronounced directing an acount to be taken, and the reference for that purpose was made to the Master at Toronto, as the place where the venue was laid.

The present application was made by *Mulock* to change the reference from Toronto to Barrie, upon the ground of preponderance of convenience. The affidavits upon which the application was founded, stated that the parties lived at Stayner, and it was believed that all the witnesses which would be called resided at or near Stayner, to which place Barrie was sixty miles nearer than Toronto, and although the same train carried them to both places, there would be longer time for their examination if held at Barrie, and they would be enabled to return home the same day.

Foster, contra, urged against the change that the material upon which the motion was founded did not shew a preponderance of convenience in the explicit manner required by the court. The affidavits should shew the *reasons* for belief that the witnesses to be called resided at Stayner: *Fisken* v. *Smith,* 2 Chy. Cham. 491. They should also show such preponderance by a consideration of the plaintiff's witnesses and costs as well as the defendant's: *Diamond* v. *Gray,* 5 C. L. J. N. S. 95; and this must be *made to appear* on the affidavits: *Tonks* v. *Fisher,* 2 Dowl. 22. It must also be *great* and *obvious: Durie* v. *Hopwood,* 7 C. B. N. S. 835; *Helliwell* v. *Hobson,* 3 C. B. N. S. 761. There would be a working day, viz., from ten to four, for the examination if conducted at Toronto. The same train conveyed the witnesses to both places, and the difference in the fare was slight; besides, on the evidence the balance of convenience seemed in favor of Toronto, where the plaintiff's solicitor resided.

Mulock replied, that the reasons for calling certain witnesses could not be given till the plaintiff had called his witnesses and it was known what evidence was required; but from the partnership business having been carried on in Stayner, where the parties lived, it was sufficiently apparent the evidence must come from that place.

Mr. Taylor, Referee in Chambers.—The analogy of applications at Common Law to change venue, seems to be followed here in motions to change venue or reference. Such being the case, I do not think the affidavits are sufficiently precise as to the witnesses to justify my making the order asked. Neither is there a case of preponderating convenience made out in favor of the change. I therefore must refuse the order with costs.

ENGLISH REPORTS.

ROLLS COURT.

Venn *v.* Cattell.

Specific performance—Vendor and purchaser—Delay in de livery of abstract—Repudiation of contract by purchaser.

When a contract for sale is entered into by which it is stipulated that the abstract is to be delivered on a particular day, and it is not delivered within a reasonable time after that day, the purchaser is at liberty to repudiate the contract.

The conditions of sale under which a purchase was made provided that the abstract should be delivered within twenty-one days from the day of sale.

When seventy-eight days had expired without any abstract having been delivered, the purchaser gave notice that he declined to complete.

After one hundred and eighteen days had elapsed, abstracts of the title to some of the lots were delivered to the purchaser, and the abstract of the remaining lot was delivered a fortnight later, but was returned on the same day on which they were delivered.

On a bill to enforce specific performance of the contract

Held that as the vendor had failed to deliver the abstracts within a reasonable time after the day named, he could not enforce the contract against the purchaser, and that the bill must be dismissed with costs.

[July 25, 1872.—27 L.T. N.S. 469.]

The plaintiff, who was the sole trustee and executor of the will of Charles Cheston, who died in the month of July 1870, having devised certain property to the plaintiff upon trust for sale, in pursuance of such trusts, caused a portion of the trust estate, including the property the subject of this suit, to be put up for sale by auction on the 28th Oct. 1870. The conditions of sale referred to the particulars of sale as annexed thereto, and provided, amongst other things, that the purchaser of each lot should immediately after the sale pay into the hands of Mr. Dolphin, the then solicitor for the plaintiff, a deposit of 10 per cent. in part payment of his purchase money, and sign the agreement at the foot of the conditions, with the blanks therein truly filled up for completing the purchase according to the conditions, and that the remainder of the purchase money should be paid to the vendor on the 25th March 1871, at the offices of the said Mr. Dolphin, at which time and place the purchase was to be completed. The conditions also provided that the abstracts of title should be delivered within twenty-one days from the sale. The defendant attended the sale and became the purchaser of lots 5, 8 to 24 inclusive, and 54 at prices amounting in the whole to the sum of 5542*l.* 5*s.*, and the following memorandum was signed by the defendant:

It is hereby agreed and declared that Thomas Cattell, Esq., has this day purchased lots 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 54, described in the annexed printed particulars, for the sum of 5542*l.* 5*s.*, under and subject to the above written conditions, and has paid into the hands of Mr. Robert Dolphin, Solicitor, Birmingham, the sum of 500*l.* as a deposit, and in part payment of the purchase money, and that the purchase shall be completed, and the remainder of the purchase money paid according to the terms of these conditions.

