Canada Law Journal.

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DIARY FOR OCTOBER.

2. Sun..*16th Sunday after Trinity.* Prince Arthur visited Toronto.
3. Mon..Co. Court Terms and sitt. without jury (ex York) begin.
4. Tu..First edition English Bible printed, 1535.
8. Sat..Harrsson, C. J., sworn in, 1875. Co. Ct. Term ends.
9. Sun..*17th Sunday after Trinity.* T. Moss, sworn in Judge Court of Appeal, 1875.
10. Mon..County Court Term for York begins.
11. Tu..Guy Carleton, Gov. of Canada, 1774.
12. Wed...Lord Lyndhurst died, 1863.
13. Thu..Battle of Queenston, 1812.
15. Sat...County Court Term for York ends.
16. Sun..*18th Sunday after Trinity.*
21. Battle of Trafalgar, 1805.
23. Sun..*19th Sunday after Trinity.* Lord Monck, Gov.-Gen., 1861.
24. Mon...Sir J. H. Craig, Gov.-Gen., 1807.
25. Tu...Supreme Court sittings. Battle of Balaclava, 1854.

TORONTO, OCT. 1, 1881.

IN citing the "Rules of Court" scheduled in the Judicature Act, we shall, for the present at least, refer only to the marginal number. This is found to be the most convenient practice and not so cumbersome as a reference first to the order and then to its sub-division.

OF the many well-conducted legal journals in the United States, not the least so is the *American Law Review.* The last number contains a summary, scientific, practical, and illustrative of the law on "the slander of a person in his calling." This is a remarkably good paper, and shows the author, Mr. John D. Lawson, to be a man of original thought and large capacity for analysis, and a sound lawyer. We shall hope to see something further from his pen.

SIR GEORGE JESSEL, the late Master of the Rolls, having been appointed to the Court of Appeal, has been succeeded by Mr J. W. Chitty, Q. C., M. P. for Oxford. Mr. Chitty is the son of the late Mr. Thos. Chitty, of the Inner Temple. The name of Chitty has been, in the profession, all over the Anglo-Saxon world, a household word, and, it is almost as well known to the general public in England, in the person of the new Judge, by reason of his having been for many years umpire at the Oxford and Cambridge boat races. Mr. Chitty is a young man, comparatively, for the English Bench, having been born in 1828. The appointment has been very well received by all classes.

THE *Albany Law Journal* reports the case of *Thompson* v. *United States*, decided in the Supreme Court, in which it was held that proceedings in mandamus against a municipal officer to compel the performance of an official duty do not abate by the expiration of the office of the defendant, when there is a continuing duty irrespective of the incumbent, and the proceedings are undertaken to enforce an obligation of the corporation or municipality to which the office is attached.

IT is probable that the recent disastrous fires will be productive of some litigation. Any legal light upon the lurid subject will be of use. In *Kippner* v. *Biehl* (24 Albany L.J. 192,) it appeared that the defendant set a fire in his stubble field. Before doing so he plowed three times around the field. At night he, as he supposed, extinguished the fire. He did not do so, but unknown to him, the fire smouldered in a slough and revived, and two days afterwards extended to plain-

tiff's premises two miles away, and burned property of plaintiff. No agency intervened to spread the fire except the wind, which changed its directions, with some increase in force. *Held*, that a verdict for plaintiff in an action against defendant for the loss of the property burned was proper.

IN these days when the plea of insanity is so commonly set up in criminal cases, it will be instructive to note that a new system of imprisoning insane homicides has lately been applied in France on a limited scale, with much success. We are told by the *Kentucky Law Journal* that—

"No man can be acquitted of a crime on account of his insanity, unless, through his counsel, he pleads his insanity. This throws upon him and his counsel the responsibility of accepting the issue—sane or insane. If he be acquitted because of his insanity, he is confined, not in a common penitentiary (for his confinement is not intended for punishment) nor in an insane asylum, subject to b discharged upon the ready certificate of a physician; but he is imprisoned, at all events for a *fixed time*, and is subjected to medical treatment, but, under no circumstances, to a doctor's discharge. Nor is he subjected to hard labour nor to the debasing *regime* of a common jail. The period of confinement is scaled according to the nature of the offence charged, but in no case is proposed to extend over the prisoner's whole life. If during the prisoner's life his term of imprisonment should expire, he can be released only after his insanity is positively established by evidence to the satisfaction of a number of inquisitors selected with a view to perfect freedom from the influence of the prisoner and his friends. It is the duty of the attorney for the State to oppose the discharge. We suggest this as a tested mode of treating insane homicides, which seems rational, just, and practicable. It appears to compromise fairly between the rights of society and the rights of the insane. And, what is practically of great importance, it does not so shock our humane feelings as to make it distasteful to the people, and, therefore, impossible of application."

The last number of the *Criminal Law Review* contains a long article on the judicial problems relating to the disposal of insane criminals, which also speaks of the same subject.

BANKRUPTCY REFORM IN ENGLAND.

Lord Sherbrooke (Robert Lowe) has written an article in the *Nineteenth Century* discussing the vexed question of Bankruptcy Reform in England. He says, "The plan of trusting the property of bankrupts to officials has, I blush to say, turned out a complete failure." The estate was "an object of plunder and peculation." He adds, "I will not stop to inquire by what abuse of patronage it came to pass that persons chosen by high authorities from a learned and honourable profession, should have been unequal to withstand this not very trying temptation. It puts one in mind of the King of England who said, 'I know not which of my lawyers to appoint, for on my soul they be all rogues.'" As we understand it, neither in England nor in Canada have official assignees been taken from the ranks of the profession, so that in this respect the writer is wide of the mark. Mercantile men, broken-down politicians, so-called "conveyancers," were the class in this country from which most of these persons were taken; and though, of course, the pamphleteer had no reference to Canada, the language, though strong, is no stronger than was applied here to official assignees (with some few exceptions) very generally, before they were with one accord swept out of existence. Lord Sherbrooke advocates doing away with the bankruptcy laws altogether, but with a provision for lessening the period of limitation for debts. He thus concludes a most trenchant article: "First-born of things

divine, Equality may be a good thing. But even gold may be bought too dear, and I cannot help thinking that Equality becomes a curse when, in order to attain it, you are called upon to forfeit to strangers who have no claim at all, the very thing which it is desired to equalise. . . . It is better that debts should be paid unequally than that the property should be destroyed in the effort to ascertain an equality which yields a purely metaphysical and imaginary satisfaction to the thirsty debtor."

OUR NEW PROCEDURE.

A perfect system of legal procedure is one which, without inflicting injustice upon the parties to a suit, enables them with the least possible preliminary work to try the issues upon the merits.

Perhaps the procedure at common law, as earliest known to us, in a country of few wants and small private means, was almost perfect. The parties came before the Court, and the counsel either stated to the proper officer, or themselves handed to such officer the pleadings in the suit, each waiting to see the pleadings of the other; and demurrers, if such existed, were settled upon the spot by the presiding judge. It is apparent that the common law system, by which only single issues could be tried and no set off or counter claim allowed, while suited to primitive times would be totally unsuited to a country possessing great wealth, or to suits of an intricate nature.

The legal mind without wide culture almost invariably becomes narrowed and contracted, and disposed to attach great importance to technicalities, and hence the many refinements, and we may say pitfalls, that attached to legal procedure till within recent years, when lawyers, as well as others, ceased to be insular—if we may so use the term in its larger sense—and have extended their knowledge beyond the immediate wants of their profession. None now share the opinion of Blackstone, who thought that the laws of England were as nearly as possible perfect at the middle of the last century. Some of the supposed excellencies so fondly referred to by him have long since been cast off or become obsolete.

