DIARY FOR OCTOBER.

2. SUN. *16th Sunday after Trinity.*
9. SUN. *17th Sunday after Trinity.*
15. Sat... Law of England introduced into Upper Canada, 1792.
16. SUN. *18th Sunday after Trinity.*
18. Tues. *St. Luke Evangelist.*
23. SUN. *19th Sunday after Trinity.*
28. Frid. *St. Simon and St. Jude.*
30. SUN. *20th Sunday after Trinity.*
31. Mon. *All Hallow Eve.*

THE

Canada Law Journal.

OCTOBER, 1870.

THE MINISTER OF JUSTICE.

The recent visit of Sir John A. Macdonald to the seat of law and learning in Western Canada was the occasion of his many friends and admirers congratulating him upon his restoration to health, after the alarming illness under which he was prostrated. In common with them, we think we may without presumption, on behalf of the profession, add our meed of rejoicing that so eminent a member of the Bar, so distinguished a legislator and the head of the Department of Law in this Dominion has recovered from an attack which so nearly proved fatal, and is again able to resume his duties.

MASTER IN CHANCERY.

In our February number we touched upon the subject of certain reforms in the Court of Chancery, which pressingly required the interfence of those in authority, and our remarks were mainly directed (1) to the Master's office, and the necessity of having an energetic man as well as a good lawyer at the head of that department; and (2) to the Registrar's office—and as to the latter, particularly with reference to the difficulties in the way of getting money out of Court, and the necessity for some simple and efficient system in that behalf.

In view of the state of things there spoken of, we are glad to learn that the Attorney-General has taken the subject in hand, and has done something towards providing a remedy for at least some of the evils complained of. He has, in the first place, determined to remove the present Master and put in his place a younger and more vigorous man, from whom, if we can judge from his career so far, we may expect much in the speedy and efficient despatch of business. Secondly, he has appointed the present Master to the office of Accountant-General, whose duties have hitherto been performed by the Registrar; Mr. Turner not having performed the duties strictly pertaining to that office, but, owing to the accumulation of work in the Master's office, having done part of the work of that department. Mr. Buell will, as Accountant-General, be of much use, it is thought, in overseeing the financial business of the Court and facilitating the payment of moneys out of Court to the parties properly entitled to them, and relieve the Judges of much troublesome detail in examining accounts, vouchers, &c., which could as well be done by a painstaking, methodical officer.

The gentleman selected to fill the responsible office of Master of the Court of Chancery is Mr. J. A. Boyd, one of the firm of Blake, Kerr & Boyd. He is a young man for the office, and it has been said of not much experience, but if he has, as his success in the profession so far would seem to shew, "an old head on young shoulders," this will be no disadvantage, but the contrary, for there is an absolute necessity of having in that office one who is able, physically as well as mentally, to grapple with and keep down the business which would otherwise so rapidly accumulate there. Mr. Boyd has only comparatively recently devoted his attention exclusively to Chancery practice, but he has taken a good stand on the Equity side, as he had commenced to do previously at the Common Law, so that we have every reason to think that the Attorney-General has made a judicious selection. He enters upon his duties, we understand, early in November next.

It is said that the Attorney-General proposes making various other changes in the offices of the Court of Chancery at Osgoode Hall, the nature of which, however, he has not yet made known.

LAW STUDENTS' EXAMINATION.

For fear of any misapprehension on the part of law students who are preparing for the next interim examination, we desire to mention that it will take place on the *23rd November* next and not on the *7th December*, as stated in the Law Journal Sheet Almanac for 1870.

A correspondent from Nova Scotia, in a letter recently published, asks for information touching the confirmation of deeds of composition and discharge where there is no opposition. We do not clearly see what the difficulty is that seems to impress our correspondent. By sec. 104 the burthen of proof of the discharge being completely effected shall be upon the insolvent until the confirmation is obtained from the Judge. The insolvent can apply for the order or not as he likes—the discharge is good without it, though it may be awkward to prove it; whilst under sec. 104 an authentic copy of the judgment confirming the discharge is sufficient evidence as well of such discharge as of its confirmation.

We notice that J. G. Scott, Esq., Barrister-at-law, has been gazetted as Clerk of the Executive Council of Ontario, in the place of James Ross, Esq., resigned. He will make an efficient and energetic officer.

SELECTIONS.

NOTES ON PRECATORY TRUSTS IN WILLS.

In *Quayle* v. *Davidson*, 12 Moore, P.C. 268, it was held that a court of equity "will, if necessary, construe words importing a trust as an expression of hope or confidence." In precatory trusts, on the other hand, words expressing hope or confidence are construed as importing a trust. In each case the courts apply "one of the fixed rules of equitable construction, that there is no magic in particular words." Hill on Tr. 65.

The intention of the testator, of course, is to govern in all cases. So that no informality in words will prevent the creation of a trust where it clearly appears that a line of duty is marked out for the donee, and not merely suggestions made to his discretion: and neither precatory words nor any other will avail to create a trust where a contrary intent is shewn.

But the doctrine of precatory trusts is something more than the converse of the principle in *Quayle* v. *Davidson;* it does not stop with saying that precatory words *may*, under stress of a plainly indicated intent, be construed as importing a trust. It is stated as a rule of presumption; and, in the absence of countervailing circumstances, or in the equipoise of such as conflict, it *requires* that precatory words shall be so construed. The rule was thus expressed by Sir R. P. Arden, Master of the Rolls, in the case of *Malim* v. *Keighley*, 2 Ves. Jr. 333, 335 (A. D. 1795): "I will lay down the rule as broad as this: whenever any person gives property, and points out the object, the property, and the way in which it shall go, that does create a trust, unless he shows clearly that his desire expressed is to be controlled by the party; and that he shall have an option to defeat it." The precatory word in this case was "recommend."

This statement of the rule is cited because it has been very often quoted and approved; as, for example, in the case of *Knight* v. *Boughton*, 11 Cl. & Fin. 513. 551 (A. D. 1844), by Lord Chancellor Lyndhurst and Lord Cottenham; and in the case of *Homer* v. *Shelton*, 2 Met. 194, 207, by Wilde J. It is criticised, and yet adopted as sufficiently accurate, by Lord Chief Baron Richards, in *Heneage* v. *Andover*, 10 Price, 230.

Perhaps, therefore, when it is said, in relation to precatory trusts (Adams, Eq. 31,) that: "The question in each particular case is merely of construction on the terms of the instrument," the matter is not stated with entire accuracy. The remark, at any rate, is less significant than it would seem to be at first sight; and is not to be considered as denying that there is a canon of construction applicable to precatory words.

In England, the rule is admitted, on all hands, to be an established one; and it runs back, in that country, through a series of approved decisions, for more than a century and a half. *Eales* v. *England*, 2 Vern. 466 (A. D. 1702); *Harding* v. *Glyn*, 1 Atk. 469 (A. D. 1739); *Pierson* v. *Garnet*, 2 Bro. C. C. 38, 226 (A. D. 1786); *Paul* v. *Compton*, 8 Ves. 375 (A. D. 1803); *Cary* v. *Cary*, 2 Sch. & Lef. 173, 189 (A. D. 1804); *Forbes* v. *Ball*, 3 Mer. 437 (A. D. 1817); *Wright* v. *Atkyns*, 1 Turn. & Russ. 143 (A. D. 1823); *Wood* v. *Cox*, 1 Keen, 317 (A. D. 1836); *Shaw* v. *Lawless*, 5 Cl. & Fin. 129 (A. D. 1838); *Knight* v. *Boughton*, 11 Cl. & Fin. 513 (A. D. 1844); *Williams* v. *Williams*, 1 Sim. N. S. 358 (A. D. 1851); *Briggs* v. *Penny*, 3 Macn. & G. 546 (A. D. 1851); *Bernard* v. *Minshull*, H. R. V. Johns. 276 (A. D. 1859); *Bonser* v. *Kinnear*, 2 Gif. 195 (A. D. 1860); *Shovelton* v. *Shovelton*, 32 Beav. 143 (A. D. 1863); *Irvine* v. *Sullivan*, L. R. 8 Eq. 673 (A.D. 1869). And see *McCormick* v. *Grogan*, I. R. 1 Eq. 313 (A. D. 1867); S. C. L. R. 4 H. L. 82.

It has also been generally adopted in this country. *Reed's Adm'r* v. *Reed*, 30 Ind. 313 (A. D. 1868): *Warner* v. *Bates*, 98 Mass. 274 (A. D. 1867); *Van Amee* v. *Jackson*, 35 Vt. 173 (A. D. 1862); *Negroes* v. *Plummer*, 17 Md. 165 (A. D. 1860); *Anderson* v. *McCullough*, 8 Head, 614 (A. D. 1859); *Ingram* v. *Fraley*, 29 Geo. 553 (A. D. 1859); *Lines* v. *Darden*, 5 Florida, 51 (A. D. 1853); *McKonkey's Appeal*, 13 Penn. St. 253 (A. D. 1850); *Lucas* v. *Lockhart*, 10 Sm. & M. 466 (A. D. 1848); *Harrison* v. *Harrison's Adm'r*, 2 Gratt. 1 (A. D. 1845); *Coates's Appeal*, 2 Penn. St. 129 (A. D. 1845); *Tolson* v. *Tolson*, 10 G. & J. 159 (A. D. 1838); *Bull* v. *Bull*, 8 Conn. 47 (A. D. 1830); *Erickson* v. *Willard*, 1 N. H. 217 (A.D. 1818). See also *Harper* v. *Phelps*, 21 Conn. 257.

And it is laid down in the best text-books as an established rule; 1 Jarman on Wills (3d Lond. ed.), 356; 2 Washb. Real. Prop. (3d ed.) 469; Adams' Eq. 30, 31; Hill on Tr. 71; Lewin on Tr. 104.

Nevertheless, the doctrine as to precatory trusts has long been, and is still, fiercely assaulted in many quarters. One might gather from the language of some text-writers, and occasionally of some judges, that there never had been any good reason for adopting it, and that such reasons as there were, had been wholly exploded. *Pennock's Estate*, 20 Penn. St. 268 (A. D. 1853); *Van Duyne* v. *Van Duyne*, 1 McCarter, 397 (A.D. 1862); 2 Story's Eq. Jur. § 1069; Tiff. & Bull. on Tr. 224; 1 Redf. Wills, 713.

These attacks have not always come from the best instructed quarters. Thus, in the year 1853, in *Pennock's Estate*, 20 Penn. St. 268, a very extraordinary and elaborately considered case, the court say: "We may now add that we know of no American cases wherein the antiquated English rule has been adopted." In view of the American cases cited above, is it too much to say that the court ought to have known of half a dozen?

But in some instances these objections have proceeded from judges of high authority, *e. g.*, Lord Eldon in *Wright* v. *Atkyns*, 1 V. & B. 313, 315. See also *Heneage* v. *Andover*, 10 Price, 230, 265; s. c. on appeal, *sub nom. Meredith* v. *Heneage*, 1 Sim. 542; *Sale* v. *Moore*, 1 Sim. 534, 540; *Green* v. *Marsden*, 1 Drew. 646; the judicial comments of this sort, however, have, we believe, uniformly been made in cases which were held not to come within the scope of the rule. Among the text-writers who object to the rule now under consideration, Judge Redfield (1 Redf. Wills, 713) goes so far in his strictures as to say: "This" [to wit, that nothing obligatory is meant], "we think, is what is *always* intended by testators, in the use of these hortatory expressions in their wills, towards the recipients of their bounty. There is scarcely one man in a thousand who would, in such cases, use any such indefinite and optional forms of expression towards those whom he expected to assume a binding duty and obligation. . . . So that, probably, *in nine cases out of ten*, where the courts have raised a trust out of such mere words of wish and exhortation, it has been done contrary to the expectation of the testator, and more out of regard to the moral than the legal duty of the donee."