Dated the 28th day of October, 1870.

Tho. Cattell.

	£	s.	d.
Purchase money 5542		5	0
Deposit 500		0	0
Balance 5042		5	0

The defendant alleged that when he signed such memorandum it did not include lot 5, that the amount of the purchase money for lots 8 to 24 and lot 54 was not filled in, and that in the note at the foot of the agreement there were blanks for the amount of the purchase money, the deposit, and the balance, and that the figure "5" between the word "lots" and the figure "8," and the figures "5542*l.* 5*s.*" as the purchase money and the figures "5042*l.* 5*s.*" as the balance, had been inserted after he had signed the same, and without his authority or privity. He admitted, however, that he had signed a separate contract for the purchase of lot 5.

The defendant, at the time of the said sale, paid to Mr. Dolphin the sum of 500*l.* as a deposit.

No steps were taken by either party until the 15th Feb. 1871, when the defendant's solicitor gave the plaintiff notice in writing that in consequence of his not having furnished the defendant with any signed contract for the sale of the lots purchased by him at the auction, and of his not having delivered to the defendant an abstract of title relating to the lots so purchased within the time specified in the conditions of sale, under which the said properties were offered for sale, and of his not having complied with the said conditions in other respects, the defendant required him forthwith to repay to him the money paid by way of deposit upon the price at which the said lots were sold, and that the defendant declined to complete his purchase of said lots.

The plaintiff's solicitor, Mr. Dolphin, having died on the 19th Dec. 1870, leaving his papers in great disorder; and owing to the length and complication of the titles to some of the lots, no abstracts were delivered until the 24th Feb. 1871, when abstracts of the plaintiff's title to lots numbered from 8 to 24 inclusive, and 54 were delivered to the defendant's solicitor, who on the same day returned them. The abstract as to lot 5 was delivered on the 9th March 1871 and was returned to the plaintiff's solicitor on the same day.

On the 18th Jan. 1871, the defendant commenced an action against the plaintiff to recover the sum of 500*l.* paid as deposit, as money received by him for the use of the defendant; and on the 11th March 1871, this bill was filed to enforce specific performance of the contract for the purchase of said lots, and to restrain the defendant from proceeding with the action at law.

Fry, Q.C., and *Waller* for the plaintiff.—In this case time was not originally of the essence of the contract, and it can be made so afterwards only by giving notice to that effect.

Sir *R. Baggallay*, Q.C., and *Speed* for the defendant.

Fry, Q.C., in reply.

Lord Romilly.—This is a case, I think, of considerable importance, and I have taken a good deal of time to consider it, and I have also examined a great number of cases which bear upon