Our system of Equity had no doubt an ecclesiastical origin, and was designed to redress frauds and hardships that could not be well reached by common law; and while on the whole discharging its peculiar functions with success, has always, to a greater or less extent, shared the unpopularity of its origin, and, until late years, at least, was not a popular Court. Its introduction into this Province was not without misgivings, notwithstanding the gross and flagrant wrongs that could not be redressed without its intervention, and many can still remember that sturdy iconoclast, William Lyon McKenzie, prophesying many ills that would follow its introduction. This Court, however, from the legal attainments and good sense of the judges who have framed its procedure, may be said to have outlived, or rather lived down the popular prejudice attending the word "Chancery." These judges, in the discharge of their duties, have woven a procedure adapted to our wants, and designed in a high degree to elicit truth. Courts of Common Law have been more conservative and more disposed to follow the strict wording of statutes than Courts of Equity, which have followed the spirit of the statute rather than the statute itself. Witness the construction put upon the Statute of Frauds with reference to the sale of lands when the purchaser has gone into possession. We may instance the effect of an assignment of a chose in action as construed originally in each Court. The procedure of Courts of Equity was their weak point. It was cumbersome, illogical, and singularly technical. The examining of witnesses by means of interrogatories was a

glaring defect, though designed to enable the Court to apply properly the facts inasmuch as the Judge did not see the witnesses and hence was unable to eliminate the wheat from the chaff of a mass of evidence laid before him. The Judges of the Court of Chancery in this Province, however, quickly discerned the weak points of the English procedure and with the best results.

It was not unnatural, under all the circumstances attending the introduction of the new Act, that Chancery procedure should have prevailed in its framing. In truth the Court of Chancery seems in a sense to have swallowed up the other Courts, for now the doctrines of Equity apply in case of any variance between Common Law and Equity, and the new procedure is in effect that of our late Court of Chancery. The issues will no longer be between two parties only, nor will the litigants be confined to one issue, (in this respect unlike the former procedure in Equity). The aim of the Act is that every right or obligation arising out of one transaction shall be settled in one suit and that all the parties interested in any way in the result may be brought before the Court.

Another marked feature is the counter claim. Common Law Courts have been enabled to deal with set-offs, and Courts of Equity have allowed them, if in contemplation of the parties in the transaction that gave rise to the suit; but the innovation of a counter claim has been hitherto unknown in the procedure of any Court of Justice of English origin, unless indeed it may have been known in some American Court under some of their codes. When, however, the working out of such a claim involves an injustice to the plaintiff or is undesirable, the defendant may be prevented from setting it up, leaving him to his action. Another feature of the Act, previously alluded to, is that the doctrines of Equity when at variance with the doctrines of Common Law now prevail, but in matters of practice unless defined by a Rule of Court that practice prevails which seems to be the best. In the case of *Newbiggins-by-the-Sea Gas Co.* v. *Armstrong*, W. R. 1879, 203, the Master of the Rolls adopted the practice of the Common Law rather than that of Equity for the reason stated. The defendant may also under the new procedure allege that while he may be liable to the plaintiff still some other party is the person who ought in future to satisfy the plaintiff's claim, and such person may be brought before the Court and be made a party. An instance of the hardships under the old procedure of a defendant not being able to bring such a party before the Court is afforded in the case of *Baxendale* v. *The London, Chatham and Dover Ry. Co.*, L. R. 10 Ex. 35, where the costs of contesting a claim for damages could not be recovered from the party who really should have contested the claim. It ought perhaps also to be pointed out that subject to certain exceptions and to the right of the defendant to apply, the plaintiff may join as many causes of action as he desires in his statement of claim, following the previous practice of Common Law, and unlike the practice of the Court of Chancery, where a bill would be demurrable for multifariousness; and that all allegations of the plaintiff in his statement of claim, following the old Chancery practice and not the English Judicature Act, must be proved unless admitted by the plea or statement of defence. We are not prepared, however, at present, to admit that in this respect the procedure which has been adopted is the best. It is very easy to see the great and unnecessary expense and delay that must often ensue. Our act has been mainly based on the English Judicature Act, and we much doubt the wisdom of departing from it in this matter and following it in others of more questionable advantage. Where is the sense of compelling a plaintiff to prove a number of things which the defendent never intends to contest. The old system of pleadings at Common Law may have had its defects, but there was much

satisfaction and a great saving of time and money in having the question actually in dispute clearly defined by pleading to a distinct and acknowledged issue. The allowance of a counter claim and the power to bring in a third party and to make such persons parties is a change which we fear may add largely to the ordinary delays of an action and the expenses of the plaintiff. If this danger can be avoided no doubt the existence of these powers will enable the court to administer justice more efficiently than has been the case in many cases at Common Law. Ample powers of amendment in adding parties are also allowed, and the name of a sole plaintiff may be changed for that of another by an application to the Court upon proper grounds, and no doubt with the consent of the person whose name is substituted as plaintiff.

But it is scarcely worth while to refer to the Act in detail, when our readers can obtain all that we can state from either of the recent publications of Mr. Maclennan or of Messrs. Taylor & Ewart. These books will doubtless be the *vade mecum* for the profession, as Harrison's Common Law Procedure Act has been for the past twenty years. It is almost a pity that both were written, and that one work was not prepared containing the excellencies of both. Both works appear to be accurate, and so far as the annotations upon the Act are concerned about equally full, and no lawyer ought, or can well be without both, the one being in many instances a supplement to the other. Mr. Maclennan's book is the most handy for reference, though that of Messrs. Taylor & Ewart is, in some respects, fuller, and goes beyond the actual requirements of a simple text book upon the Act in question, in that it discusses subjects not really necessary for the elucidation of the text of the Act and rules. The subjects discussed, however, are of great interest to the profession. We may particularly instance the remarks upon the statutes relating to married women owning separate estate, which express the present law upon the subject in apt and concise words. The question of counter claims, too, is fully discussed—a subject novel to the profession, and likely to prove a stumbling block to many. The question of parties is fully discussed in both works, and this, too, will be a subject of great interest under the new Act to those whose practice was mostly at Common Law. Neither of them refers at any length to the new system of pleadings. Perhaps both might have enlarged upon this with advantage. It may be pointed out that good pleading will not be a lost art, as many, no doubt, will find to their client's expense. It is as necessary as it ever was to set forth all the facts that are required to enable a plaintiff to succeed in his action, and the omission of such facts from the plaintiff's statement will as surely lead to a successful demurrer as of old. A good work on pleading under the new procedure is the grea want of the profession here and in England at the present day, and until we have this the successful framing of statements of claim or defence will be a work of much care, and require much thought. Cases do arise where no resort can be well had to any work on pleading, but a new work on the principle of Bullen & Leake will be of great assistance, and particularly so if it can embrace a number of forms of pleadings in a class of cases hitherto known as equity cases. The work of Taylor & Ewart also has very useful chapters on Partition, Mortgage, and Administration suits, which will be of great service to the profession. Both books contain the Chancery orders, especially as excepted in the Act, and which still remain in force. An appendix to Mr. Maclennan's work contains the general orders of the Court of Appeal, and some valuable annotations thereon; and this is followed by an appendix embracing a time table under the new Act, a most valuable aid to the memory of the practitioners.

It is not now worth while offering any ob

jection as to the necessity for this act, and it it is too soon to predicate its success. Since the introduction of the Administration of Justice Act, almost every difficulty relating to the conflict between law and equity has been removed. The old procedure, it is true, was in some respects unskilful and composite, but it had become well understood, and worked smoothly. The new procedure is in theory more perfect, and may ultimately be an improvement upon the old procedure; but some time must elapse before it will become familiar to us, and in the meantime there will have been much confusion and expensive litigation. It is unfortunate that this expense will fall heavily on those who will be sufficiently taxed without it. This, however, cannot now be helped, and it remains for us all to do the best under the circumstances, and we trust that history may record that though in some respects imperfect, and for a time causing confusion, it was on the whole a step in the right direction.

SELECTIONS.

ALMANACS AS EVIDENCE.