The italics are our own. These phrases are, certainly, sufficiently broad.

Is this sort of comment upon the doctrine of precatory trusts just? And upon what grounds, if any, may we look to see that doctrine continue to hold its own?

The rule is but one among many; it is a secondary and auxiliary rule,—always subordinate to the cardinal principle that the intention of the testator is to govern. Indeed, it is a rule that has its whole support in a supposed conformity with that principle; and it gives way at once when the two are shown to conflict. There is no sort of difficulty in accepting the rule where it does not conflict with the testator's intention, for no technical words are necessary to create a trust. The difficulty exists in cases, where, without the application of this rule, there is no plain indication of the intent.

Where the doctrine is an established one, as in England, it may safely be assumed that it always accords with the intention of the testator, when the will is drawn artificially and with technical skill.

It is to be noted that, in its strictest definition, it is a rule of very restricted application. It will seldom happen that some indication or other, and some prevailing indication, of a testator's intention, in the use of precatory words, may not be drawn from the facts to which the will is applicable, or from the other language or the structure of the instrument. Thus, in the late and well-considered case of *Warner* v. *Bates*, 98 Mass. 274, the language under discussion was the following clause in a testamentary gift from a wife to her second husband: "In the full confidence that, upon my decease, he will, as he has heretofore done, continue to give and afford my children" [naming all her children by both husbands] "such protection, comfort, and support as they or either of them may stand in need of;" it appeared that some of the children were adults, and without property; that during their whole life they had all been supported at the mother's house and out of her property, and had lived together as one family; that she gave all her property to the husband for life, and left the children nothing at all during that period, unless through the operation of the clause above quoted; and that upon the husband's death she gave all her property to the children, by both husbands, equally; the court were clear in the opinion that, under circumstances like these, the established rule as to the construction of precatory words accorded well with the intention of the testatrix.

It is a trite qualification of the rule as to precatory trusts, and one that has been ingeniously applied so as to take many a case out from the operation of it, that the subject-matter and the person, or object, must be clearly pointed out. But a good deal more significance has been attached to this observation than it deserves. It is a qualification that is not peculiar to precatory trusts. Where the technical phrases for creating a trust are used, and there is no room for question as to the intention, the want of clearness in pointing out the person or property to which it relates, can have only the effect of nullifying that admitted intent. Where precatory words are used, this uncertainty has the same effect, so far as any intention to create a trust is made out; and so far as there is a doubt as to the intention, it also has a bearing upon the solution of that question. The intention being

made out, however, no greater effect is to be given to the want of clearness in the one case than the other; the rule being equally applicable always, that in order to create a trust there must be,—1, sufficient words; 2, a certain subject; and, 3, a certain object: *Williams* v. *Williams*, 1 Sim. N.S. 358, 369, 370; *Briggs* v. *Penny*, 3 Macn. & G. 546, 556; 1 Jarman on Wills (3rd Lond. ed.), 359. In *Bernard* v. *Minshull*, H. R. V. Johnson, 276, we have a case where precatory words availed to prevent the donee from taking a beneficial interest, although the intended trust failed for uncertainty. This case shows, first, that a want of certainty is not conclusive as to the effect of precatory words; and, second, that it is fatal to a trust of any sort.

What are called precatory words are of very different degrees of force. One of them, the word "confidence," is a very strong one; indeed, in legal usage, it comes near being the equivalent of "trust." It is often mated with it; "trusts and confidences" is the phrase used in the Statute of Uses and elsewhere; and under the term "Trust," Burrill's Law Dictionary, after giving "a confidence" as one of its definitions, goes on to add: "The radical idea of a trust is confidence, and this is the word employed by Lord Coke in his definition of a use, which has been adopted by Mr. Butler and Mr. Lewin as the best and most exact definition of a *trust*." In *Meredith* v. *Heneage*, 1 Sim. 542, 556, with reference to the words "in full confidence and with the firmest persuasion," the court say, "unquestionably these words are extremely strong." Surely they are. It was considered in that case that there was enough else to outweigh them; but in the absence of a clear indication to the contrary, one may well wonder how it should ever be thought that a testator, in laying a donee under such solemn and stringent injunctions, could intend that he might keep the gift while he disregarded them.

There are many other words — of wish, recommendation, desire, entreaty, expectation and so forth—which have not, intrinsically, so much force. To all of them alike, however, one powerful consideration applies,—they are used in an instrument whose primary purpose it is to transfer property; and they are used as a part of the phraseology for transferring it. A will may be, and is, sometimes, availed of, incidentally, for the expression of the testator's mere wishes or opinions; but that is not its purpose, nor is it ordinarily or mainly used for such communications. It seems to be reasonable—where these expressions are found in such a document, and where one who has a right to order, expresses, without qualification, his expectation, or his wish, that something shall be done—to say that "the expression of his wishes is deemed to be the expression of his will" (Wilde, J., in *Whipple* v. *Adams*, 1 Met. 445), and that "the mode is only civility" (Lord Loughborough, in 1 *Malin* v. *Keighley*, 2 Ves. Jr. 529, 532). How shall one determine that the testator would give any thing if he did not suppose that his "expectation," or "wish," or "confidence," would be heeded? Assuming, as we do, that he has given no plain indication of his intention in other ways, we have the two facts, that property is given to A. B., and that the giver, in bestowing it, desires that it shall be applied in a particular way. Why shall it not be so applied? "He uses," says Redfield (1 Redf. Wills, 713), "such precatory words, because he desires to leave it to the *discretion* of the donee; and if he intended to control that discretion, he would adopt very different language" This is easily said, but it is not convincing. One has only to reply, "Why, then, does he not *say* that he intends to leave it to the discretion of the donee? Why does he not at least intimate it, so as to lift from the conscience of the donee that weight which his language must needs lay upon it." Every man feels the moral stringency of such injunctions. No person, in giving property, and coupling these expressions with the gift, can fail to be aware how impressive they are: they are, and are meant to be, extraordinarily weighty. It seems to us, therefore, that the law is wise and prudent in assuming that where a testator intends that such injunctions shall have no other force than that of suggestions to the discretion of a donee, he will indicate it, and in requiring whenever he does not indicate it, and the conscience of the donee is found to be evading them, that they shall be taken up and enforced by "the general conscience of the realm—which is Chancery."

As to the objections, then, which are taken to the doctrine of precatory trusts, it may be said generally,—

I. That so far as they amount merely to saying that the cases have sometimes been decided on grounds too narrow and technical, or that the rule has sometimes been pressed with too little referenco to other rules equally operative, they may be admitted to have much force.

II. That so far as they serve to indicate a desire for a broader statement of the rule, so as to include certain admitted limitations of it, one would hardly care to find fault with them.

III. That so far as it is desired to insist chiefly on the primary rule as to the intent of the testator, to be collected from the whole instrument, there is no need to contend against them. Thus Redfield cites, with approbation (1 Redf. Wills, 707), the language of Lord Cranworth, in *Williams* v. *Williams*, 1 Sim. N. S. 358, 368, to wit: "The real question in these cases always is, whether the wish or desire or recommendation that is expressed by the testator is meant to govern the conduct of the party to whom it is addressed, or whether it is merely an indication of that which he thinks would be a reasonable exercise of the discretion of the party; leaving it, however, to the party to exercise his own discretion."

That is all well enough; but it hardly touches the difficulty, which is one relating to the admission of a subordinate rule of presumption to assist in settling this "real question."

IV. That, upon the whole, the strong language of Bigelow, C. J,, is, perhaps, not too strong, when he says, in *Warner* v. *Bates*, 98 Mass. 274, 277: "The criticisms which have been sometimes applied to this rule by text-writers and in judicial opinions, will be found to rest mainly on its application in particular cases, and not to involve a doubt of the correctness of the rule itself as a sound principle of construction. Indeed, we cannot understand the force or validity of the objections urged against it, if care is taken to keep it in subordination to the primary and cardinal rule that the intent of the testator is to govern, and to apply it only where the creation of a trust will clearly subserve that intent."—*American Law Review.*

CONTRABAND OF WAR.

The war between France and Prussia will make it necessary for commercial lawyers to rub up their old lore on the subject of "contraband," a topic of much import to shippers, ship-owners, and insurers. The decision whether any particular cargo of goods is or is not contraband of war lies theoretically as well as practically with the Prize Court of the capturing power, whose decision is a decision *in rem*, and not to be impugned in any court. It will be remembered that though a foreign judgment *in personam* may be reviewed, a foreign judgment *in rem* may not. There has indeed been a disposition on the part of the present Lord Chancellor, among other judges, to hold that even a foreign judgment *in rem* may be reviewed if on its face it has proceeded on a gross disregard of the comity of nations (see *Simpson* v. *Fogo*, 11 W. R. 418; and the report of *Castrique* v. *Imrie*, in the Exchequer Chamber, 9 W. R. 455); but it is in a high degree improbable that a foreign Prize Court decision would ever be disregarded by any of our courts. Indeed apart from their being decisions *in rem* there appears to be a sort of understanding that Prize Court decisions are conclusive on the matters before them. When we speak of a Prize Court decision being unquestionable in the court of another power we shall of course be understood as meaning unquestionable for the purposes of questions arising in the foreign court and hinging upon the question decided in the Prize Court, as, for instance, in insurance matters.

Contraband may be confiscated by the captor, beyond which there is this further consequence, that any insurance upon it is void. A contract to insure contraband is void, because it is a contract to export under circumstances which render the exportation illegal, and if the act be illegal, an insurance to protect the act is illegal likewise.

At the present moment all sorts of questions are being asked as to whether or not this, that, and the other is contraband of war. Without following Grotius into his three classifications of munitions of war, goods applicable for pleasure and not for war, and goods of a mixed nature (*ancipitis usus*), we will state as shortly as we can the present acceptation of the subject. All muniments of war conveyed to a belligerent are of course contraband; also all goods conveyed to a blockaded port. As to what is or is not a blockaded port, it is material to notice the 4th article of the French Emperor's proclamation, that "blockades, in order to be binding, must be effectual; that is they must be maintained by a force really sufficient to prevent the enemy from obtaining access to the coast"—this merely expresses what has been decided in our own English courts. Two things are necessary to constitute a blockade binding on neutrals—first, that it should be notified to their country; and secondly that there should be really a substantial blockade. It is not enough for a belligerent to proclaim a blockade which he cannot maintain, but of course a blockade does not necessarily cease to be a blockade because one or two vessels manage to run the gauntlet. The blockading power is entitled to consider its notification of a blockade to the Government of a neutral power as a notification to all the subjects of that power. But it seems that, with reference to the validity of an insurance, there is no such rule, and the knowledge of the insurers is a question of fact to be determined (Lord Tenterden in *Harratt* v. *Wise*, 9 B. & C. 717). In *Naylor* v. *Taylor*, (ib. 721) a master sailed to a port not knowing whether it was blockaded or no, and not intending to violate the blockade; the policy, also, on the ship was framed upon a doubt whether the blockade would be subsisting by the time the ship arrived out; it was held that the voyage, and therefore the policy, was not illegal. We need not, of course, say that all persons would be regarded as having notice of matters of public notoriety.