the subject. The point is a very simple one, but it appears to me to be one of considerable importance. It is upon a subject which is very familiar to us all, and is constantly occurring. The bill is a bill for specific performance. The question is, how long a person may wait, and what steps he may take, before enforcing the specific performance of a contract. The dates of course are very material, and it all depends upon them. It is rather material to mention what the facts were. There were a good many lots put up for sale, I think 17 or 18. The sale took place on the 28th Oct. 1870, and, by the conditions of sale, the abstract was to be delivered within twenty-one days, namely on the 18th Nov. When seventy-eight days had expired, that is, fifty-seven days after the appointed time for the delivery of the abstract, no step having been taken by either party, and nothing having been done at all, on the 15th Jan. 1871, the defendant gave notice to the plaintiff that he declined to complete his purchase, and required the deposit to be returned; and three days afterwards he brought an action against the plaintiff for the deposit, the deposit having been paid to the plaintiff. After one hundred and eighteen days had elapsed, that is upwards of three months after the appointed time, on the 24th Feb. 1871, the abstract of lots from 8 to 25, and of lot 54 was delivered, and on the very same day that they were received the defendant returned them all. He in no respect receded from what he had previously done—he returned every one of them. On the 9th March 1871, a fortnight later, the abstract was made complete by sending an abstract of lot 5, which was also bought, and on the same day the abstract was returned. The plaintiff was quick enough in filing a bill, because two days afterwards the bill was filed, namely on the 11th March 1871. Now the question is, whether the contract can be enforced in this court. It is said, and I think truly, that time was not of the essence of the contract, that is to say, time was not of the essence of the contract in the sense that it is sometimes understood, as in the sale of a public house where you are losing the trade; it was not a sale of a matter the value of which was fluctuating, such for instance as of foreign debentures or of foreign stock; it was not a sale to a body which can fluctuate, such as a Dean and Chapter or the like, or a sale such as has come before the court in late cases where there was a question of immediate residence. The case is simply this, whether—to put it in the words of Lord Loughborough in *Lloyd* v. *Collett* (4 Brown's C. C. 459)—there is any case in which, where the purchaser has refused to perform the contract after the time for doing so has elapsed, and the purchaser has never gone back from that, this court will enforce it. Several instances were given where that was done, or where it was said it was done, but most of the cases were cases of this description:—where the defendant accepted the abstract, and so in point of fact gave way to the lapse of time; and then having once given way to the lapse of time, the court has not held the delay binding on anybody, and so it goes on till at last somebody creates a new period from which time runs, as in the case of *Southcomb* v. *The Bishop of Exeter* (6 Hare, 213). But I want to know where a person says, "I have contracted that you shall deliver this to me on a certain day," and he does not do it for two months afterwards, and then the other man says, "I will not have anything to do with the contract," whether he can be bound to perform it? I am quite clear of this: that the modern train of authorities has all been to make the time much more strict, and very wisely so, and though it has not gone to the extent of saying it is to be the rigid strictness of a court of law, yet it is a strong thing to say that a man having contracted to buy property (and this property was apparently bought to sell again) he is to wait two or three months before the abstract is delivered, and then be bound to perform the contract. There are several cases where the defendant, by which I mean the purchaser, has applied to the vendor to deliver the abstract, and he has not done so, and the purchaser has thereupon said, "I will not accept it now," and he has not gone back from that view of the case, but has insisted upon it, and the court has refused to enforce the contract; but I am not sure that I have found any case which is exactly like this. The case of *Lloyd* v. *Collett* is as nearly as possible this case; and I cannot find that *Lloyd* v. *Collett* has been overruled or objected to in any authority or any text book on the subject. I think that the Lord Chancellor's judgment in that case is a very striking one. The judgment is not given where the case is reported, but is set out in a note to *Harrington* v. *Wheeler* in 4th Vesey, junior. The facts of the case are stated in 4th Brown; and in a note in 4th Vesey junior, at page 689, it is stated that the Lord Chancellor in *Lloyd* v. *Collett*, which was cited, pronounced the following judgment. The judgment was this, and I think it worth while to read it: "There is nothing of more importance than that the ordinary contracts between man and man, which are so necessary in their intercourse with each other, should be certain and fixed; and that it should