In *State* v. *Morris*, 47 Conn. 179, a trial for burglary, for the purpose of showing that the offence was in the night the State was permitted to introduce in evidence a copy of an almanac. The court said: "There is no error in this. The time of the rising or setting of the sun on any given day belongs to a class of facts, like the succession of the seasons, changes of the moon, days of the month and week, etc., of which courts will take judicial notice. The almanac in such cases is used, like the statute, not strictly as evidence, but for the purpose of refreshing the memory of the court and jury." In *Munshower* v. *State*, Maryland Court of Appeals, October, 1880, 2 Cr. L. Mag. 320, an almanac was admitted to show the time of the rising of the moon on a given night. The court said: "The precise periods at which the sun and moon will rise or set in any particular twenty-four hours in the future, are as certain and as capable of exact mathematical ascertainment as is the occurrence of the day in which such rising or setting shall take place. Courts have received as evidence weather reports, reports of the state of the markets, prices current, and insurance tables, tending to show the probable duration of human life, though these are records which are not capable of mathematical demonstration, which cannot be tested by any certain law, and which may or may not omit the record of changes which have actually taken place. But an almanac forecasts with exact certainty planetary movements. We govern our daily life with reference to the computations which they contain. No oral evidence or proof which we could gather as to the hours of the rising or setting of the sun or moon could be as certain or accurate as that which we may gather from such a source." In *Sutton* v. *Darke*, 5 H. & W. 647, Pollock, C. B., said, *obiter*: "The almanac is part of the law of England. In *Regina* v. *Dyer*, 6 Mod. 41, it is stated that all the courts agreed it was; but it does not follow that all that is printed in every printed almanac is part of it, as for instance, the proper time of planting and sowing. Also in *Brough* v. *Perkins*, 6 id. 81, it is said that the almanac is part of the law of England; but the almanac is to go by that which is annexed to the common prayer book. Looking at that, I find it says nothing about the rising or setting of the sun, and I rather think that any information on that subject is quite recent." So Taylor (Ev., 1230) says: "The hour at which the moon rose is a fact, and it can fairly be argued upon the general principles of the law of evidence, that the best evidence of that fact is the testimony of some one who observed its occurrence. Books of science are generally not evidence of the facts stated in them, although an expert may refresh his memory by their use." In *Collier* v. *Nokes*, 2 C. & K. 1012, the court held that although they would take judicial notice of days, they would not of hours, as of the hours of sunrise or sunset. In *Allman* v. *Owen*, 31 Ala. 167, it was held that courts will judicially take cognizance of the coincidence of days of the month with days of the week, as disclosed by the almanac.

Wharton says (Ev., § 282) that a judge "may refer to almanacs" So says Best. Now if the judge may turn to an almanac to satisfy himself when the sun set on a particular day, why may not the almanac be put in

evidence to satisfy the jury of the same fact?

In *Sisson* v. *Cleveland, etc., R. Co.*, 14 Mich. 497, it was held, Cooley, J., giving the opinion, that newspaper reports of the state of the markets are receivable in evidence. The learned judge remarked: "Courts would justly be the subject of ridicule if they should deliberately shut their eyes to the sources of information which the rest of the world relies upon, and demand evidence of a less certain and satisfactory character." The reason in favour of the mathematical demonstrations recorded in the almanacs is much stronger than that in favour of the comparatively inexact and discordant reports of newspapers, dependent solely on hearsay.

In speaking of books of exact science, Wharton says (Ev., § 667): "The books containing such processes, if duly sworn to by the persons by whom they are made, are the best evidences that can be produced in that particular line. When the authors of such books cannot be reached, the next best authentication of the books is to show that they have been accepted as authoritative by those dealing in business with the particular subject."

In *Morris* v. *Hanner's Heirs*, 7 Pet. 559, it was held that although historical works are evidence of ancient occurrences, which do not presuppose the existence of better evidence, yet if the facts related by a historian are of recent date, and may fairly be presumed to be within the knowledge of many living persons, then the book is not the best evidence within the reach of the parties. But there is a great difference between matters of historical difference and mathematical certainty; between the accounts of the late civil war by Mr. Jefferson Davis, or Mr. Pollard, on the one hand, and Gen. Badeau or Gen. Sherman on the other, and the tables of the tides, an almanac, or the multiplication tables. We agree with the annotator of the Maryland case in the *Criminal Law Magazine*, that "we govern our daily life by reference to the computations of the almanac, and these computations are more satisfactory to us than the computations of persons who have actually observed the events predicted by such computations. The world at large regards the statement of an almanac in regard to the hour of sunrise as more certain and satisfactory than the recollection of individuals. A rule which would exclude the evidence of an almanac is too narrow and technical to find favour in modern jurisprudence" It would be almost impossible, in a great majority of cases, to prove, by human testimony, the precise hour of the rising or setting of the sun or moon on any particular day a number o years, or perhaps even a few months, ago To ascertain an individual who happened to observe and note it, would be like hunting for a needle in a haystack. If the English judges are determined to wait until the church shall recognize the fact that science has predicted these occurrences for many years in the past, and shall conform her prayer book accordingly, they are welcome to do so, but for us a Poor Richard's Almanac is much better practical evidence on such subjects than the prayer book. The church has always been slow to accept the demonstrations of science; witness the cases of Gallileo and Columbus Perhaps the English judges may regard a scientific discovery several centuries old as "recent," but it seems old enough for acceptance by courts of justice without waiting for the bishops. A knowledge of the times of the rising and setting of the sun and moon may be of no consequence to the church, but it frequently is important in worldly affairs, and laymen will take the most convenient and certain means of acquiring it.—*Albany Law Journal.*

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

September 17.

WILSON v. BROWN.

Promissory note by firm of solicitors—Amendment.

The plaintiff lent money to H., who procured B., one of the defendants, who were known to the plaintiff as a firm of solicitors, to sign the firm name to the note jointly with him without the knowledge or consent of his partner. The defendants had done business with a Bank, agreeing therewith to recognize each others's right to sign mercantile paper, but the plaintiff was unaware of this when he took the note. It was proved that the defendants had a contract for the construction of a government work.

Held, that the plaintiff could not recover against the defendants; but that there was no reason, save the technical objection to the constitution of the record, against his recovering against B., who had signed the note, and that the record should have been amended by striking out W.'s name from the record.

A verdict had been entered for defendants in the County Court, and a rule *nisi* to set the same aside was refused.

Held, that there was no power in this Court to make the above amendment; but the appeal was allowed so far as to direct the granting of a rule *nisi*, upon a return of which the amendment might be made in the Court below.

GIBSON v. MCBRIDE.

Conflicting evidence—New trial refused—Appeal.

Where there was conflicting evidence, and the Court below had discharged a rule for a new trial, granted on affidavits, and on the ground that the verdict was against law, evidence, and the weight of evidence.

Held, that this Court could not interfere.

GAUGHAN v. SHARPE.

Prayer for general relief—Effect of—Relief not specially prayed for.

If the allegations in a bill state a case entitling a party to relief, he may under the general prayer have it, though he may have prayed specially for other relief; but a plaintiff cannot take advantage of the ambiguity of his own pleading so as to claim upon facts stated in the bill a relief entirely foreign to the scope of the bill.

A creditor's bill prayed that the proceeds of an insurance policy which had been effected by the deceased for his first wife and children, should be subjected in the hands of the executors to the payment of the plaintiff's claim, and that the executors might be restrained from paying over the money. The Court below overruled a demurrer thereto, but under the general relief prayer granted administration.

Held, reversing the decision of the Court below, that the demurrer should have been allowed, and that the plaintiff was not entitled to the administration decree.

PROCTOR v. AMBLER.

Statute of Frauds—Goods over £10—Delivery of—Verdict against evidence.

A delivery and acceptance of goods exceeding the value of £10 in order to satisfy the Statute of Frauds must be in pursuance of a contract of sale. Where, therefore, the plaintiff, an outgoing tenant of premises leased from the defendant, handed the key to the defendant,

Held, that this was not a delivery or symbolic delivery of the goods upon the premises to satisfy the statute.

Where the Court was satisfied on the evidence that the verdict for defendant was wrong, and that it was not merely against the weight of evidence, but against the evidence, the appeal was allowed and a new suit directed.

REID v. HUMPHREY.

Alteration of negotiable instrument—Onus of proof.

While a promissory note was in the hands of the plaintiff's testator, the name of the payee, D.P., was improperly added thereto as a maker.

Held, affirming the judgment of the Court below (MORRISON, J.. dissenting) that it was such a material alteration as to vitiate the note; and that this would have been so even if the name had been placed there by D. P., or by his authority as an additional maker of the note.