As to goods in general, no hard and fast definition of contraband is possible. The doctrine of "occasional contraband" (*i. e.*, that destination, &c., &c., may make anything contraband) has, indeed, been found fault with by some text writers, but may be regarded as established in modern use. For the purposes of the present war, it must be assumed that all sorts of things may be contraband according to their destination, the exigencies of the belligerent at the port to which they are addressed, and a hundred other varying circumstances. Coal, for instance, may fairly be considered contraband if conveyed to a port in which belligerent steam-rams are lying. Resin, rope, and other articles capable of being "naval stores" may be contraband when shipped for a belligerent dockyard port. Horses may be contraband if shipped out to be landed for belligerent use. Provisions may

be contraband if intended for the same end (some writers have maintained that such necessaries ought to be incapable of being contraband, but that is not the rule now at any rate). Some articles are from their nature more capable of being contraband than others; thus it is very easy to understand the circumstances under which a cargo of saltpetre might be contraband, but (except, of course, as exported from or imported into a blockaded port) it is almost impossible to conceive how a cargo of violins could be contraband.

It may be useful to give a few notes of "contraband" cases decided by our own Courts during the last French war.

In *The Jonge Margaretha* (1 Rob. 193), Sir Wm. Scott afterwards Lord Stowell) observing that provisions "generally are not contraband, but may become so under circumstances arising out of the particular situation of the war, or the conditions of the parties engaged in it," held that a cargo of cheese shipped by a Papenberg merchant from Amsterdam to Brest was contraband, Brest being a naval arsenal of France, in *The Zelden Rust* (6 Rob. 93), a cargo of cheese shipped from Amsterdam to Corunua was held contraband, Corunna being, "from its vicinity to Ferrol, a place of naval equipment, almost identified with that port." In these cases notice was taken of the fact that the cheese was of the quality served out in the French navy. But in *The Frau Margaretha* (6 Rob. 92) similar cheese shipped from Amsterdam to Quimper was held not contraband, on a presumption that Quimper, though near Brest, was sufficiently remote for carriage purposes to rebut a presumption of the cheese being destined thither. In *The Range* (6 Rob. 127), it appearing that a cargo of biscuit for Cadiz was shipped under false papers, and had come from the public stores at Bordeaux, both ship and cargo were condemned. In *The Edward* (4 Rob. 69) wine was seized in a Prussian ship, ostensibly bound from Bordeaux to Embden, but hovering near the French coast. Here the Court examined the ship's log, and arriving, by the assistance of the Trinity Elder Brethren, at the conclusion that the intention was to get into Brest condemned the cargo.

In *The Charlotte* (*Nock*) (5 Rob. 275), Swedish copper, in sheets, but not adapted for ship-sheathing, was held not contraband. In *The Graeffen Van Gottland* (H. of L. not reported), a shipment of masts in a Russian ship for Cadiz, was condemned. The latter decision was commented on in the judgment in *The Charlotte* (*Koltzenburg*), 5 Rob. 305, in which a cargo of masts in a Russian ship for Nantes (a mercantile port), was condemned, the Court holding that with regard to an article such as masts, the character of the port of distinction was immaterial, since even in a mercantile port masts might be fitted into privateers (but note that privateering is not on foot as between France and Prussia). In *The Twee Jeffrowen* (4 Rob. 242), Sir William Scott laid it down that pitch and tar are universally contraband, "unless protected by treaty, or unless it is shown that they are the produce of the country from which they are exported." Similarly, in *The Neptunus* (3 Rob. 108) it was held that sailcloth is universally contraband, even when destined for ports of mere mercantile equipment.

We may also remind the reader that as regards *mixed* cargoes, "to escape from the contagion of the contraband, the innocent articles must be the property of a different owner" (Bynkershoek, and see *The Staadt Embden*, 1 Rob. 30). Where a doubtful cargo is seized and afterwards released by the Prize Court, it is a frequent practice to saddle it with the captor's expenses (see *The Gute Gesellschaft Michael*, 4 Rob. 95).—*Solicitor's Journal.*

HUMOROUS PHASES OF THE LAW.

THE CONDUCT OF COURTS.

It is popularly supposed that the study and pursuit of the law are unattractive. It is true that the court room is not a prepossessing apartment. To those unfortunates of our race who seem to have an innate bias toward depravity, its interior must be quite forbidding. It is somewhat awful, even to those unaccustomed litigants who approach it in a harmless way, to contest civil rights. It is peculiarly a bugbear to nervous women. To some sickly ladies the height of human infelicity seems to be an imaginary liability to be dragged to the witness stand. They know they never could live through it. We often wonder that their husbands do not contrive to have them subpœnaed, for the sake of the experiment.

But on more familiar acquaintance, these horrors wear away. The associations of the court room are apt to degenerate into dullness, and its visitants are more prone to gape than to tremble; and yet, to one who is an habitual frequenter of its precincts, its lessons are not unmixed with the humorous. On entering its venerable portals, how quiet and drowsy is the aspect of every thing! The hall is shrouded in a dim, irreligious light; the sun, that usually unblushing orb, seems diffident about looking in upon this mysterious realm of green baize and red tape. Long rows of corpulent books, almost buried in dust, suggest forgotten researches of scholars and jurists. The flies on the windows are of the fattest and laziest kind —regular chancery suitors; while the spiders that conceal their webs in the recesses of the dome, are marvelously agile and sharp,—complete solicitors in their way. The sheriff's mastiff, sleeping at the door of the prisoners' box, has an extraordinary severe and unfathomable countenance, the opposite of that of his master, who is in most instances a good-natured man. Half a dozen superannuated persons, bearing long and unwieldy poles, flit in a noiseless manner about the room, render-

ing themselves generally useless and in the way. There is a bald fat man, with spectacles, upon the bench, whose chief occupation seems to be to discomfit one or the other of two thin bald men, with spectacles, at the bar. Directly under the judge's bench sits the clerk, whose principal duties, or rather pleasures, are to make fees, and to construct good citizens out of all sorts of foreign materials in the rough. Close at his elbow, at this moment, sits a prisoner, who with a broad grin on his face is laborously signing his name to a certain paper writing; well may he smile, for it is "his own recognizance" for bail that he is subscribing, and he is doubtless thinking what a "muff" the judge must be to let him off on such easy security. The aged crier, who looks as if he might have come over in the "Mayflower," rises and drones forth his mechanical "oyez," in the same whine that has characterized it ever since the blessings of legal forms dawned upon its perishing race. The lawyers, who really act among themselves as if they are a good sort of fellows, and seem unseasonably happy and jovial for persons having so much on their consciences, are talking and laughing, in no wise dismayed by the caution of the crier's formula. They evidently feel under no more restraint than the disrespectful son, whose father excused his sauciness, on the ground that they were so well acquainted that they said almost any thing they pleased to each other. "Silence in court!" says his honor, rapping the bench with the knife with which he has been peeling an apple while he read the morning newspaper; at the same time looking severely in every direction except that from which the disturbance evidently comes. At this signal, the superannuated persons, bearing poles, agitate themselves out of their somnolency, making great pretense of activity in suppressing an imaginary tumult, and shortly go to roost on their poles again. All this time the hum of the great noisy world outside acts like a soporific on the senses.

"Call the grand jury," says the judge. After they are called and sworn to keep all sorts of secrets, including "their own and their fellows" (and here seems to be a reason why women, in any millenium of female sovereignty, can never act as grand jurors), his honor appoints the most corpulent and inactive one as foreman. Then, after a caution from the old crier to the bystanders to "keep silence on pain of fine and imprisonment" (which seems quite unnecessary, because at this juncture the spectators are always in breathless suspense to learn if it is possible for the judge to say any thing new), his honor rises, and the jury also rise, with unmixed awe and respect imprinted on their countenances, and his honor proceeds to charge them, "with horse, foot and dragoons." It is customary to observe in opening, that although they may properly be supposed to be somewhat familiar with their duties (which is not improbable, considering that the public are thus made acquainted with them three or four times a year), yet it is required of him to make a few general remarks. He then proceeds, at an hour's length, to inform them that they are the conservators of the public peace, and the safeguard of society; that they are selected from the most intelligent and respectable portion of the community to protect their persons and property from the hand of the violent, and to point out the offender to public justice. He then overwhelms them with a sense of their tremendous responsibility, and the solemnity of their position. He then impresses on them the novel theory that no man is so high as to be above, or so low as to be beneath, the reach of the law. He then opens up to them the terrible consequences which would ensue if they should fail to preserve strict secrecy as to their deliberations and proceedings, and gives them a timely caution to be impartial and unprejudiced. He then usually reminds them that their whole duty is pointed out in their oath, which he proceeds to analyze, making each component part the text for a short discourse of say fifteen minutes; but this, as it is merely a repetition of what he has already said, it is unnecessary for us to go through. He then reminds them of the necessity of being utterly devoid of partiality and prejudice. Next he calls their attention to several offences which our legislature have deemed so much more heinous than all others, as to be worthy of specific reprobation, such as vending intoxicating beverages to drunken men, without having paid the state for the privilege; lending money at the rate of interest which the parties think it worth, when it happens to exceed what the state thinks it worth; taking money from a candidate for voting for him when the purchased party would have voted for him in any event, and so forth. These injunctions are undoubtedly most excellent in a moral view, but are never known to produce the slightest practical effect. He then again exhorts them to divest their minds of every thing like partiality or prejudice. And finally he winds up, in a comprehensive, well-rounded and elaborate sentence (usually written beforehand), designed to comprise all that he has said before (with an additional remark about the impropriety of partiality and prejudice), and thus impress it on their minds; and with a bland and soothing reminder of the reliance that the community place upon their unimpeachable and unquestioned and unvarying integrity, intelligence and impartiality, he dismisses them to their secret chamber, under the guidance of one of the paralytics, who descends from his roost for the purpose. The reporters for the press are very busy all this time, and next day the newspapers, with remarkable unanimity, compliment his honor on his able, learned and eloquent "charge to the grand jury." It has been frequently noticed that the said reporters, at or about the same time, are to be seen emerging in a body

from some temple of Bacchus conveniently near the temple of justice, with a satisfied expression of countenance; and it has been likewise noticed that the grand jury are entirely oblivious to the fact that the priest of the first-mentioned temple is without orders, or license, notwithstanding its propinquity to the last-mentioned temple.

Next, the clerk calls the petit jury, and the judge if fresh in office, or not looking for a re-election, imposes fines on those delinquents who fail to appear and answer; but such fines are more for show than for service, and are remitted on very trivial grounds. His honor then announces that he will hear excuses from jurymen, who desire to be relieved from the necessity of attendance. These excuses are as various as those of the guests summoned to the feast in the parable, and comprehend every ailing and disability known to medicine from bronchitis to bowel complaint, from piles to paralysis, from corns to consumption. A juror was once excused for the reason that he had no control over his bowels, and was, therefore, unable to sit for any length of time. Immediately succeeding him a juror asked to be excused on the ground that his wife was momentarily expecting to be confined. His request was, of course, granted—the judge, who was a notorious wag, remarking that the difficulty complained of by the first witness seemed quite prevalent in that locality. Deafness is a standing excuse for sitting, and where satisfactorily established, is allowed to prevail. A doubtful instance once arose in northern New York, where the juror alleging that he could hear only with great difficulty, the judge asked him if he did not hear his charge to the grand jury, just delivered? "Why, yes," was his reply, "I heard it, but I couldn't make head or tail of it!"

If any cause is ready for trial, the clerk calls a jury especially for the purpose. Perhaps there are not names enough in the box. "Summon talesman," says the judge. At this announcement there is an evident fluttering amoung the spectators, and if the cause is understood as likely to be tedious or protracted, as many of them as can escape by incontinent flight, while the sheriff singles out those who voted against him, or those against whom for any other reason he holds a grudge.