be certainly known when a man is bound, and when not. There is a difficulty to comprehend how the essentials of a contract should be different in equity and at law. It is one thing to say: the time is not so essential that in no case in which the day has by any means been sufferred to elapse, the court would relieve against it, and decree performance. The conduct of the parties, inevitable accident, &c. might induce the court to relieve. But it is a different thing to say: the appointment of a day is to have no effect at all, and that it is not in the power of the parties to contract that if the agreement is not executed at a particular time, the parties shall be at liberty to rescind it. In most of the cases there have been steps taken. Is there any case, in which, without any previous communication at all between the parties, the time has been suffered to elapse? I want a case to prove that, where nothing has been done by the parties this court will hold in a contract of buying and selling, a rule, that certainly is not the rule of law, that the time is not an essential part of the contract. Here no step has been taken from the day of the sale for six months after the expiration of the time at which the contract was to be completed." In the case before me it is three months, not six months. "If a given default will not do, what length of time will do? It is true the plaintiff must have considered himself bound after the day. So he was. He could not take advantage of his own neglect. He says, by my own default, this contract is void in law; I cannot succeed at law; on the contrary, the other party is entitled to recover back the money he has paid in expectation of the execution of his contract; therefore an equity arises to me. An equity out of his own neglect. It is a singular head of equity. The consequences of this idea, which I know has prevailed, have been extremely inconvenient. The hardship generally falls upon the other party. The utmost extent of relief, where the party is discharged at law, would be on making him full compensation. Is interest of the purchase money compensation? The time may go on for years. Suppose the subject was an estate sold for payment of debts; debts and legacies carry interest at 5 per cent.; the purchase money may carry 4 per cent. from the time the contract ought to have been completed. Where it is with a view to a re-sale, as in this case," (that is the case here) "what is the consequence? Here a man has purchased these ground-rents upon a speculation which is totally defeated. I see no reason to enjoin the action. You deliver yourself from that by paying the money. The action is against the auctioneer. I do not think the equity extends to him, for he personally contracts that he receiving the deposit money, will return it if the terms are not complied with." That is the judgment of Lord Loughborough in that case, and I think every word of it applies to this case, and I intend to follow it. I think it very desirable there should be a distinct rule laid down as to what time a person may continue not to perform his part of a contract. I do not mean at all to say that if the abstract had been delivered within two or three days, that that is not a case which equity would enforce specific performance of. Here the abstract ought to have been delivered on the 18th Nov., and it was not delivered on the 15th Jan. when the defendant says, I will have nothing more to do with the case, and then on the 24th Feb., the first abstract is delivered; and on the 9th March the delivery of the abstract is completed, and the defendant never varies a word from what he first said, namely, that he would have nothing at all to do with it, as he wanted to sell it again. I do not mean to say to what extent the rule is to go. I think the abstract must be delivered within a reasonable time, and if a man knows he cannot perform the contract within a reasonable time, he ought not to enter into it. I am of opinion this Bill ought to be dismissed, and I must make the costs follow the event. I shall be glad if the parties will appeal it, because then the Lords Justices will say whether the rule I propose to lay down is the correct one, or what rule is to be adopted in cases of this description. The rule I propose to lay down is this, that when a man enters into a contract, and says the abstract shall be delivered on a particular day, and it is not delivered within a reasonable time after that day, that thereupon the person who has bought the property is at liberty to say, I will have nothing more to do with the transaction. If he afterwards goes back from that and accepts an abstract, of course a totally different equity arises; but in that case I will not enforce specific performance, unless I am instructed by a higher tribunal that it is my duty to do so.

IRISH REPORTS.

QUEEN'S BENCH.

The Queen v. The Divisional JJ. of Dublin.

Nuisance—18 & 19 *Vict.*, *c.* 121—*Certiorari.*

An order was made by Justices at Petty Sessions under the 18 & 19 Vict. c. 121, s. 12, that the owner should immediately disinfect a house, so that the same should be habitable and free from infection at the expiration of one month under penalties. By another order, made

before the expiration of the month, the magistrates ordered payment of the penalties. The Court quashed the latter order by *certiorari*.

[Ir. L. T. Rep. Dec. 21, 1872.]

On the 27th of October, 1871, the Justices made an order that John Rice, the owner of a certain house at Bridgefoot-street, should, immediately on the service of the order, renew a sewer and disinfect the rooms, so that same, at the expiration of one month from the date of the order, may be habitable and free from infection, under penalties of 10s. per day for non-compliance. On the 16th November, 1871, an order was made by the Justices for payment of penalties, under the first order, amounting to £4, and £1 12s. costs, a conditional order for a *certiorari* having been made.

J. O. Byrne (with whom was *Purcell, Q.C.*), for the Inspectors of Nuisances, showed cause. The magistrates had jurisdiction to inflict the penalty. But there was merely a technical irregularity, for which the Court will not quash the order of the magistrates, nor will it interfere with the exercise of their jurisdiction ; *Tinkler* v. *The Board of Works for the Wandsworth District*, 1 Gif., 412 ; *The King* v. *The Justices of Denbighshire*, 1 B. & Ad., 66.