Held, also, that the onus would have lain upon the testator, if alive, to acconnt for the placing of the name where it was, and to rebut the inference arising from the alteration, and the fact of his death did not shift the onus.

FREED v. ORR.

Judgment against executor—Execution—Sale under—Validity of.

Lands are liable to be sold under execution on a judgment against an executor or administrator only for a debt of the testator or intestate, and a sale of the same cannot be upheld if, in fact, the judgment were not recovered in respect of a debt of the deceased. But when a judgment is recovered against a living person, or against executors for a debt of the testator, the sale of land under the writ valid on its face, and authorized by the conclusion of the record, passes a good title thereto, and the debtor could only recover the money under the execution in case of a reversal of the judgment for error on the record.

CHAMBERS.—Q. B. and C. P. DIV.

Mr. Dalton.] [Sept. 20.

TRUST & LOAN CO., v. HILL.

Land, action to recover—Judgment—Rule 322—Admission.

In an action for the recovery of land the plaintiff may obtain an order to sign final judgment under Rule 322 upon an admission of the defendant in pleadings or on his examination.

Marsh, for plaintiff.

Mr. Dalton, Q. C.] [Sept. 20.

LAIDLAW v. ASBAUGH.

Ejectment—Issue—Notice of trial—Rule 494.

A writ in ejectment was served on 15 August, 1881, and an appearance entered after the 22nd of the same month.

Held, that the plaintiff need not file a statement of claim under the new practice, and a notice of trial served immediately after the entry of the appearance was regular, the cause being then at issue.

Shepley, for plaintiff.

G. B. Gordon, for defendant.

Mr. Dalton.] [Sept. 22.

FRIENDLY v. CARTER.

Notice of trial—Countermand.

Where a notice of trial has been given it cannot be countermanded by either party.

H. W. M. Murray, for plaintiff.

Perdue, for defendant.

Mr. Dalton.] [Sept. 22.

LUMSDEN v. DAVIES.

Notice of trial—Time—Agent, service on.

Where a notice of trial is served upon the Toronto agents of a solicitor he is not allowed two days additional time, as he was under the former practice.

Alan Cassels, for defendant.

G. B. Gordon, for plaintiff.

Mr. Dalton.] [Sept. 22.

SCHNEIDER v. PROCTOR.

Issue—Joinder—Notice of trial.

A cause is at issue where a joinder of issue has been filed or where three weeks have elapsed after the statement of defence has been delivered.

A notice of trial served before either of those events has happened was held irregular and was set aside.

I. Campbell, for defendant.

Drew, Q. C., for plaintiff.

CHAMBERS—CHAN. DIV.

Boyd, C.] [Sept 5.

HOPKINS v. HOPKINS.

Partition under G. O. 640—Adverse title—Costs.

A partition matter. A defendant on reference before a master claimed title to the land in question.

This was a motion by plaintiff for leave to file a bill. It appeared in evidence that the plaintiff was aware prior to the taking of proceedings before the Master that the defendant in possession claimed the land.

Nesbit, for the motion.

J. H. Macdonald, contra, cited *Bennetto* v. *Bennetto*, 6 P. R. 145 ; *Macdonnell* v. *McGillies*, 8 P. R. 339.

BOYD, C., dismissed the application, and ordered the plaintiff to pay the costs of proceedings in the Master's office, and of this application.

Boyd, C.] [Sept. 26.

AITKIN v. WILSON.

Reference—Change of—Ontario Judicature Act—Effect of—Practice.

The decree directed a taking of partnership accounts. Reference to Master at Toronto. A motion before Mr. STEPHENS to change the reference to the Master at Barrie was refused On an appeal :

The CHANCELLOR, after ascertaining from the Master that the earliest time free for appointments in his office was in November, changed reference to Barrie, stating that but for this he would not have done so ; that in regard to the cases cited the O. J. Act had changed the principles on which they were decided. The policy of that act is to decentralize business and send local matters to local Masters ; that here the business of the partnership had been carried on in the county of Simcoe, and the parties reside there, so that the matter should properly come before the Master of that county. Order made changing reference ; costs to be costs in the cause.

Mulock, for the defendant, appellant.

Hoyles, contra, cited *Macara* v. *Gwynne*, 3. Gr. 310, and *Noad* v. *Noad*, 6 P. R. 49.

REPORTS.

RECENT ENGLISH PRACTICE CASES.

(Collected and prepared from the various Reports by A. H. F. LEFROY, ESQ.)

RICHARDS v. CULLERNE.

Imp. Jud. Act, 1873, *sec.* 89—*Ont. Jud. Act*, *sec.* 77.—*County Court—Committal fo disobedience.*

[Q. B. D., July 27—W. N. 120.

In this case a County Court had made in the course of an action an order on the plaintiff for production of documents, which order was disobeyed. The defendant applied to commit him, but the judge refused to commit him, being of opinion that he had not jurisdiction to do so. The defendant obtained a rule *nisi* for a mandamus, which was discharged by Denman and Williams, JJ., on the ground of an omission to produce certain exhibits, without any opinion being given on the merits.

THE COURT (Jessel, M.R., and Brett and Cotton, L. JJ.) held that the County Court had jurisdiction to commit, and that the case was governed by *Martin* v. *Bannister* 4 Q. B. D. 491 ; the fact that the order in that case was final, and in the present case only interlocutory, not making any difference.

[NOTE : *Imp. Jud. Act*, 1873, *sec.* 89, *and Ont. Jud. Act, sec. 77 are identical.*]

BURROWES v. FORREST.
FORREST v. BURROWES.

Action—Reference to arbitration—Enforcing award.

[M. R., July 22—W. N, 120.

All matters in difference between the parties to these actions were referred to an arbitrator who made his award, whereby (among other

* It is the purpose of the compiler of the above collection to give to the readers of this Journal a *complete* series of all the English practice cases which illustrate our present practice, reported subsequently to the annotated editions of the Ontario Judicature Act, that is to say since June, 1881.

things) he ordered the payment of a sum of money to Burrowes by Forrest.

The award had not been made a rule of Court.

H. G. Deane now moved on behalf of Burrowes for an order enforcing the award.

THE MASTER OF THE ROLLS, expressing an opinion that it was desirable to assimilate the practice of the Chancery and Common Law Divisions, made the order as asked without requiring the award to be made a rule of Court.

SCHGOTT V. SCHGOTT.

Married woman suing by her next friend—Authority—Security for costs.

[July 29.—W. N. 125.

Motion on behalf of defendants, a husband and the wife's trustee under a separation deed (the trustee having refused to give his consent to the wife's proceeding) that the action, which had been commenced by the wife, suing by her next friend for the payment of unpaid instalments of maintenance money under the deed, might be dismissed, on the ground that the plaintiff had never given the alleged next friend any authority to act; or that the next friend might be ordered to give security for costs, on the ground that he was not a householder, and that a witness had ascertained upon inquiry that he had no visible means of paying costs. In defence the next friend deposed that he was in a position to pay any costs that he might be ordered to pay, but as to his authority he said nothing.

THE VICE-CHANCELLOR said it was new to him that a next friend should be interrogated as to his authority. If a wife were to come forward and say she had not given any authority, that would be another thing. But until the wife said this, or until some one said this and proved it, the case must go on. Neither could he put the alleged next friend on the terms of giving security for costs. The defendant, the husband, was the last man who should make this application, having deprived his wife of the means of subsistence. If he could answer the case he had the remedy in his own hands, for if he should succeed, he might pay himself the costs out of the annuity.

Motion refused; costs to be costs in the cause.

JENNINGS, APP.; JORDAN AND PRICE, RESPTST.

Imp. O. 16, r. 7 — Ont. O. 12, r. 7 (No. 95.) Mortgage—Consolidation—Parties—Trustees.

[H. of L., August.—W. V. 127.

Appeal from a decision of the Court of Appeal, reported *sub. nom. Mills* v. *Jennings*, 13 Ch. D. 639.