After the exercise of a good deal of professional finesse, a jury is secured, and the plaintiff's counsel opens the case. This is an admirable opportunity for the exercise of the imaginative faculties, for the jury, if the case is strikingly and glowingly presented, are apt to have a corresponding idea of it fixed in their minds, and no matter how much the testimony may fail to support it, an immense preponderance of opposing evidence is requisite to efface the impression.

Witnesses are then examined. Their oath is to tell the truth and nothing but the truth; but this means, in answer to the questions of counsel and nothing beyond. And so if the witness is disposed to tell a little truth on his own account, he is checked, and his testimony is termed "irresponsive." Everybody is, of course, aware of the tortures inflicted on witnesses. The popular belief that no man, however truthfull and intelligent, can perserve his consistency under the fire of cross-examination is so firmly fixed that no efforts on the part of the profession can remove it. The prevailing difficulty is that no witness is content with simply answering a question, and indeed very few can answer the simplest question at all. Suppose the witness is narrating a conversation, and says that in the course of it defendant called plaintiff a fool, a scamp, and thief. "Will you swear," says Counsellor Sharp, "that he used the word thief?" And the answer will be, "I think he did." "I am quite sure he did," or "I am positive he did;" or any thing else but yes or no, the only possible answer to the question. The witness is willing enough and honest enough, but not reflective enough,; or he is obstinate, and, although he sees the point, is unwilling to admit that he cannot swear positively to the circumstance, because he has no doubt of it. So, after awhile, under the skillful badgering of counsel, he becomes mad and almost desperate, affirms every thing his counsel asks him, negatives every thing else, and thus, rushing like a bull at a gate, beats out his brains against the stubborn subtleties of the law, and then out of court whines about the unfairness of counsel. Counsel are undoubtedly frequently unfair in the examination of witnesses, but their unfairness generally consists in taking advantage of the proneness of human nature to be unfair, or its inability to be candid. One would suppose that lawyers would themselves make good witnesses, but the contrary is the fact; indeed there is but one class of witnesses less endurable, and that is physicians, who cannot divest themselves of the habit of lecturing and the use of technical language.

After the evidence is all in on one side, the opposing party proceeds to contradict, explain, modify, or discredit, and after he has had his "innings," the plaintiff goes at it again, and so on until the case will admit of no farther contradiction, explanation, modification, or discrediting, and then the jury are ready to be argued at. The defendant's counsel presents one view, and then the plaintiff's counsel presents another entirely different, each invariably assuring the twelve that in the course of his professional practice he has never met with so clear a case for his client, and imploring them so to decide that they can lay their heads on their virtuous pillows at night with the proud consciousness of having rightly discharged their duties. And here let us observe, that the compliments of his honor to the grand jury are nothing to the flattery and eulogy which the counsel pour upon the heads of the petit jury. If a man wants to find out what a surprisingly clever and esti-

mable fellow he is, let him get himself impaneled. But as there is no rose without its thorn, so the jury are not exclusively treated to these sweets. The denunciations which the counsel respectively avow themselves ready to heap on their heads, supposing them so lost to honor and rectitude as to decide against their client, are almost as fearful to contemplate as the curse of the Catholic church upon backsliders and heretics, and it is to avoid this awful contingency, perhaps, that juries so frequently disagree. This is the way in which these things strike a layman, but we suppose that among the profession they are all received in a Pickwickian sense. After the jury have been thoroughly kneaded in this way, the judge flattens them out with his rolling-pin of law, and stamps them with almost any tin pattern he pleases, in the shape of a charge. The counsel then have a sharpe encounter with his honor, to entrap him in some erroneous charge or a refusal to make some proper one, and thus obtain an exception on which to found a successful appeal. The jury then retire in charge of one of the paralytics and a pole, and are kept in strict seclusion on a light diet of water, until they agree, or until in case of disagreement the judge chooses to release them. The propriety of starving a jury into a verdict is one of the good jokes connected with the law, which it would take us too long to explain. The English of old times, having a much keener sense of humor than ourselves, used to cart the jury around, following the judge on his circut, until they should agree; and it is even said, that some intensely witty and pleasant fellows, like Scroggs and Jeffries, when the wretched creatures proved unyielding, would sometimes get rid of them by dumping them into some convenient ditch. It is true that now-a-days the counsel usually consent that the jury may be fed, but the *theory* of the law is now, just as it was under the aforesaid humorous judges, that they are kept "without meat or drink, water excepted."

And this is the ordinary course of a trial at law. In all these proceedings, that which strikes the spectator most forcibly is the prevalence of forms. Some of these forms are as old as the common law itself, and as little varied by lapse of time as the street cries of London. These seem singular, but are necessary. Legal affairs must be transacted in some settled and unvarying method. The error is in not accomodating these forms to the growing intelligence and civilization of the age, and in preserving in the nineteenth century the quaint practices of the sixteenth. For instance, it would be difficult to assign any good reason for the practice of starving a jury into agreement, and as the practice has fallen into disuse, why should we preserve the theory?

Another striking feature of trials at law is the apparent equality of the contest. An unsophisticated observer would suppose, that as one side must be right and the other must be wrong, it would clearly and speedily appear which is right and which is wrong. But two skillful lawyers are like two experts at any game of skill or endurance, and the result is that the clearest case becomes at least somewhat doubtful, and the event quite problematical. The arguments on both sides seem irrefragable as they are separately presented. The advocates elude one another's grasp like weasels. They are lubricated all over with the oil of sophistry and rhetoric. It is quite as difficult to put forward a suggestion that is not plausibly answered, as it is to make a run at base ball, or a count at billiards after a skillful player has left the balls in a safe position.

Another conclusion forced on the mind by observing the proceedings of courts is, that advocacy is much more easy than impartiality; that it is almost impossible for man to divest himself of prejudice and to overcome the force of habit and education. There is only one judge who is impartial, and even he has strong leanings against the wicked. So in almost every case we hear the judge discussing the facts, and arguing on probabilities and credibilities, and, in the same breath, instructing the jury that these questions are their peculiar province and entirely outside his own. Human nature is alike all over the world, in all times, in all stations. Man is a disputatious animal, and logically dies hard. Adam must needs dispute with the anchangel. Thereupon we must not blame our judges for taking sides. The Irishman's hands itch for a "shillalah" when he sees a "free fight" going on between a few of his friends, not so much for love of either party as to gratify an innate pugnacity, and if his own skull is cracked in the encounter he bears no malice. So the judge, when he sees so much fine logic flying about the heads of the jury, yearns himself to have an intellectual whack at them, and sometimes in his ardor his reasoning recoils, like the eastern boomerang upon his own reverend head.

But finally, the most remarkable sensation that courts of justice are subject to, is experienced at the sight of a pretty woman. Let a comely and well-dressed woman enter the court room, and at the first rustle of her silken gown every man present seems to lose his head. Talk of the equality of the sexes! A man stands no more chance in a lawsuit against a good-looking woman, especially if she is in weeds, than he does of being saved without repentance, or of being elected to congress without spending money. Portia would have been even more potent in petticoats. The lawyer who should undertake to cross-examine a woman sharply would be considered a brute. Even to ask her age is a hazardous experiment. When she testifies to hearsay, or what she said herself, or what she thought or thinks, or anything else improper, the judge merely lays down his pen and smiles, and the jury believe every word of it. And whether

party or witness, let her take out a black-bordered white hankerchief, and put it to her eyes, or nose—it makes no difference which—and the jury will treat her antagonist with about as much consideration as the early Christian martyrs received from the wild beasts at Ephesus. A man may be put off with sixpence; a woman's verdict always carries costs. Even the gallows has no terrors for her; its noose relaxes and refuses to clasp her fair neck; it is only when it embraces Adam's apple that it preserves its hold. And yet the women are trying to break this spell by becoming lawyers and jurymen! I should not be surprised if they succeed in getting hanged, if they accomplish this purpose. The charm of their unaccustomed and artless presence will be gone, and if they demand the privilege of acting like men, they will perhaps be treated like men.—*Albany Law Journal.*

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

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

Scott v. School Trustees of section one in Burgess and section two in Bathurst.

Amending return to writ of execution—Delay.

Held, that the returns to writs of *fi. fa.* and *ven. ex.* lands could be amended so as to make them correspond with the facts (but upon terms), although a sale had been made under them, and after a lapse of over ten years.

[Chambers, April 11, 1870—*Mr. Dalton.*]

The plaintiff having obtained a judgment against the defendants caused a writ of *fi fa.* lands to be issued on the 19th June, 1858, under which a school-house and lot belonging to the defendants was seized on the 14th July, 1859.

A writ of *ven. ex.* lands being issued on this, the sheriff assumed to sell the school-house and lot to the plaintiff for the sum of £60 No money was actually paid. The court of Queen's Bench in an action of ejectment brought by the plaintiff on the sheriff's deed held that nothing passed by it, as the sheriff could not sell the lands of a school corporation (see report of this case in 19 U. C. Q. B. 28).

The plaintiff took no steps in the matter until the 3rd February, when a summons was obtained on behalf of the plaintiff and the sheriff calling on the defendants to shew cause why the sheriff should not be allowed to amend his return to the writ of *fieri facias* against lands issued in this cause on the 15th day of June, 1858. by making the same as a return that the defendants had no lands in his bailiwick whereof, &c., and why the writ of *venditioni exponas* issued in this cause on the 19th July, 1859, and all proceedings thereunder, and the return made thereto by said sheriff should not be altogether set aside and quashed.

Or why the said sheriff should not be allowed to amend both said returns by making the first a return of lands on hand to the value of one shilling, and the second a return that he had levied and made of the lands of the said defendants the sum of one shilling.

Or why the said sheriff should not be permitted to amend his return to the said first mentioned writ by making the same a return of lands on hand to the value of one shilling, and why the said writ of *ven ex.* should not thereupon be amended accordingly.

Or why the said writ of *ven. ex.* should not be amended by inserting therein the return actually made by the said sheriff to the said writ of *fieri facias*, and by striking out of the same the recital that the sheriff had taken lands to the value of the damages recovered in this cause.

Or why such other order should not be made, and such relief afforded to the plaintiff. and upon such terms as to the said presiding judge might seem proper.

J. A. Boyd. shewed cause.—This application cannot succeed after the great delay that has taken place, and after there has been a change in the ratepayers and in the limits of the school section. The purchaser knew what he was buying, and the maxim *caveat emptor* must apply. See *Corporation of Frontenac* v. *Corporation of Kingston*, 20 U. C. C. P. 49; *Austin* v. *Corporation of Simcoe*, 22 U C Q B. 73. In case an amendment is ordered the plaintiff must reconvey and pay the costs of the ejectment suit.

Osler, contra. The amendment can be made, and it is not too late: *Bull* v. *King*, 8 U. C. C. P. 474; *Lee et al.* v. *Neilson et al.*, 14 U. C Q B. 606; *Cannan* v. *Reynolds*, 5 E & B 301; *Holmes* v. *Tutton*, 25 L T. Q. B. 177; *Webster* v. *Emery*, 10 Ex. 901; *Cavenagh* v. *Collett*, 4 B & Al. 279; *Reg* v. *Sheriff of Portheline*. 1 Marsh. 344: *Reg.* v *Sheriff of Wilts*, 8 J B. Moore 518; *Green* v. *Glasbrook*, 2 Bing N. C 143; *Wood* v. *Grimwood*, 10 B. & C 689; *Welsh* v. *Hall*, 9 M. & W. 14; Sewell on Sheriffs, 384-5; Ch. Arch 1557. The plaintiff is prepared to give a conveyance and register it.