C. Molloy and *J. A. Curran*, in support of the order, cited *Tomlins* v. *Great Stanmore Nuisance Committee*, 12 L. T. N. S. 118, Q. B.; *The Queen* v. *Jenkins*, 32 L. J., N. S. M. C., 9.

Whiteside, C. J.—We have no doubt about confirming the authority of the magistrates, or enforcing the jurisdiction they possess, nor do we think, though we have heard the case very well argued, that there is any difficulty in carrying the law into effect. It is a beneficial law, and we believe that the more vigorously it is enforced the better will it be, but it must be law that we are to enforce. The magistrates made an order on the 27th October, 1871 ; their jurisdiction is clear ; they entertain the complaint, and it is stated to them that a certain house has been so infected by what has been termed fever poison, as to be unfit for occupation and dangerous to health. I entirely subscribe to the argument of Mr. Purcell, that we are not to inquire into the discretion of the justices. Upon the face of the order the object in view is intelligible and distinct. My construction of the order is that they have ordered some work to be done in this neglected habitation—done within a month—so as to insure its being fit for occupation. I read the order in this way, that the work is to be completed—not to make the house a better habitation—but with the view of exercising the jurisdiction, wisely and judiciously exercising it, to remove a nuisance. The house is pronounced by the order to be unfit for habitation, and it is to be closed during one month. I confess, it would appear to me what the justices had to do, after having pronounced the order, was to see that the work was properly done within the time limited, so as to provide for the occupation of it within the month. What is the power of the magistrates ? By the 13th sec. of the 18th and 19th Vict., ch. 121, they may require the person to take such steps as will render a house safe and habitable, and to do such "work or acts as are necessary to abate the nuisance complained of, in such manner and within such time as in such order shall be specified," "and on their being satisfied that it has been rendered fit for such purpose, they may determine their previous order by another declaring such house habitable." What occurred in the case was this :—a summons to Thomas Rice was issued on the 16th Nov., 1871, to answer the complaint of the Inspector of Nuisances, in relation to the house being infected with fever poison. It appears to us it is impossible to read the summons and not to perceive that in reality it is a summons issued to and complaining of a person for not having executed all the works for the doing of which he had beeen given a month's time. It would not be possible for the justices, after they had made the order granting a month to do a thing, to inflict a penalty in a few days. By the 14th section of the statute, it is enacted, that "any person not obeying the said order for abatement shall—if he fail to satisfy the justices that he has used all due diligence to carry out such order—be liable for every such offence to a penalty," &c. Now, what is the offence for which he has been called upon to pay the sum of £5 15s. ? I cannot see that the proceedings are for anything but neglecting to do that which the party got one month to do, and he could not be guilty of violating the order within a week. I do not mean to say that the magistrate might not have issued a summons to bring him up ; and looking at the 20th section of the Act, I find that "where any costs, expenses, or penalties are due, under or in consequence of any order of justices, made in pursuance of this Act, as aforesaid, any Justice of the Peace, upon application of the nuisance authorities shall issue a summons requiring the persons from whom they are due to appear before two justices," &c. I do not think there has been a compliance with the Act of Parliament. We are of opinion that there should be a fresh summons before the issuing of the warrant. There should be a summons for not having closed the house. Then

the case would have been clear and formal. The magistrates have a jurisdiction which they have not exercised. The summons required by the Act has not been issued, and the conviction that should have been pronounced has not taken place.