THE LORDS affirmed the decision with costs, with the variation of reserving liberty for the respondents or either of them, or for any of the *cestuis que trust* under the deeds of the 3rd of December, 1838, and the 6th May, 1868 respectively (in case of redemption of the mortgaged premises included in the decree by the respondent Jordan) to apply to the Chancery Division for the addition to the decree of any further accounts and directions consequential thereon, which by reason of such redemption he Court may think just.

[NOTE.—*Imp. O. 16, r. 7, and Ont. O. 12, r. 7 are identical.* Mills v. Jennings *is cited at some length by Taylor & Ewart, (Jud. Act) p. 187.*]

AUSTEN V. BIRD.

Imp. O. 16, r. 15.—Ont. O. 12, r. 17 (No. 105.) Death of sole plaintiff—Order to revive—New defendant—Service of writ.

[M. R., Aug. 5,—W. N. 129.

This action was commenced on the 27th of July, 1880, by a sole plaintiff against a sole defendant. The plaintiff died on the 26th of December, 1880, after delivery of statement of claim, and on the 11th of February, 1881, his executors obtained a common order to revive. The plaintiffs had obtained leave to add a new defendant, but the order was not drawn up.

Cozens-Hardy applied under Order xvi. r. 15, for directions as to service, the only plaintiff named in the writ being dead. He referred to *Re Wortly, Culley* v. *Wortley*, 4 Ch. D. 180.

The Master of the Rolls directed copies of the original writ and the order to revive and the order adding the new defendant to be served upon him.

[NOTE.—*Imp. O. 16, r. 15, and Ont. O. 12 r.*

17, are identical, excepting that the former requires the plaintiff to file an amended copy of the writ of summons, which our order does not do.]

SALT v. COOPER.

Imp. Jud. A. 1873, *sec.* 24., *subs.* 7, *O.* 42.—*Ont. Jud. A., sec.* 16, *subs.* 8, *O.* 38.—*Equitable execution—Appointment of receiver after final judgment—"Cause or matter pending."*

[Ch. D., C. of A., Dec. 21, 1880,—
50 L. J. R., 529.

In this case in the court below, the M. R. held that after final judgment in an action a receiver may be appointed (although the writ contains no claim for a receiver) without the issue of any fresh writ, so long as the judgment remains unsatisfied, the action being in such a case "a cause or matter pending" within the meaning of the Jud. Act, 1873, sec. 24, sub-sec. 7, and that Imp. O. 42. (Ont. O. 38), does not at all affect the question.

Now on appeal to the Court of Appeal the above decision of the M. R. was affirmed.

[NOTE.—*Imp. J. 7., A. 1873, sec. 24, subs. and Ont. J. A. sec. 16. subs. 8 are identical. The case of Salt* v. *Cooper, before the M. R. is cited by Taylor & Ewart at p. 335 of their work on the Jud. Act. The case involved a further point arising from the prior appointment of a receiver by the Court of Bankruptcy, and the judgments are mainly concerned with this. The Lord Justices of Appeal, however, allow the subsequent equitable execution would have been good, but for this.*]

WATSON v. CAVE.

Appeal—Withdrawal of withdrawal.

An appellant wrote a letter on Jan. 26, 1881, proposing to withdraw his appeal, and asked the respondent's consent to such withdrawal, which was given. Two days afterwards he gave notice of his intention to proceed with the appeal, on the ground that he had before been under a misapprehension as to a material matter of fact, which misapprehension had now been removed.

Held, that the withdrawal could not be rescinded, and that the appeal could not be heard.

[Ch. D., C. of A., Feb. 19, —.
50 L. J. R. 561; 19 W. R. 763.

The facts sufficiently appear from the above head-note.

On the opening of the appeal, on the preliminary objection being taken that the defendent, having withdrawn his appeal, could not proceed with it,—

Counsel for appellant contended that as the appeal had not been struck out they could proceed. When an order was made in Court in the presence of the parties by consent, it was open for either party to withdraw that consent at any time before the order was actually drawn up: *Rogers* v. *Horn*, 26 W. R. 432.

JAMES, L. J., was of opinion that it would be *pessimi exempti* if they were to allow such a withdrawal of the appeal as that which was contained in the letter of Jan. 26, 1881, to be rescinded. In this case it was true that within two days the appellant wrote, withdrawing his withdrawal. But it might have been after two years, and it was impossible to say what might not have been done by the respondents in the meantime on the faith of such withdrawal. The letter of the 26th of January could not be treated as a mere proposal to withdraw, but was a formal notice by the appellant of his intention to withdraw his appeal, and to avoid further costs he asked the respondents to consent to his withdrawal. The respondents gave their consent, and if the appellant wished afterwards to withdraw his withdrawal and return to his former position, his proper course would have been to have applied for leave to give fresh notice of appeal. If the notice of withdrawal had been given under any mistake of fact, the court might, upon a due consideration of all the facts, have acceded to such an application, but at present it knew nothing of the facts of the case.

LUSH, L.J., was of the same opinion. The proposal made on the one side, and accepted on the other constituted a contract which was binding on the parties, and did not require, in order that it should be perfected, that the appeal should be actually struck out of the list. If the case had come before the Court after what had taken place, their Lordships would themselves have ordered the appeal to be struck out. The proper course for the appellant would have been to have applied for leave to serve his notice of appeal, although such notice was out of time, and if he could have shown that there had been a mistake of a serious nature, in consequence of which he ought to be allowed to

withdraw his notice of withdrawal, the Court might have given leave. As it was, however, they knew nothing about the facts. He was of opinion that the proposal, when once accepted, became a contract by which the parties were bound.

The appeal was dismissed with costs, such costs not to include the respondents' costs of affidavits filed since the acceptance by him of the withdrawal.

Kay asked for leave to give notice of motion to enlarge the time for appealing.

The Court gave leave, but no motion was subsequently made.

LYON V. TWEDDELL.

Partnership—Action of dissolution on equitable grounds—Date from which it should commence.

Where the partnership articles contain no provision for the dissolution of the partnership, and the intervention of the Court is sought to put an end to the partnership on purely equitable grounds, such as incompatibility of temper, and a dissolution is decreed, the dissolution will date from the date of the judgment.

[Ch. D., C. of A., May 19.—50 L.J. R. 571; 44 L. T. 785.]

This was an appeal from a decision of BACON, V. C., who, when the action came on for trial, decreed a dissolution of the partnership, and held that the dissolution should date *from the date of the writ*, and directed that the partnership accounts should be taken in a particular manner.

The defendant appealed, and the only point calling for a report on the appeal was from what date the dissolution should date.

Counsel for the appellant declared the practice to be unsettled, and submitted that the dissolution should date from the judgment of the V. C. They cited *Besch* v. *Frolich*, 1 Ph. 172; 12 L. J. R., Ch. 118.

Counsel for respondent cited contra *Kirby* v. *Carr*, 3 Y. & C., Ex. 184; *Shepherd* v. *Allen*, 33 Beav., 577.

No reply was heard.

JESSEL, M. R.: I think on the whole the more convenient and better plan is to make the dissolution date from the date of the judgment. Consider the nature of the action. The action is instituted not to carry out or enforce any of the partnership articles, but asks the intervention of the Court on purely equitable grounds; that is to say, that under the circumstances the partnership is so detrimental to the parties that the Court is asked to intervene and to put an end to it. In such a case the dissolution should, in my opinion, as a matter of principle, date from the date of the judgment.

JAMES, L. J.: I am of the same opinion. I think that the date of the dissolution should be the date of the judgment, where the misconduct on which the dissolution is based is not in respect of any breach or misfeasance of the partnership articles or contract, but where it arises from incompatibility of temper or like matter. It appears to me that every word of Lord Cottenham's judgment in *Besch* v. *Frolich* applies to the present case, and that is really a matter of principle. But in holding this, I guard myself expressly, and say that it applies only where the dissolution is sought for misconduct not arising under the partnership articles.

LUSH, L. J.: The point is important, and one in which the practice should be settled. In the present case the partnership articles do not provide for a dissolution. In such a case, where both the partners are *sui juris*, and the court dissolves the partnership articles, it seems to me that the principle of the decision in *Besch* v. *Frolich* applies with even greater force than when one partner is a lunatic. I am also of opinion, therefore, that the dissolution should date from the date of the judgment.