Mr Dalton—As far as regards this application to amend the sheriff's returns to the writs of execution, it seems to me the case should be looked at as though the defendants were persons acting in their own right. The matters urged for the defendants, arising from the peculiarity of their position as school trustees, must be considered in another place. The plaintiff will, very likely, find great difficulties in his way when he seeks to levy his debt—perhaps insuperable difficulties—but I do not see that they are proper to be urged against him on this application which is merely to make the record according to the truth.

The sheriff's return now shows a satisfaction of part of the judgment, which has turned out to be entirely illusory. No money was really made. The sheriff executed to the plaintiff a deed of the school-house at the price which the plaintiff bid for it—by that deed nothing passed. The defendants have always held the property, and have used it as a school-house without interruption, and as the plaintiff really got nothing, and the defendants really lost nothing, why should an entry, which is not true, be allowed to remain on the record, that by these means the plaintiff's judgment has been partially satisfied.

When the plaintiff seeks to enforce his judgment, the position of the defendants as trustees, the lapse of time, the change in the school section, and other circumstances will, no doubt, be urged against him. It may be, for all I know, that he will have no remedy—but that is not for me to consider. The question now is whether the additional difficulty of there being conclusive evidence of satisfaction of part of his debt, which was in truth never made, is to remain in the plaintiff's way.

The sheriff's returns should be amended, as it seems to me, upon the plaintiff re-conveying free from encumbrances all interest in the land derived under the sheriff's deed, and upon his crediting on his judgment the defendants' costs of the ejectment suit, as between attorney and client, discounted at 6 per cent. per annum to the day of the entry of plaintiff's judgment, and upon plaintiff paying the costs of this application.

Order accordingly.

BROWN v. MCGUFFIN.

GREAT WESTERN RAILWAY CO. *Garnishees.*

Attachment of debts—Assignment—Notice.

The judgment debtor, through his sub-contractors, delivered to the garnishees certain railway ties, and gave the sub-contractors an order on the garnishees for all money coming to him therefor. Subsequently to this, but before the garnishees had any notice of the above order, they were served with the attaching order in this case.

Held, that the order in favor of the sub-contractors operated as an assignment of the fund to them, although there was no notice of it to the garnishees, they not having been led by the want of notice to alter their position so as to make it inequitable as against them to enforce the assignment.

[Chambers, April 23, 1870—*Mr. Dalton*.]

This was an application to attach a debt alleged to be due from the garnishees to the judgment debtor.

The facts were, that the judgment debtor dedelivered to the garnishees 1326 railway ties, through his sub-contractors, Ford and Baker, at one of the stations of the company, under a contract by him to supply the company with a much greater quantity at 25c. per tie.

The garnishees acknowledged to owe the judgment debtor $331.50 for these ties, less a drawback of ten per cent., which it was agreed should abide the fulfilment of the contract; but as the judgment debtor desired to be released by the garnishees from further performance of his contract, they were willing to pay also the ten per cent. upon receiving proper releases in that behalf from the judgment debtor. The amount less the drawback was $289 35.

The judgment debtor denied that he owed the garnishees anything, and said the ties had never been delivered, but were still the property of Ford and Baker, the sub-contractors who delivered the ties at the station. He annexed to his affidavit a copy of the agreement between himself and Ford and Baker, in which the latter stipulated that the ties to be delivered by them, should not be in the possession of the judgment debtor until the payments were made as thereinbefore mentioned, that is, payment at 23 cents per tie for all ties delivered, less a drawback of ten per cent.; and he further swore that an order on the company was given by him to Ford and Baker, or rather to Wm. McCosh their attorney, entitling him to receive for them all moneys they should be entitled to for ties delivered. This order, he swore, was intended to have been given at the execution of the sub-contract, but was not in fact given till the month of February following.

Ford and Baker in their affidavit vehemently insisted that they had not delivered the ties, and that the act of the company in inspecting them, and crediting the judgment debtor with the price, was entirely unauthorized by them.

MR. DALTON—It is plain that the garnishees had no notice, previous to the attaching order, either of the above clause in the agreement between the judgment debtor and Ford and Baker, or of the order in favour of McCosh.

I take it to be clear law, that an attaching order has no operation upon debts of which the judgment debtor has already divested himself by assignment; he must have both the legal and beneficial title.

Two questions present themselves here.

First—Under the circumstances, can Ford and Baker insist that there has been no delivery? They did not before the attaching order inform the company of their position; and they delivered the ties upon the grounds of the company, apparently in performance of the contract of the judgment debtor. Had the company altered their position, as by payment to the judgment debtor, Ford and Baker would have had no remedy.

Several considerations on either side present themselves, and upon the whole, if I were driven to decide upon this point, I should think that Ford and Baker might still assert that the property had not passed from them. But I omit many observations which arise, as I think there is another ground upon which I may more satisfactorily decide the case.

Secondly—Can Ford and Baker assert, or can the judgment debtor assert for them, that the order upon the company is an equitable assignment of the fund in their favour, sufficient to defeat the claim of the judgment creditors? I think that they can. In Story's Equity Jurisprudence, secs. 1043-4, 1047, 1047 *a*, it is said that any order, writing, or act, which makes an appropriation of a fund, amounts to an equitable assignment of that fund, and that may be by parol as well as by deed. "But," as is said in sec 1047, "in order to perfect his title against the debtor, it is indispensable that the assignee should immediately give notice of the assignment to the debtor, *for otherwise a priority of right may be obtained by a subsequent assignee*, or the debt may be discharged by a payment to the assignor before such notice."

Very recent cases, however, show contrary to what had been formely held, that *as respects third parties*, notice to the debtor is *not* necessary to perfect the equitable assignment of a debt. In *Watts* v. *Porter*, 3 E. & B. 743, it was decided by the Queen's Bench, after time taken to consider, that it was necessary, but Erle, J., dissented. That case was decided in 1854, and has often since been observed upon and doubted.

In *Pickering* v. *Ilfracombe Railway Co.*, L. R. 3 C. P., at page 248, Bovill, C. J., says:—"The last objection urged by the defendant's counsel was that notice of the assignment must

be given to the person whose debt is assigned, in order to make the assignment available as against a creditor. The validity of this objection turns upon the doctrine of the courts of equity. As between the assignor and the assignee, it is clear that no notice is necessary. As to third persons there has been some difference of opinion: the majority of the Court of Queen's Bench in *Watts* v. *Porter*, 3 E. & B. 743, holding that the assignment without notice was inoperative as against a subsequent judgment creditor; but the Lord Chancellor (Cranworth), and Lord Justices Knight Bruce, and Turner, in *Beavan* v. *Lord Oxford*, 25 L. J. Ch. 299, and the Master of the Rolls in *Kinderley* v. *Jervis*, 25 L. J. Ch. 538, holding the contrary doctrine. * * * If it were necessary to decide between this conflict of authority, I should have no hesitation in agreeing with the opinions of Erle, C. J., in *Watts* v. *Porter*, and of the Lord Chancellor, Lords Justices, and Master of the Rolls in the two Chancery cases."

Mr. Justice Willes in the same case, at p. 251, expresses similar opinions.

In the same volume, at p. 264, is the case of *Robinson* v. *Nesbit*, in which the Court of Common Pleas overruled *Watts* v. *Porter*, and decided that a prior equitable assignment of railway shares in the hands of the garnishee, was a bar to an attachment from the mayor's court, London, notwithstanding that no notice of such assignment had been given to the garnishee.

I must hold, then, that the order given by the judgment debtor in favour of Ford and Baker, in February—before the attaching order—operates as an assignment of the fund, though the company had no notice, they not having been led from the want of notice to alter their position, so as to make it inequitable as against them, to enforce the assignment. Of the *bonâ fides* of Ford and Baker's claim, there can be no doubt

It has not escaped me that there is the difference of two cents per tie between the amount payable to Ford and Baker, and the amount payable by the company. But this makes no difference, for the 10 per cent. retainable by the company more than covers the amount.

That 10 per cent. they are willing to pay over upon receiving a release from the judgment debtor, of their contract with him, but at present they are not inbebted in the amount, and therefore cannot be ordered to pay it over.

As to the costs, the judgment creditor should pay the costs of the garnishees, but not the costs of the judgment debtor.

Macaulay v. Neville and Macaulay.

Dower—Infant defendant—Appearance.

An infant cannot appear by attorney, but by guardian. If the appearance is by attorney, all subsequent proceedings are irregular.

An attorney who appears for an infant, knowing of his infancy, will be ordered to pay the costs of all subsequent proceedings, and of the application to set the same aside.

[Chambers, May 6, 1870—*Mr. Dalton.*]

This was an action of dower, commenced under Stat. Ont. 32 Vic. cap 7

The writ was issued on the 27th October, 1869, with the usual notice required by that statute, claiming damages for detention of dower.

An appearance was entered for the defendant Macaulay, by attorney, on the 12th November, 1869, with an acknowledgment of title, and his consent that the demandant might have judgment for her dower under sec. 16 of the above act.

Other proceedings were thereupon had; and on the 9th April, 1870, interlocutory judgment was signed for the dower, and a suggestion of the claim for damages filed and served

On the 19th April the defendant Macaulay pleaded to the suggestion, and on the same day the demandant signed interlocutory judgment, and served notice of assessment, which was immediately returned by the defendant's attorney, with a letter to the demandant's attorney stating that his "judgment is moreover irregular; the defendant, Daniel Macaulay, is an infant, of which I suppose you are aware."

On the 24th day of April, *Osler*, for the defendant Macaulay, obtained a summons calling upon the plaintiff to show cause why (1) the interlocutory judgment of the 9th April should not be set aside because entitled in the Common Pleas, the action being in the Queen's Bench; (2) or why the interlocutory judgment of the 19th should not be set aside on the ground that it was signed after the plea had been filed to the suggestion; (3) or why all proceedings subsequent to the appearance should not be set aside, on the ground that the defendant was and still is an infant, and could not appear by attorney, and no guardian had been appointed to appear for him.

This summons was served upon the regular agents of the demandant's attorney, who on the following day enlarged the same for several days.

On the 25th day of April, *Kerr*, specially instructed in this matter, and without knowledge of the above application or enlargement, on behalf of the demandant, obtained a summons (1) to set aside the appearance and all subsequent proceedings; (2) for an order on the defendant Macaulay to appear by guardian, or, in default of such appearance, that a guardian be assigned to him; and (3) for costs of all proceedings, to be paid by the attorney who had appeared for the defendant.

Both applications came on for argument together.

Kerr showed cause to the first summons, and supported the second.

The application on behalf of defendant must fail, as it is not shown that it is made with his consent: *Nunn* v *Curtis*, 4 Dowl. 729. Defendant should go to the root of the irregularity, which was the appearance, and he has not moved against that: Arch. Prac. p. 1463.

This objection was waived by the plea filed by defendant

As to the second objection, the plea filed was inconsistent with the notice filed with the appearance.

After consent under sec. 16, the defendant cannot in any subsequent proceeding deny the demandant's right to dower, and any proceeding denying such right is a nullity. The plea is not an answer to damages, and the right of action is admitted. There remained only an assessment of damages to be made.

The defendant takes advantage of his own

wrong, and his attorney admits in the affidavit filed that he knew of the defendant's infancy when he entered the appearance, but to save costs did not have a guardian appointed. He cannot now get costs consequent upon his own irregularity.