Fitzgerald, J.—I concur in the decision of the Court upon the ground of public policy and public safety. It is our duty to assist the magistrates in carrying into effect the provisions of this useful Act of Parliament. The Legislature has given strong powers to the magistrates, and the reason why I comply with the application—that the order made by the magistrates under the 20th section should be quashed—is because there has not been any conviction for the breach of the order of the 27th October, 1871, nor the adjudication of a penalty of that breach of the law. The order of that date is all that it should be. It prohibits the use of the house, and directs that certain works shall be executed to render it habitable, and it is not alleged that this order was not, either in form or substance a legal order, and one that was capable of being enforced. I offer no opinion whether there should be a separate order under sections 14 and 20. Possibly, looking at the Act of Parliament, we might finally come to the conclusion that it might be done by one order, but it is clear that to enforce a penalty there should be a conviction for the offence, and an adjudication ascertaining the amount of the penalty. It is erroneous to say that under section 14 a penalty necessarily attaches to a non-compliance with its enactment; a party might satisfy the Justice that he had used due diligence, and might show a willingness, but inability, to comply with the provisions of the Act, and that he had used every exertion in his power. These are matters for the consideration and adjudication of the magistrate; he has to ascertain whether, under the 14th section, there has been any breach of the order; if so, he is to exercise his judicial discretion in determining what penalty should be inflicted—for there are two penalties, one inflicted for not having done the work, the other for a breach of the prohibition to occupy the house—and the magistrate may inflict the full fine, or reduce the penalty to the minimum amount. The Justices may exercise a discretion, and this will obviously appear by a reference to the 19th section of the Act, for under that section proceedings may be instituted in a Supreme Court to recover costs and expenses, but there must be a conviction and adjudication by the magistrates before, and I do not mean to say that you may not consider the two sections under one order. The only thing done by the magistrates was that which was done under the 20th section, and that fairly would import that the magistrates were satisfied. There had not been a compliance with the order, but that does not appear upon the face of the order to raise a question of jurisdiction. We are of opinion that before there has been a breach of the order, a conviction and adjudication, the magistrate could not make the order for payment of costs and expenses, and we declare that the order made under section 20 should be brought up to be quashed; but this will not prevent the law from being put in force, but we do not interfere with the order of the 27th October. There is no statutable limitation. The nuisance authorities can summon a party under section 14, and under section 20 procure an order for payment of costs.

Barry, J.—I concur in the judgment of the Court.

CORRESPONDENCE.

Professional Etiquette.

To the Editor of the Canada Law Journal:

Gentlemen.—What has the Bar of Ontario come to, when a person professing to be an "Ontario barrister" (at least his note paper is so headed) sends a letter to a lady, who he has learned has a claim against a company, asking her to allow him to sue them, and encloses an order for her signature, a copy of which I send you:

Sir,—I hereby authorize you to collect my claim against————, on the following terms: All risk and expenses to be taken by you; the undersigned to receive one half of the amount recovered, if successful. [Signature.]

Modest, very! Is this touting for business only, or does it amount to Champerty? *Qr.:* If the defendant succeeded, and judgment for costs issued against plaintiff, would this Ontario barrister be worth suing to recover it from him again? Your views on the subject of the above "order" might be of service, and I think would do a great deal to stop this sort of practice.

I remain yours truly,

Etiquette.

[We fear that the great increase in the number of practitioners in Ontario is dangerous to professional ethics. A case like

this brought before the Benchers, not to speak of the Courts, and rigorously dealt with, would have a beneficial effect upon those whose necessities are uncontrolled by a sense of what is due to themselves and to the honorable profession to which they belong.—Eds. L. J.]

REVIEWS.

The British Quarterlies for October, republished by Leonard Scott Publishing Co., 140 Fulton St., New York.

The numbers for this quarter are exceedingly interesting, and fully keep up the character of the Reviews.

The Edinburgh contains articles which discuss, amongst other matters, "New Shakesperian Interpretations," founded on the reproduction, in exact fac simile, of the famous first folio, 1623, by the new discovered process of photo-lithography. Then we have a sketch of the Corea, of which it is said, that "geographers know more of Central Africa and its mountains and river systems than they do of the interior of this mere promontory, interposed like a wedge between the seas of China and Japan." The present state of affairs in Japan had been spoken of in a former number, and this article is a valuable addition to our information on this part of the world, so rapidly rising in importance to European countries. The memorials of Baron Stockmar, who is spoken of by one of his friends as an "anonymous and subterranean being," is reviewed in this number, as also in the *London Quarterly*. The other subjects discussed are "Terrestrial Magnetism." "The Fiji Islands," "The Progress of Medicine and Surgery," "The Past and Future of Naval Tactics," &c.