IN RE SUTCLIFFE.—ALISON V. ALISON.

Discovery—Administration—Creditor.

A plaintiff in an administration action is entitled to discovery as to the property of the deceased debtor, at the earliest stage of the action.

[Ch. D., May 19.—50 L. J. R. 574; 19 W. R. 732.]

This was a motion by the plaintiff, a beneficiary in an administration action, to compel a further answer from the defendants, the representatives of the deceased debtor, to interrogatories, some of which they had objected to answer. One of the interrogatories was the old common interrogatory as to the details of the

deceased's personal estate. There was also an interrogatory as to the deceased's real estate.

The objection to answer these two interrogatories taken was, that they were not material at that stage of the action. The point was argued on the former interrogatory.

Counsel for the motion said that neither the reasons for giving the discovery, nor the practice in allowing it had been changed by the Judicature Act, (notwithstanding Imp. O. 31, r. 5, a rule not adopted in Ontario.) He cited *Saunders* v. *Jones*, 47 L. J. R., Ch. 440, L. R. 7 Ch. D. 435; and also *Thompson* v. *Dunn*, L. R. 5 Ch. 573; *Elmer* v. *Creasy*, 43 L. J. R. Ch. 166; L. R. 9 Ch. 69; *Sault* v. *Browne*, 43 L. J. R. Ch. 588; L. R. 9 Ch. 364.

FRY, J., after having determined that the interrogatory must be answered, said,—As this is an important point of practice, I will give my reasons. The interrogatory to which exception is taken, as being immaterial and not sufficiently relevant at this stage, is the old enquiry as to personal estate in administration suits. It is said that of late years, and I am glad to hear it, such interrogatories are not so frequent. The question is, whether the beneficiaries have lost the right of discovery which they had. In my opinion they have not. I will only refer to the case of *Thompson* v. *Dunn*, where Lord Hatherley expressed his opinion. * * * * * It appears to me that there is nothing whatever to which my attention has been called which deprives beneficiaries of that right against the executors. Furthermore it is important at this stage of the action to have the discovery for two purposes: in the first place the plaintiff may desire to move to have the funds paid into court; in the next place the account may satisfy him, and he may desire to discontinue the action. That interrogatory will therefore be allowed.

HASTINGS V. HURLEY.

Imp. O. 9, r. 13; O. 11, r. 1; O. 57, r. 6; Ont. O. 6, r. 12 (No. 44); O. 7. r. 1 (No. 45); O. 52, r. 9 (No. 462.)—Time—Extension—Service out of jurisdiction.

The time for endorsing the date of service on a writ served in the United States, was extended for a month from the application.

[Ch. D., March 8—50 L. J. R. 577.

This was a foreclosure action in which the writ had, under an order obtained for the purpose, been duly served on one of the defendants in the United States by the British Consul on Feb. 10th, who, however, had omitted to indorse the day of service on the writ.

Vernon Smith, for the plaintiff, applied by motion for an extension of the time limited to three days from service by Imp. O. 9. r. 13 for making the indorsement.

FRY, J., extended the time for a month from the present day, but required the consul to make a fresh affidavit of service.

[NOTE.—*Imp. O. 57, r. 6, and Ont. O. 52, r. 9, are identical. Imp. O. 11, r. 1, and Ont. O. 7, r. 1, are virtually identical. Imp. O. 9, r. 13, and Ont. O. 6, r. 12, are identical, excepting that the former declares absolutely that if the date of service is not endorsed on the writ within 3 days, the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default, whereas the latter adds: "without the leave of a judge, such leave to be obtained at the cost of plaintiff, and such cost to be in no event charged against the defendant."*]

IN RE WADE AND THOMAS.

Taxation—Copies of documents—Mortgagee or transferee.

[Ch. D., April 28—50 L. J. R. 601.

A mortgagee or transferee of a mortgage who is being paid off, has a right, until the transaction is completed, to keep one fair copy only of the draft deed of reconveyance or transfer, and to charge the mortgagor for making it; but on payment off he is bound to hand over that and all other copies of documents relating to the property to the mortgagor.

[NOTE.—*There is, in this case, a somewhat long judgment of the M. R., but the above note of the result appears all that is needed in this place.*]

SCHNEIDER V. BATT and Co. PANWELS (third party.)

Imp. Jud. Act. 1873. s. 24. sub. 3; O. 16. r. 17, 18—Ont. Jud. Act. s. 16. subs. 4; O. 12, r. 19, 20 (Nos. 107, 108.)—Bringing in third party—Position of third party when the whole matter cannot be disposed of by one trial.

In action against the defendants for breach of con-

tract they served P. as third party under Imp. O. 16. r. 18. The defendants then applied to the Court to give directions as to mode of trial; but the Court held that the matters could not all be decided at one trial, and declined to give any directions. Pleadings having been, by direction of the Q. B. Div., delivered between the defendants and the third party, the defendants then gave the third party notice of trial, the action between the plaintiff and the defendants having been already tried.

Held (affirming the judgment of the Q. B. D.) that as the Court had decided that all the questions could not be determined in one trial, the third party ought to be dismissed from the action, and that the notice of trial should therefore be set aside.

[Q. B. D., C. of A., May 19, 20.—50 L. J. R. 525.

The facts of this case sufficiently appear from the above head note.

BRAMWELL, L. J., who delivered the judgment of the Court, after observing, that speaking for himself, he thought that when a case is not within Imp. O. 16, r. 18, but is within rule 17 of the same order, the third party served with a notice which in terms brought the case within rule 18 (as was the case here) —should be dismissed, and not brought in on one ground and then retained and dealt with on another ground, continued :—

"However, assume that the case is properly brought under rule 17, then we think the object of the rule is that, where the same question may arise between two parties, where a plaintiff may say to a defendant, 'you complain that the goods sold to you are not according to contract,' and the defendant replies, 'If that is true, and if they are not, then then there is a third party who has broken a contract with me with respect to the same goods,' that same question should be tried once for all. But when, as in this case, a Court has decided that the same question shall not be tried once for all between all the parties, then the reason for retaining the third party is at an end. There is no reason why the provisions of rule 17 should be applied to the third party, and we think that the third party should be dismissed for the action. The Solicitor-General has said that the rules could not limit the operation of Jud. Act, 1873, sec. 24, subs. 3; but the rules have received a sanction which renders them equivalent to an Act of Parliament, and speaking for myself, I think that, although the rules ought to be interpreted according to the Act, still this view in effect does so. It may be observed that the section of the statute is permissive not obligatory or compulsory."

[NOTE: *Imp. J. Act 1873, s. 25, subs. 3. and Imp. O. 16, r. 17, are identical with Ont., J. Act, s. 16, subs. 4, and Ont. O. 12, r. 19 respectively. Imp. O. 16, r. 18 and Ont. O. 12, r. 20, are virtually identical, except that the former requires the leave of the court or judge before service of the notice n the third party, and also that the notice shall be stamped with same seal as writs of summons.*]

MUDGE V. ADAMS.

Imp. Jud. Act, 1873, *s.* 24, *subs.* 3.—*Ont. Jud. Act, s.* 16, *subs.* 4.—*Protection order—Probate action—Statement of defence and counter claim praying for discharge of protection order.*

[P. D. & A. D., Feb 1.—50 L. J. R. 49.

In this case the plaintiff as executor, propounded the will of defendant's wife. The statement of claim alleged that the deceased had duly executed the will while living apart from her husband after obtaining a protection order, and being possessed of separate estate. The statement of defence alleged that the protection order had been obtained fraudulently, and ought to be set aside. The defendant by his counter-claim, claimed (i.) that it might be declared that the protection order was fraudulent and void, and that the same be set aside and discharged; (ii.) that the Court should pronounce against the will propounded by the plaintiff; (iii.) that the Court should decree to the defendant a grant of letters of administration of the personal estate of the deceased as her lawful husband; (iv.) that in the alternative the Court should decree to the defendant a grant of letters of administration of so much of the personal estate and effects of the deceased as she had no power to dispose of by her will.

The plaintiff demurred on the ground that it was not alleged that the protection order had been revoked, and that it was not competent to the defendant in this proceeding to assail its validity.