The second summons is the proper one, and goes to the root of the irregularity in the appearance, and asks for appointment of guardian; even if appearance be set aside, the order should provide for this: Arch Prac. 1234; Tidd's Prac. (9th ed.) 97; Park on Dower, 286; *Ross* v. *Cool*, 9 U. C. C. P. 94. And as to costs, the attorney, who is alone responsible, should pay them. He cited *Paget* v. *Thompson*, 3 Bing 609; 11 Moore, 504; *Fountain* v. *McSween*, 4 P. R. 240; *Carr* v. *Cooper*, 1 B. & S 230; *Walker* v. *Dwyer*, 4 Ir. L. Rep. 364; *Keegan* v. *Shaw*, Ir. L. Rep. 2 C. L. 637.

Osler supported the first summons, and showed cause to the second.

The second summons must be discharged, because granted after the first had been enlarged, and proceedings thus stayed. The defendant having first moved, is entitled to an order. No improper conduct is imputed to defendant's attorney, and the demandant must have known of the infancy of defendant, who is her step-son. The proceedings are irregular, and must be set aside: *Jarman* v. *Lucas*, 15 C. B. N. S. 474. The suggestion was irregular, the defendant having declared. Section 18 of the act requires this.

Mr. Dalton.—This is a summons by the defendant Macaulay to set aside several specified proceedings, upon grounds of irregularity stated. The only one I think it necessary to notice is that to vacate his appearance in this action, as having been entered by an attorney, and not by his guardian,—and as a consequence to set aside all subsequent proceedings as against him. The summons of the plaintiff is for the same purpose, and for an order on the defendant Macaulay to appear by guardian. But the plaintiff seeks further to charge the attorney for the defendants with all the costs which have been occasioned to the plaintiff by the wrongful entry of appearance by the attorney for the defendant Macaulay.

The summons of the plaintiff was taken out after the summons of the defendant was attendable; and it was urged, upon the argument, that the plaintiff's summons being so attendable, the defendant's summons was necessarily irregular, as having been moved during a stay of proceedings. On the argument I supposed that to be so, but I find that it is not.

The defendant's summons did not seek a stay of proceedings, and does not in its nature call for one; for the defendant is not to take the next step, to be dependent on the result of his summons, and the rule in Arch. Ch., 1601, in this respect is clear. I have referred to all the standard works on practice, and I find that they are substantially uniform upon this point.

I have therefore to consider both summonses. The question is really one of costs only, and these are the facts which seem of importance:—

The writ was issued on the 27th October last, and the appearance entered by the attorney on the 12th November. The account given by the attorney of the entry of the appearance is as follows. It is in an affidavit in support of his own summons. He says: "That the defendant, Daniel Macaulay, is, as I am instructed and verily believe, an infant under the age of twenty-one years, but I did not take steps to have a guardian appointed herein for him, with the object of saving expense and trouble, and he, the said defendant, being resident a long distance from the town of Napanee." Other proceedings took place which I will not detail, and finally, on the 19th April, on returning the issue book and notice of assessment delivered by the plaintiff, he adds to other matters in a letter to the plaintiff's attorney: "Your judgment is moreover irregular, because the defendant Daniel Macaulay is an infant, of which I suppose you were aware."

He knew, then, on the 12th November, the fact of Macaulay's infancy; he knew also, as was suggested on the argument, that it was necessary that an infant should appear by guardian, else why should he assign the expense and trouble as reasons for not appointing one? It is to be presumed, as he is a legal practitioner, that he also knew the consequences to the plaintiff of proceeding upon the appearance. Certainly if he knew those consequences on the 19th April, and if he did not contemplate them on the 12th November previous, he does not say at what period between those times he became aware of them. It is observable that he has made no affidavit in answer to the plaintiff's summons, which pointedly seeks to charge him with the costs of the abortive proceedings—where *bona fides* on his part is of material importance to his case—and that when he did give notice on the 19th April, the plaintiff was then necessarily thrown over till the autumn.

On the other hand, the plaintiff and her attorney were neither of them aware of the fact of the infancy of the defendant till the 19th April.

I can draw but one inference from these facts and from what he says and what he does not say—that the attorney *did* know, when he entered the appearance, the effect of that act on the plaintiff's proceedings. Knowing the fact of infancy and the necessity for a guardian, it must at any rate be presumed that he was aware of the direct consequences of entering an ordinary appearance.

There are many English cases, and some in our own Courts, which fully warrant all that the plaintiff here asks. I refer to *Hubbart* v. *Phillips*, 13 M. & W. 702; *Hoskins* v. *Phillips*, 16 L. J. Q. B. 339; *Goodright* v. *Wright*, 1 Stra. 33; *Carr* v. *Cooper*, 1 B. & S. 232; and to Mansfield's Law of Attorneys, pp. 62-5; *Weir* v. *Hervey*, 1 U. C. Q. B. 430; *Stephenson* v. *McCombs*, 1 U. C. Q. B. 456. I have not seen any English case exactly in point, but Mr. Kerr has referred me to two Irish cases, which are so. In *Lessee of Walker et al.* v. *Dwyer*, 4 Ir. L. Rep. 364, it is held that where an attorney enters an appearance and makes defence to an action brought against an infant before a guardian has been appointed for such infant, the court will hold him liable for the costs incurred by the plaintiff in setting aside such defence; and in *Keegan* v. *Shaw*, Ir. L. Rep., 2 C. L. 637, under similar circumstances, the defendant's attorney was ordered to pay all costs; and it surely does seem natural and right that where

expense has been incurred which must fall upon some one, it should be put upon the party whose wilful default has occasioned it.

I therefore order that the appearance of the defendant Macaulay be set aside, together with all subsequent proceedings in the suit; and that he shall appear by guardian in one week from this time; and that the attorney for the defendants do pay the plaintiff all the costs of the proceedings in this suit since the entry of appearance, and the costs of the plaintiff's present application; and I discharge the defendants' application without costs.

Order accordingly.

McPherson et al. v. McPherson.

Law Reform Act, 1868, sec. 17—Liquidated amount.

Under the above section no case can be taken down to a County Court for trial unless the amount is ascertained by the signature of defendant—the words "liquidated" and "ascertained" referring to the same condition.

[Chambers, June 9, 1870.]

The defendant applied to set aside the notice of trial for a County Court on the ground that the case was not one which could be taken down for trial to a County Court under section 17 of the Law Reform Act, 1868.

The particulars of the plaintiff's claim were as follows:

1870. March 10.

To 648½ bush. oats delivered here @ 25c	$162 13
To paid freight at your request to Brockville	23 00
To paid freight on bags from Montreal	0 52
To paid for time sewing bags	0 35
	$186 00

325 bags delivered F. O. B. here in car No. 757.

There were other similar charges on two subsequent days. No credits were given, nor was the claim ascertained by the signature of the defendant.

W. S. Smith shewed cause.

Mr. Muckle (Paterson, Harrison & Paterson) *contra*, cited *Cushman et al.* v *Reid*, 5 Prac. R. 121; 20 U. C. C. P. 152.

Mr. Dalton—The words of section 17 of the Law Reform Act are "liquidated or ascertained by the signature of the defendant."

Upon consideration, I do not think that the words "liquidated" and "ascertained" are intended to convey different ideas, but are a mere redundancy of expression conveying the same idea, and that "by the signature of the defendant" applies to both, they in fact constituting one condition. Such is evidently the view taken by Mr. Justice Gwynne in *Cushman et al* v *Reid*, 20 U. C. C. P. 152, and is the grammatical construction.

It follows that no case can be taken down under clause 17, however clear the nature of the transaction may make the amount of the plaintiff's claim, unless it be ascertained by the signature of the defendant.

MUNICIPAL CASES.

Reg. ex rel. Halsted v. Ferris.

Election—Declaration of qualification—29 & 30 Vic. cap. 51, secs. 131, 178.

A defective declaration of qualification of a candidate at a municipal election is not a ground for unseating him by the summary process under the Municipal Act.

[Chambers, June 30, 1870.]

It was sought on this application to unseat the defendant on the ground (amongst others) that he had not taken the declaration of qualification required by the statute. The declaration made was as follows:

"I, Matthew Ferris, do solemnly declare that I am a natural born subject of Her Majesty; that I am truly and *bona fide* seized or possessed to my own use and benefit of such an estate, namely: W. ½ Lot 1, in the Gore, 100 acres; M. part Lot 6, 2nd range of Gore, 55 acres, as doth qualify me to act in the office of Reeve for the Township of Colchester, according to the true intent and meaning of the Municipal Laws of Upper Canada."

The objection taken on this point was that the declaration was insufficient, inasmuch as it did not specify the nature of the estate claimed by the declarant, &c.; that the defendant could not, under the statute, enter on his duties until he should have made a proper declaration; and that the election of the candidate was not complete until he had done what was necessary to qualify himself for office: 29 & 30 Vic. cap. 51, sec. 178.

M. C. Cameron, Q. C., shewed cause.

O'Brien, *contra*.

Mr. Dalton—Nothing can be made of this objection on this application. Whatever might be the effect of the omission to describe the nature of the claimant's estate in a *quo warranto* at common law, it affords no grounds for declaring, in this statutory proceeding, that the election was not legal, or was not conducted according to law, or that the person declared elected thereat was not duly elected.

Judgment for defendant, with costs.

ENGLISH REPORTS.

CROWN CASES RESERVED.

The Queen v. Kilham.

False pretences—"Obtaining" goods—Larceny Consolidation Act (24 & 25 Vict. c. 29) s. 88.

To constitute an obtaining by false pretences there must be an intention to deprive the owner wholly of the property.

The prisoner falsely pretended that he had been sent by A. B. to order and obtain a horse for hire for him. The horse was accordingly delivered to the prisoner, who, after driving it during the day, returned it to the owner in the evening.

Held, that the prisoner could not be found guilty of obtaining the horse by false pretences.

[C. C. R., 18 W. R. 957.]

Case stated by the Recorder of the City of York.

James Kilham was tried before me at the last Easter Quarter Sessions for the city of York on an indictment containing three counts, the first count of which was as follows:—"City of York

to wit. The jurors for our Lady the Queen upon their oath present that James Kilham, on the 13th day of March, in the year of our Lord, 1870, in the city of York, unlawfully and knowingly, did falsely pretend to Henry Burton, then being an ostler in the service of James Thackray and Edward Thackray, then keeping horses for hire in the city aforesaid, that he the said James Kilham, was then sent by Mr. Hartley (thereby then meaning a son of Mr. Thomas Gibson Hartley, then living in Davygate, in the said city), to order and obtain for hire a horse for him, the said first mentioned Mr. Hartley, to drive on a journey to Elvington, to be ready at half-past nine of the clock the next morning, by means of which said false pretences the said James Kilham did then unlawfully obtain from the said Henry Burton a certain horse of the goods and chattels of the said James Thackray and Edward Thackray with intent thereby them to defraud. Whereas, in truth and in fact, the said James Kilham was not then sent by the said Mr. Hartley or any son of the said Mr. Thomas Gibson Hartley, then living in Davygate aforesaid, to order and obtain for hire a horse for him to drive on a journey to Elvington, to be ready at half-past nine of the clock the next morning, as he, the said James Kilham well knew at the time when he did so falsely pretend as aforesaid."