The London Quarterly contains perhaps the most readable articles to the general reader. It commences with a never-failing subject of interest to Englishmen, the Duke of Wellington, on this occasion treated with reference to his capacity as a Cabinet Minister. Another matter of equal home interest is the completion of St. Paul's Cathedral. We fancy the contrast drawn between it and St. Peter's at Rome, most unfavorable to the former, will not be so pleasant to the hereditary cockney. "The Consciousness of dogs," "The Journal of a French Diplomatist in Italy," "The East African Slave Trade," &c., are the other articles.

The British Quarterly commences with "The Goths at Ravenna." The next article is headed, "Immortality," which takes up the question on the stand-point of modern thinkers, and, in arguing against the prevailing spirit of infidelity and scepticism, appeals to the facts and experiences of social life, the validity of which all acknowledge, forbearing reference to the authority of Scripture. The remaining articles, which we have not space to refer to at length, are, "The Railway System of England," "The Authorship of the Fourth Gospel," "The present phase of Prehistoric Archæology," "Sir Henry Lawrence," &c.

The articles in The Westminster Review, are "The Heroes of Hebrew History," The Public Libraries," "The Descent of Man," being a review of Mr. Darwin's last work, wherein he treats of selection in relation to sex. "France: her position and prospects." "The Æsthetics of Physicism," &c.

It has been held by the Court of Common Pleas in England in *Grimwood et al.* v. *Moss*, that, where a lessor, subsequently to Midsummer-day, brought ejectment for breaches of covenant committed prior to that day, and afterwards distrained for rent due up to the same day, the ejectment operated as an election to determine the tenancy, and that the distress, whether lawful or not, did not vary that election. Willes J. held that the distress was an act of trespass.

Law Society—Michaelmas Term, 1872.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Michaelmas Term, 36th Victoria.

During this Term, the following Gentlemen were called to the Degree of Barrister-at-Law :

George Dormer, Beaufort Henry Vidal, Frederick Wm. Monro, Charles Corbould, James Fletcher, John Alex. Gemmell, William Roaf, John Augustus Barron, Roderick Stephen Roblin, Martin Malone, John Rowe, Alexander Fraser McIntyre, James Robert Strathy, Robert McMillan Fleming, Charles Henry Ritchie, George McNab, John Akers, John White, John Andrew Paterson, Robt. Sedgewick, Newman Wright Hoyles, James Bruce Smith, Thos. Langton, Hugh John Macdonald, Wm. Redford Mulock, Richard John Wickstead.

And on Tuesday, the 19th November, the following Gentlemen were admitted into the Society as Students of the Laws, their Examinations having been classed as follows :

University Class.

Albert Clement Killam, Charles Joseph Holman, John Crerar, Albert Lewis, Henry James Scott, Dennis Ambrose O'Sullivan, Eugene McMahon.

Junior Class.

Thomas Dalziel Cowper, James Dowell, Jarid Alex. Morton, Luther Kendall Murton, Samuel D. Raymond, Harry Symons, Louis Adolphe Olivier, Thomas Ellis Dunlop, Thomas Edward Lawson, Arthur O'Leary, Wm. John Franks, Albert Whitman Kinsman, Frederick J. Vannorman, Jacob L. Whiteside, James Fullerton, John Jerman Manning, George Miles Lee, Daniel Webster Clendinnan, Lawrence H. Dampier, Edward Jackson Stuart, John Franklin Monk, Jas. Saunders Nainer, John Bishop, Raynaldo Wigle, James Bond Clarke.

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

That a graduate in the Faculty of Arts in any University in Her Majesty's Dominion, empowered to grant such degrees, shall be entitled to admission upon giving a Term's notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his diploma or a proper certificate of his having received his degree.

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

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

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

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

That the books for the final examination for students at law, shall be as follows :—

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

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

That the subjects for the final examination of Articled Clerks shall be as follows :—Leith's Blackstone, Watkins on Conveyancing (9th ed.), Smith's Mercantile Law, Story's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

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

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

1*st year.*—Stephen's Blackstone, Vol. i., Stephen on Pleading, Williams on Personal Property, Griffith's Institutes of Equity, C. S. U. S. c. 12, C. S. U. C. c. 43.

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

3*rd year.*—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Story's Equity Jurisprudence, Fisher on Mortgages, Vol. 1, and Vol. 2, chaps. 10, 11 and 12.

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

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

J. HILLYARD CAMERON,
Treasurer.