The President (Sir James Hannen), held that the counter-claim was good, and that an ap-

plication to discharge the protection order could be entertained in a probate action. His judgment is chiefly concerned with other points which arose in the case, but as to the form of the pleadings, and the effect of the Judicature Act in this respect, he observes, after reading the above section :—

"The present case, in my opinion, comes exactly within those terms" (*i.e.*, of the said section). "If this defendant had instituted a suit or proceeding for the purpose of setting aside this protection order, the action would have been against this same plaintiff as claiming under the alleged will of the wife ; and this section says that what might have been asserted in that suit may be asserted by way of counter-claim in answer to the action of the plaintiff against the defendant.

"Now I should observe I am dealing with the pleadings as a whole. I think as a matter of refined argument it may be said that if the plea had stood by itself it would not be good, because I agree that while the protection order is subsisting it must be respected. But the counter-claim appears to me to be good, because by it the defendant asks specifically that the protection order be discharged, which is exactly the relief he would pray in the proceeding if they had been instituted in an independent suit."

[NOTE :—*Imp. J. Act*, 1873, *sec.* 24, *sub-s.* 3 *and Ont. J. Act. sec.* 16, *sub-s.* 4 *are identical.*]

LAW STUDENTS' DEPARTMENT.

EXAMINATION FOR CALL.

Dart's Vendors and Purchasers—Walkem on Wills—Statutes.

After a bid had been made at an auction and the property knocked down by the auctioneer, and before any contract had been signed, the bidder withdrew his bid and refused to complete the sale. Can he be compelled to complete ? Explain fully.

A. being desirous of purchasing certain property, and believing that the owner would more readily sell to C. than to himself, professes to act as the agent of C., but takes care that a formal contract is made out in his own name. Will specific performance be decreed as against the owner ? Give reasons for your answer.

What are the requisites of an agreement for the purchase of lands ? Can letters to third parties suffice to bind the writer ?

A. contracted to sell leaseholds to B., who paid part of the purchase money and then deposited with his bankers the contract, accompanied by a memorandum in which he agreed to assign to them the leasehold premises by way of mortgage. The bankers gave notice to A. of this agreement, who, notwithstanding, conveyed to B. Is A. liable for any loss sustained by the bankers ? Give reasons for your opinion.

In a lease from A. to B. the latter is given a right to purchase the premises at the end of a period which does not arrive until after the death of A. At the time named B. purchases the property. By his will, executed prior to the lease, A. had devised the property to X. Who is entitled to the purchase money paid by B., and to the rents which accrued prior to the purchase ? Is there any statutory enactment which may affect the question ?

What are the usual means of proving intestacy in showing title as between vendor and purchaser ? Have we any statute which renders such evidence less necessary than formerly in many cases ? Explain.

Is there any presumption in matters of title arising from age or sex that one of two persons who perished in the same catastrophe survived the other ? Explain how the law operates in such case.

A will is executed in the presence of three witnesses, one being the wife of a legatee, the second a creditor, and the third an executor. Is the will valid ? Explain fully.

A testator by his will devised, (1) to B. an estate tail in Blackacre ; (2) to C. (his son) $1,000 ; and (3) to D. (his nephew), $500. B., C., and D. died before the testator. Who are entitled to the benefits mentioned ? Explain fully.

What must be proved in order to establish the defence of purchaser for valuable consideration without notice ?

Blackstone, Vol. I.—Broom, B. III. & IV.—Harris' Criminal Law.

How many classes of abduction may be distinguished? Define the offence.

Define the crime of arson. In what cases is it necessary to prove an intent to injury or defraud.

Explain under what circumstances in criminal cases that exceptions are allowed to the rule that leading questions cannot be asked in examination in chief.

How far can general evidence of good character be disproved in criminal cases.

How many kinds of criminal information are there. Define them?

Define ignorance in a criminal sense. How far is it an excuse for crime?

Define municipal law.

How many ways can a corporation be dissolved.

Define an action of malicious prosecution. What must the plaintiff prove in order to succeed?

Write a short analysis of the extent of a master's responsibility for the torts of his servant.

Best on evidence—Byles on Bills—Smith on Contracts.

Write short comments on the rule, "The best evidence must be given."

Compare and contrast the effect of evidence, (*a*) in civil, (*b*) in criminal cases.

"Evidence to the character of parties is in general not admissible." State exceptions to this rule as fully as you can.

Give principal exceptions to the rule which requires primary evidence to be given.

Discuss the question whether or not the following words constitute a sufficient guaranty: "Mr. Wakefield will engage to pay the bill drawn on Pitman in favour of Stephen Saunders."

Where a party on whose account a policy of life assurance is made has no interest in the life insured, how will the policy be affected, and why? Answer fully.

Give the general powers which a commission merchant, entrusted with the possession of goods, has of disposing of the same. Answer fully, with reasons.

Pay C. or order $100 ten days after the death of X.; pay C. or order $100 in ten equal annual instalments on 1st September in each year, to be void on the death of X.; are these, or either of them, valid as Bills of Exchange, and why?

What is the legal effect of the payee of a bill not negotiable endorsing it? Would the effect be different in case of a note? Answer fully.

Under what circumstances will alteration of a note not vitiate it?

Equity Jurisprudence.

What is mutuality in the cases of (1) mortgages, and (2) specific performance of contracts.

What is the effect of a conveyance by which land is conveyed on trust in case a debt be not paid by a day named, to sell, and after payment of the debt and costs, to pay over the surplus to the grantor, and grantee covenants not to sell without giving six months' notice, and the grantor covenants to pay the debt and interest?

State who is entitled to the surplus money after a sale under a mortgage where the sale takes place, (1) during the lifetime, and (2) after the death of the mortgagor.

What is the effect of a conveyance of land or other property made without a consideration, and without a distinct use or trust?

Where money is directed to be converted into land, or land into money, and there remains over an unconverted residue, who is entitled to such unconverted residue?

State the classes of cases in which one person may sue on behalf of himself and of all other persons interested in the subject matter of the ligitation.

What rules does a court of equity follow in deciding on the validity and interpretation of (1) purely personal legacies, and (2) legacies charged on land.

Where a provision is made, by deed or will, for the payment of debts out of real estate, when will the Statute of Limitations cease to run?

Define a lien, and state how it may be enforced.

How far does the doctrine of election apply to creditors?

CORRESPONDENCE.

Cheap Law.

To the Editor of the CANADA LAW JOURNAL.

DEAR SIR,—There is another infringement on the rights of the legal practitioner to which I beg to call your attention. It may seem a small affair in the eyes of some, but the *smallness* consists in the parties who give rise to the nuisance. I refer to the columns of legal advice in some of our leading journals. One influential newspaper in a neighboring city publishes a regular list of "*queries*" from its numerous readers asking legal advice on the most abstruse matters, and some time ago it was announced in the paper, that this department, and the answers to be given to inquirers therein, would be presided over and attended to by a leading barrister of the city. The rage for cheap law has certainly of late been carried very far, but this last method is to my mind the most contemptible of its class yet known. It may be urged that the advice thus given will after all have to be revised by some legal gentleman after the full facts of the case are known. If this be so, then the newspaper advice is worthless, and on this ground alone should not be given. It is a sort of gentle fraud on its readers and a useless work of legal supererogation. I enclose you an extract from the above journal showing that the omniverous desire to give advice has broken out in a new spot.

Truly yours,

LEX.

St. Marys, Ont., Aug. 19, 1881.

[We cannot say we feel much exercised about this matter. Legal advice so given cannot be of any practical use, and we doubt whether it is ever acted on. If it is, probably so much the better for the lawyers.—EDS. L. J.]

FLOTSAM & JETSAM.

JUDGE ——— has long worn a black wig. Having lately donned a new one, which looks still darker, and meeting Senator Bayard, of Delaware, the latter accosted him with, "Why. Black, how young you look ; you are not as gray as I am, and you must be twenty years older." "Humph," said the judge, "good reason ; your hair comes by descent, and I got mine by purchase."