There were two other counts, slightly varied in form but the same in substance. The evidence on the part of the prosecution was that the prisoner had called at the livery stables of Messrs. Thackray, who were duly licensed to let out horses for hire, on the evening of the 13th of March last and stated to the ostler that he was sent by a Mr. Gibson Hartley to order a horse to be ready the next morning for the use of a son of Mr. Gibson Hartley, who was a customer of the Messrs. Thackray. Accordingly, the next morning the prisoner called for the horse, which was delivered to him by the ostler. The prisoner was seen in the course of the same day driving the horse, which he returned to Messrs. Thackray's stables in the evening. The hire for the horse, amounting to seven shillings, was never paid by the prisoner. Mr. Hartley and his son denied that they had authorised the prisoner to hire any horse for them, or that the prisoner had used the horse for any purpose of theirs. The prisoner was found guilty, but I respited the sentence and admitted him to bail till the opinion of the Court for Crown Cases Reserved could be taken. I desire the opinion of the Court as to whether the prisoner could properly be found guilty of obtaining a chattel by false pretences within the meaning of the statute 24 & 25 Vict. c. 96, s. 88. The case of *Reg* v. *Boulton*, 1 Denison's Crown Cases, 508, was relied on on the part of the prosecution.

EDWIN PLUMER PRICE, Recorder.

April 19, 1870.

May 7.—No counsel appeared for the prisoner.

A. Simpson, for the prosecution. Obtaining money by way of loan by a false pretence has been held to be within the former statute, 7 & 8 Geo. 4, c. 29, s. 53; *Reg.* v. *Crossley* 2, Moo. & R. 17, Patteson, J., laying it down that the terms of that Act embrace every mode of obtaining money by false pretences, by loan as well as by transfer. *Reg.* v. *Boulton* (1 Den C. C. 508), is very like the present case. There the prisoner obtained by a false pretence a railway ticket for a journey from Bendford to Huddersfield, which would have had to be given up at the end of the journey; though in fact the prisoner was stopped on the line and the ticket taken from him. What the prisoner obtained there was the use only of the ticket for the time during which the journey would last; and it appears from the judgment, which was a considered one, that the fact that the ticket was to be returned was present to the mind of the Court. The learned editor of Russell on Crimes (vol. 2, p. 645, note *p.*) questions that decision, and puts the very case now before the Court as on the same footing with it. In that he is right, but it is submitted that the case cannot now be questioned, and is binding on the Court. This Court has already, in *Morrison's case*, 7 W. R. 554, Bell, 158, 167, held itself bound by *Reg.* v. *Boulton*. The statutes relating to false pretences were originally passed to avoid the difficulty which existed of convicting of larceny any person who had obtained the property in the goods by fraud, and "they were not intended to mitigate the common law:" 2 East. P. C. 689. The first statute was 33 Hen. 7, c. 1, and was confined to the case of obtaining goods by false tokens, and that was extended by 30 Geo. 2, c. 3, to all cases where goods were obtained by false pretences of any kind. [WILLES, J.—The words in the preamble of 33 Hen. 8, c. 1, are "get into their hands or possession" The note to 2 East, P. C. 689, goes to show that that was not meant to apply to a case of obtaining the use only, but rather to cases where actual possession was obtained.]

Per CURIAM.—The question raised by this case is a very important one, and the rule to be laid down will be one of general application. The Court is much indebted to the learned counsel for the prosecution for his able argument, and will take time to consider its judgment.

Cur. adv. vult.

June 4.—The judgment of the Court was now delivered by

BOVILL, C.J.—We are of opinion that the conviction in this case cannot be supported. The statute 24 & 25 Vict. c. 96, s. 88, enacts that, "whosoever shall, by any false pretence, obtain from any other person any chattel, money, or valuable security, with intent to defraud, shall be guilty of misdemeanour." The word "obtain" in this section does not mean obtain the loan of, but obtain the property in any chattel, &c. This is to some extent indicated by the proviso, that if it be proved that the person indicted obtained the property in such manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted; but it is made more clear by referring to the earlier statute from which the language of section 88 is adopted. The 7 & 8 Geo 4, c. 89, recites that "a failure of justice frequently arises from the subtle distinction between larceny and fraud," and for remedy thereof enacts that if any person shall by any false pretence, obtain, &c. The subtle distinction which the statute was intended to remedy was this, that if a person by fraud induced another to part with the possession only

of goods, and converted them to his own use, this was larceny; while, if he induced another by fraud to part with the property in the goods as well as the possession, this was not larceny. But to constitute an obtaining by false pretences it is equally essential, as in larceny, that there shall be an intention to deprive the owner wholly of his property, and this intention did not exist in the case before us. In support of the conviction the case of *Reg* v. *Boulton*, 1 Den. C. C. 508, 19 L. J. M. C. 67, was referred to. There the prisoner was indicted for obtaining by false pretence a railway ticket with intent to defraud the company. It was held that the prisoner was rightly convicted, though the ticket had to be given up at the end of the journey. The reasons for this decision do not very clearly appear, but it may be distinguished from the present case in this respect, that the prisoner by using the ticket for the purpose of travelling on the railway, entirely converted it to his own use for the only purpose for which it was capable of being applied. In this case the prisoner never intended to deprive the prosecutor of the horse or the property in it, or to appropriate it to himself, but only intended to obtain the use of the horse for a limited time. The conviction must, therefore, be quashed.

Conviction quashed.

EXCHEQUER CHAMBER.

Jacobs v. Sheward.

Tenants in common—Trespass by one against the other.

Trespass will not lie by one tenant in common against another for cutting and carrying away a crop of hay, the whole produce of the common property.

[18 W. R. 953.]

Appeal from a decision of the court of Common Pleas, making absolute a rule to enter a nonsuit in an action of trover and trespass, brought by one tenant in common of land against the other, for cutting and selling the hay on the land, being the whole produce thereof, without his permission. The case in the court below is fully reported in 17 W. R. 735.

Brett, J., refused to nonsuit at the trial, on the authority of *Benington* v. *Benington*, Cro. Eliz. 157, which was cited to him from Roscoe on Evidence, 11th ed. 567, where it is wrongly quoted as deciding that the plaintiff was entitled to judgment, whereas it really decided that the defendant was entitled to judgment.

Gibbons argued for the plaintiff, and cited *Henderson* v. *Eason*, 17 Q. B. 701, and *Murray* v *Hall*, 7 C. B. 441; but the court, without calling on *Bulwer*, Q. C., who appeared for the defendant, affirmed the decision of the court below.

Decision affirmed.

CHANCERY.

Lambe v. Eames.

Will—Construction—Gift absolute or coupled with trust.

A testator gave real and personal property to his wife "to be at her disposal in any way she may think best for the benefit of her and her family."

Held, that there was no trust created, but that the wife took the property absolutely.

[Chan. 18 W. R. 972.]

John Lambe, by his will made in 1833, willed and bequeathed to his wife Elizabeth Lambe, his freehold estate, being No. 29, Cookspur-street, and also his personal estate "to be at her own disposal in any way she may think best for the benefit of herself and family." Elizabeth Lambe died in 1865, having by her will, dated in 1857, devised the freehold house to trustees in trust for her daughter, charged with an annuity of £70 to the plaintiff, who was an illegitimate son of one of her sons, and after her daughter's death in trust for the plaintiff and another grandchild, and after the death of either for the survivor.

The bill was filed for (amongst other things) compelling payment of the annuity which had never been paid, and the question raised was whether Elizabeth Lambe took an absolute interest in the property under the will of her husband so as to enable her to dispose of it as she chose, or whether she only took a life interest subject to a trust for her family.

Cotton, Q. C., and *Warner*, for the plaintiff, contended that although this was a will made under the old law, yet there was an absolute gift with sufficient words to pass the absolute interest in the fee. It was impossible to say there was a trust for the family where the words said she might do what was best for herself. They cited *Brook* v. *Brook*, 3 Sm. & G. 280; *Reeves* v. *Baker*, 2 W. R. 354, 18 Beav. 372; *Howorth* v. *Dewell*, 9 W. R. 27, 29 Beav. 18; *Grey* v. *Pearson*, 5 W. R. 454, 6 H. of L. Cas. 61; *Knight* v. *Knight*, 3 Beav. 148; *Williams* v. *Williams*, 1 Sim N. S. 358; *Green* v. *Marsden*, 1 W. R. 511, 1 Dr. 646; *Alexander* v. *Alexander*, 5 W. R. 28, 2 Jur. N. S. 898, 6 De G. M & G. 593; *Webb* v. *Wools*, 2 Sim. N. S. 267, Sugden on Powers, 8th ed. p. 590.

Bristowe, Q. C., and *W. Barber*, for the defendants, contended that there was an absolute indelible trust. The property was given to Mrs. Lambe for a definite, distinct and fixed purpose, namely, to be at her disposal for the benefit of herself and other persons. In the cases relied on on the other side there was first an absolute gift and then a precatory trust added. Here there was no precatory trust, but an imperative one. Had she sold the property during her lifetime though quite able to make a title as far as a purchaser was concerned, yet she would be a trustee of the proceeds as between herself and her family. They citied *Butler* v. *Gray*, 18 W. R. 193, L. R. 5 Ch. 26; *Shovelton* v. *Shovelton*, 32 Beav. 143; *Salusbury* v. *Denton*, 5 W R 865, 3 K. & J. 529; *Crockett* v. *Crockett*, 2 Ph. 553; *Woods* v. *Woods*, 1 My. & Cr. 401; *Raikes* v. *Ward*, 1 Ha. 445; *Armstrong* v *Armstrong*, 17 W. R 570, L. R. 7 Eq. 518; *Scott* v. *Key*, 13 W. R. 1030, 35 Beav 291; *Godfrey* v. *Godfrey*, 11 W. R. 754; *Smith* v. *Smith*, 2 Jur. N. S 965; Hawkins on Wills, p. 165; Jarman on Wills, 3rd ed. p. 359.

Heath, for one of the devisees under Mrs. Lambe's will.

Cotton, Q. C., in reply.

Malins V. C., after stating the will, said that if the widow had sold the house it had been admitted by the counsel for the defence that her title could not have been disputed. The testator did not say *my* family, it might mean *her* family,

and if so it would include children by a future husband. The testator evidently intended his wife to do what she liked with the property, and he had no doubt it was his intention to leave it at her absolute disposal. The tendency of the cases was not to fetter these kinds of gifts In the cases cited there were words stronger than these. and yet they had been held not to create a trust. There was no indication here of an intention on the part of the testator that the family should take anything except through the voluntary appointment of their mother. He apprehended that where there was an absolute gift at first, the latter part must show as clear an intention to cut down the absolute gift as the first part did to give one. He was of opinion, therefore, that the testator's widow took the fee simple of the real property, and the personalty absolutely.

DIGEST.

DIGEST OF ENGLISH LAW REPORTS.

FOR MAY, JUNE AND JULY, 1870.

(Continued from page 251.)

Abandonment—*See* Insurance, 4.

Action.

1. A debtor gave a fraudulent preference to the defendant, one of his creditors, by assigning goods to him, and was afterwards adjudicated a bankrupt; before the adjudication the defendant sold the goods. The assignee brought this action to recover the money received for the goods. *Held*, reversing the judgment of Q. B., that the assignee of a bankrupt might avoid a fraudulent preference, because it contravenes the spirit of the bankruptcy laws; and that, the goods having been converted into money, he might maintain an action for money had and received, to recover the proceeds. (Exch. Ch.)—*Marks* v. *Feldman*, L. R. 5 Q B. 275.

2. W.'s stock was to be sold at auction; he was indebted to the defendant. and it was agreed between them that the defendant should buy at the sale, and place the amount against W.'s debt. The defendant bought at the sale and received the goods; the plaintiff, who was the auctioneer, was ignorant of the agreement until he had paid over to W. about half the proceeds of the sale; he then had notice of it from the defendant. Afterwards the plaintiff paid to W. the balance due, deducting his commission. *Held*, that as the plaintiff's charges had been satisfied by W., and as W was not entitled to receive any thing, the plaintiff could not maintain an action for the price of the goods against the defendant.—*Grice* v. *Kenrick*, L. R. 5 Q. B. 340.