AN outspoken judge had to sentence a prisoner in Danville, Va., to prison for eighteen years, for murder, the jury making a "compromise verdict." The judge informed the defendant that the sentence was due to the "moral cowardice of twelve men." Telling him that he considered him guilty, the judge added, "You should rejoice and praise God that you fell into the hands of, and were tried by, a jury of your peers."

WE notice that Mr. Jonas ap Jones, for many years a solicitor in Toronto, has opened an office in London, for transaction of Canadian law business, particularly taking evidence under commission. The profession will no doubt find it to their advantage to have a careful and responsible solicitor in London, acquainted with the laws of Ontario, and the mode of charging customary here.

THE tone of the lay press in speaking of the law and the lawyers, is generally so recklessly and indiscriminately fault-finding, that the following views from our enterprising Kansas contemporary, *The Commonwealth*, *apropos* of the responsibility of lawyers in the General Assembly for improvident and illegal legislation, is really refreshing. "It is not the fault of the lawyers in the Legislature that so many unconstitutional laws are passed. Almost invariably such acts become laws in the face of protests from lawyers. . . . At every session there have been a lot of members who thought to make themselves popular by denouncing lawyers. Every measure proposed by a lawyer would be opposed by these wiseacres. They would try to make the people believe that lawyers were always trying to get some measure through to rob the people. The result has been, and always will be, that crude, unwise laws have been passed. We mean, always will be, till the people send men to the Legislature who either know something themselves, or know enough to know that they don't know anything, and will follow the advice of those who do know something."—*Central Law Journal.*

Law Society of Upper Canada.

OSGOODE HALL.

TRINITY TERM. 45TH VICT.

During this Term the following gentlemen were called to the degree of Barrister-at-Law. The names are placed in the order of merit:—

CALLED WITH HONOURS.

John Henry Mayne Campbell.

CALLED.

George Anthony Watson, John Sanders Macbeth, Horace Edgar Crawford, George Gordon Mills, Jeffrey Agar McCarthy, Charles Miller, Allan McNab, James Scott, Conrad Bitzer, William Elliott Macara, Samuel George McKay, James Brock O'Brian, Frederick Herbert Thompson, Frederick William Kittermaster, Alexander Ford, James Walter Curry, Edward Norman Lewis, Frederick Case, Abraham Nelles Duncombe, William Franklin Morphy.

The following gentlemen who passed their examination in Easter Term, 1881, were also called to the Bar this Term:—

Frederick Faber Harper, Solomon George McGill.

The following gentlemen were admitted into the Society as Students-at-Law, namely:—

GRADUATES.

Hugh St. Quentin Cayley, William Durie Gwynne, Thomas Chalmers Milligan, Alpin Morrison Walton, Douglas Armour, Thomas B. Bunting, Walter Laidlaw, Thomas Joseph Blain, George Washington Field, Samuel Clement Smoke, Henry Herbert Collier, Frederick W. Hill, Charles William Lasby, John Bell Jackson, James Metcalf McCallum, Thomas Edward Williams, George Morton, Frederick Ernest Nellis, Alexander Cameron Rutherford, Frank Henry Keefer, Lucius Quincy Coleman, Henry Thomas Thibley, Joseph Wesley St. John, John Douglas.

MATRICULANTS OF UNIVERSITIES.

Edward W. Humie Blake, Herbert Carlton Parks, Edward Charles Higgins, William H. Holmes, R. S. Smith, John Wesley White, John Paul Eastwood.

JUNIOR CLASS.

William Murray Douglas, George Marshall Bourinot, Thomas Urquhart. Alexander William Marquis, John Bell Dalzell, Osric L. Lewis, Frederick Stone, Alexander David Hardy, Donald James Thomson, Joseph Coulson Judd, Parker Ellis, John O'Hearn, Francis McPhillips, Henry Clay, Robert Casimir Dickson, Arthur Clement Camp, John Carson, Douglas Harington Cole, Thomas Steele, Andrew Charles Halter, Matthew Joseph McCarron, Robert G. Fisher, Charles Meek, W. H. F. Holmes, Paul Kingston, Harry George Tucker, Richard Vanstone.

And the Preliminary Examination for Articled Clerks was passed by William Mansfield Sinclair.

RULES

As to Books and Subjects for Examination.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

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

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

Articled Clerks.

1881.
- Ovid, Fasti, B. I., vv. 1-300; or,
- Virgil, Æneid, B. II., vv. 1-317.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History—Queen Anne to George III.
- Modern Geography—N. America and Europe.
- Elements of Book-keeping.

In 1882, 1883, 1884 and 1885. Articled Clerks will be examined in the portions of Ovid or Virgil, at their option, which are appointed for Students-at-Law in the same years.

Students-at-Law

CLASSICS.

1881.
- Xenophon, nabasis, B. V.
- Homer, Iliad, B. IV.
- Cicero in Catilinam, II., III., IV.
- Ovid, Fasti, B. I., vv. 1-300.
- Virgil, Æneid, B. I., vv. 1-304.

1882.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum, (B. G. B. IV. c. 0- 36, B. V., c. 8-23.)
- Cicero, Pro Archia.
- Virgil, Æneid, B. II., vv. 1-317.
- Ovid, Heroides, Epistles V. XIII.

1883.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum.
- Cicero, Pro Archia.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Heroides, Epistles V. XIII.

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis, B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.

Composition.

Critical Analysis of a selected Poem:—

1881.—Lady of the Lake, with special reference to Cantos V. and VI.

1882.—The Deserted Village.
The Task, B. III.

1883.—Marmion, with special reference to Cantos V. and VI.

1884.—Elegy in a Country Churchyard.
The Traveller.

1885.—Lady of the Lake, with special reference to Canto V.
The Task, B. V.

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek:—

FRENCH.

A paper on Grammar.

Translation from English into French Prose:—

1881.—Emile de Bonnechose, Lazare Hoche.

OR, NATURAL PHILOSOPHY.

Books.—Arnott's Elements of Physics, 7th edition, and Somerville's Physical Geography.

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

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination, to be passed in the third year before the final Examination, shall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery; O'Sullivan's Manual of Government in Canada; the Dominion and Ontario Statutes relating to Bills of Exchange and Promissory Notes, and Cap. 117, R. S. O., and amending Acts.

The Subjects and Books for the Second Intermediate Examination to be passed in the second year before the Final Examination, shall be as follows:—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing, (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law; Underhill on Torts; Caps. 49, 95, 107, 108, and 136 of the R. S. O.

FINAL EXAMINATIONS.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Smith on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Harris's Principles of Criminal Law, and Books III. and IV. of Broom's Common Law, Dart on Vendors and Purchasers, Best on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

FOR CERTIFICATE OF FITNESS.

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

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

The Primary Examinations for Students-at-Law and Articled Clerks will begin on the Second Tuesday before Hilary, Easter, Trinity, and Michaelmas Terms

The Second Intermediate Examination, on the 3rd Tuesday, except in Trinity Term.

The First Intermediate, on the 3rd Thursday, except in Trinity Term.

The Attorneys' Examination, on the Wednesday, and the Barristers' Examinations, on the Thursday before each of the said Terms.

FEES.

Notice Fees	$1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Attorney's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fees each,	1 00
Fee in Special Cases additional to the above	200 00

The following changes in the Curriculum will take effect at the examination before Hilary Term, 1882:—

FIRST INTERMEDIATE.

Williams on Real Property; Smith's Manual of Common Law; Smith's Manual of Equity; the Act respecting the Court of Chancery; Anson on Contracts; the Canadian Statutes relating to Bills of Exchange and Promissory Notes, and Cap. 117 R.S.O. and Amending Acts.

SECOND INTERMEDIATE.

Leith's Blackstone (2nd edition); Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages and Wills); Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada; the Ontario Judicature Act; Caps. 95, 107 and 130 of the Revised Statutes of Ontario.

FOR CERTIFICATE OF FITNESS.

Taylor on Titles; Hawkins on Wills; Taylor's Equity Jurisprudence; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and the Pleadings and Practice of the Courts.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris's Principles of Criminal Law, and Books III. and IV. of Broom's Common Law; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills; the Statute Law and the Pleadings and Practice of the Courts.