See Principal and Agent, 2; Warranty.

Administrator Pendente Lite.

Testator left a will and two codicils. There was no opposition to the will and first codicil, but the defendant opposed the second codicil; this codicil did not affect the appointment of executors. The court refused to appoint an administrator *pendente lite*, as there was an executor capable of discharging his functions. —*Mortimer* v. *Paull*, L. R. 2 P. & D. 85.

Admiralty.—*See* Collision; Towage.

Admissions.

At the trial of an action by the plaintiff and wife for injuries to the wife owing to the defendants' negligence, evidence was given by the defendants tending to show that the plaintiff offered a man one-third of the compensation received, if he would give false evidence in his behalf, and that C., a clerk of the plaintiff's attorney, who was present, said that if he did not do it, he would find others who would. Two other witnesses testified that C. made similar proposals to them to give false evidence, but that these proposals were not made in the plaintiff's presence. *Held*, that the evidence was admissible as admissions by the plaintiff that his case was not a good one, and that there was evidence that C. acted by the plaintiff's authority. — *Moriarty* v. *London, Chatham and Dover Railway Co.*, L. R. 5 Q. B. 314.

Adultery—*See* Evidence, 2, 4.

Agency—*See* Principal and Agent.

Ambiguity.

Devise "to my nephew Joseph Grant." It appeared that the testator's own brother had a son Joseph Grant; and that the testator's brother-in-law had a son Joseph Grant, whom the testator was in the habit of calling his nephew. *Held*, that the evidence exposed a latent ambiguity, and that parol evidence was admissible to show which person was intended. —*Grant* v. *Grant*, L. R 5 C. P. 380.

See Evidence, 1; Will.

Ancient Light.

The owner of land subject to an easement of light has no right to deprive the dominant estate of any of the light coming to it, because the owner of the dominant estate has by any means obtained other light besides that which he had by his easement.—*Dyers' Company* v. *King*, L. R. 9 Eq. 438.

Appointment.

1. A marriage settlement, after declaring certain trusts, directed that the trustees shoul

hold the residue in trust for such persons as the wife should appoint, and contained limitations in default of appointment. The wife appointed that the trust funds should be paid to two trustees for the benefit of her two nieces One of these nieces died before the wife, and her interest in the fund lapsed. *Held*, that the appointment to trustees was a severance of the property from the settlement fund, and that the lapsed interest passed to the next of kin of the wife, and not under the limitations in the settlement.—*Wilkinson* v. *Sckneider*, L. R. 9 Eq. 423.

2. C. by his will appointed a leasehold estate, after his wife's death, for the same purposes as his wife should declare, "with respect to the disposition of her residuary personal estate," by will; and in default of any disposition by her of her residuary personal esttae, or so far as the same should not extend, to his next of kin. His wife by will gave certain legacies, and then gave "all the residue of her property," one-third to a hospital, and the remaining two-thirds to charities which were incompetent to receive the bequest. *Held*, that the hospital took one-third of the husband's leasehold estate, and the other two-thirds went to his next of kin.—*Bristow* v. *Skirrow*, L. R. 10 Eq. 1.

3. Real estate was settled upon a husband and wife for their lives, remainder to such of their children as they should appoint by deed; there was no power to grant building leases. There were four children of the marriage, and the husband and wife by deed appointed the whole estate to one in fee; afterwards they and the appointee conveyed it to trustees upon similar trusts to those contained in the settlement, and also with power to grant building leases. *Held*, that the appointment was for the benefit of all the persons interested in the power as well as the appointors, and therefore was not fraudulent.—*In re Huish's Charity*, L. R. 10 Eq 5.

See Election

Appropriation.

The New Orleans Bank drew a bill for £2,000 upon the Bank of Liverpool in favor of the plaintiffs, who bought it on the faith of representations by the New Orleans Bank that funds to meet it were lying in the Bank of Liverpool specifically appropriated to that purpose. Before acceptance the New Orleans Bank suspended payment. Upon a bill against both Banks, *held*, that the plaintiffs having purchased the bill on the faith of those representations, were entitled to be paid the amount out of the funds of the New Orleans Bank in the hands of the Bank of Liverpool.—*Thomson* v. *Simpson*, L. R. 9 Eq. 497.

See Trust.

Assault—*See* Indictment.

Assignment.

A bank agreed to renew two notes of a company upon the understanding that a call should be made and the proceeds deposited with the bank to await the maturity of the notes. The notes were renewed, and the call made. *Held*, that the assignment of the call already determined on, could not be distinguished from the case of a mortgage of the arrears of a call already made, and was valid.—*In re Sankey Brook Coal Co*, L. R. 9 Eq. 721.

Assumpsit—*See* Action, 1; Warranty.

Auctioneer—*See* Action, 2.

Bailment—*See* Insurance, 1.

Bankruptcy—*See* Action, 1.

Bill of Lading.

Goods consigned to a firm in London were landed at a sufferance wharf subject to a lien for freight. (11 & 12 Vict. c. 18.) The consignee deposited with M., the plaintiff, the first and second parts of the bill of lading as security for £2,500, but fraudulently retained the third part B., the defendant, without knowledge of these transactions, advanced £2.000 on receiving the third part of the bill of lading, and the lien for freight being removed, obtained the goods and sold them. The Act (11 & 12 Vict. c. 18) provides that goods landed at a sufferance wharf shall, upon notice to the wharfinger, remain subject to the same lien for freight as if they remained on board the ship. *Held*, that the goods were not delivered while they remained subject to the lien for freight, and that the bill of lading continued in force; also that the first transfer of the bill of lading to M. passed to him the ownership of the goods.—*Barber* v. *Meyerstein*. L. R. 4 H. L. 317.

Bills and Notes.

D. P. bought certain overdue bills of exchange for £2,300. Of the purchase-money £2,000 were assets of the Oriental Bank, and had been collected by D. P., who was manager of the bank. He afterwards sold these bills to the Eastern Bank, of which he was managing director, and paid himself for them out of its funds. The Oriental Bank claimed the bills. *Held*, that the Eastern Bank was not affected with notice of the fraud through its director D. P., but that, as the bills were overdue, the Eastern Bank took no better title than D. P., and the Oriental Bank was entitled to a part

of the proceeds of the bills proportionate to its share of the purchase money.—*In re European Bank. Ex parte Oriental Commercial Bank*, L. R. 5 Ch. 358.

See Appropriation: Assignment.

Bond—*See* Racing Debt.

Bottomry—*See* Insurance, 3.

Building Restrictions—*See* Injunction.

Burden of Proof.

The plaintiff demised a dwelling-house to A., who covenanted in the lease that he would not permit any sale by public auction to take place on the premises without the consent in writing of the plaintiff; and there was a proviso for re-entry in case of breach of covenant. A. underlet to the defendant, and assigned his goods upon the premises to B., C., and D., who sold them by public auction on the premises, bills having been previously posted there. In an ejectment for forfeiture, upon the above facts, *held*, that the plaintiff should be nonsuited [by Kelly, C. B., Martin and Pigott, BB.] on the ground that there was no evidence that the sale was by the permission of the lessee; by Willes, J., on the ground that being the case of a forfeiture, the burden was on the plaintiff of showing that the sale was without the consent of the plaintiff; by Brett, J., Channel and Cleasby, BB., on both grounds. (Exch. Ch.)—*Toleman* v. *Portbury*, L. R 5 Q. B. 288.

Burial Ground—*See* Reverter.

Call—*See* Assignment.

Charge.

In 1802, there were two judgments (for £1,000 and £2,000) against A. In 1809, A. made a voluntary settlement of his real estate, reserving to himself a life interest, in which it was recited that said estates were subject to these charges, amounting in the whole to £3,000. In 1818 and 1819, he executed two mortgages on his real estate. The judgment of 1802 for £2,000 was paid out of A.'s life estate under the settlement. At the suit of a judgment creditor in 1822, a receiver was appointed, and part of the land sold and applied to his debt. A. died in 1861. The petitioner was a judgment creditor. *Held*, that the judgments of 1802 were charges on the inheritance, and that so much of them as had been paid out of the life estate ought to be paid by the inheritance for the benefit of the creditors whose demands affected only the life estate; also that the statute of Elizabeth against fraudulent conveyances enabled A. to defeat the voluntary settlement so far as the mortgages extended, but that the doctrine of marshalling did not apply.—*Dolphin* v. *Aylward*, L. R. 4 H. L. 486.

Charity—*See* Cy Pres.

Class.

Two marriage settlements were made; by one, the real estate of the husband, subject to certain life estates, was settled upon the first and other sons of the marriage successively in tail male; by the other, which recited the first, the wife's real estate was settled, subject to a life interest for her, to the use of all the sons (except the eldest or only son) and daughters of the marriage, as tenants in common, in tail; and if any such son or daughter should die without issue, or if any such son should become an eldest son before he should attain the age of twenty-one, then as to the share of such son or daughter to the use of the survivors as tenants in common in tail. After the husband's death, his eldest son entered into possession of his estate and died; the next son succeeded to the husband's estate, having attained twenty-one, and died leaving a son: two daughters of the marriage survived. Upon the wife's death, it was *held*, that the class entitled to the wife's estate was to be ascertained at her death, which was the time of distribution; and that the two daughters were the only ones entitled to a share.—*In re Bayley's Settlement*, L. R. 9 Eq. 491.

Codicil.

1. A testator, having made a will and codicil, executed in the presence of two witnesses a document to the following effect: "I hereby make a free gift to Maria Robertson of sixty pounds." The court, being satisfied by parol evidence that the testator intended the gift to be dependent on his death, granted probate of the paper as a codicil to the will.—*Robertson* v. *Smith*, L. R. 2 P. & D. 43.

2. A testatrix by her will gave a legacy to her niece M.; by a codicil she revoked the bequest, and gave it to her two nieces equally; by another codicil she declared, "My wish is, that in the event of the name of M. having been erased from my will, it be reinstated as previously there placed." *Held*, that the erasure of the name of M. never having been made, the last codicil was inoperative.—*Wilkinson* v. *Schneider*, L. R. 9 Eq. 423.

Collision.

Two vessels were close hauled on the same tack, one ahead of the other. The head vessel went as near a shoal as she could and went about; as she was coming round, the other vessel ran into her. *Held*, that it was the duty of the rear vessel to go about when she

saw the other go about, and as she had not done so, she alone was to blame for the collision.—*The Priscilla*, L. R. 3 Ad. & Ecc. 125.

See Towage.

Collusion—*See* Waste.

Commitment.

The prisoner was convicted under 5 Geo. IV. c. 83, s. 4, which enacts, that every suspected person or reputed thief frequenting . . . any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit felony . . . . . shall be deemed a rogue and vagabond. The warrant of commitment stated that he had been convicted of frequenting "a certain highway at," &c., "with intent to commit a felony." The prisoner was brought up upon *habeas corpus*. *Held*, that a public highway is not necessarily a place of public resort, and that the commitment was bad.—*In re Timson*, L. R. 5 Ex. 257.

Company.

The articles of association of a company provided that, when 3000 shares should have been subscribed for, the members should be associated for the objects of the company. Before 3000 shares were subscribed for, the plaintiff was appointed engineer by the directors. In an action for his salary. *held*, that until 3000 shares were subscribed for, there was no company capable of contracting with the plaintiff.—*Pierce* v. *Jersey Water Works Co.*, L. R. 5 Ex. 209.

See Assignment; Director; Principal and Agent, 4; Ultra Vires.

Confirmation.

1. Bill to set aside a settlement. The plaintiff made a settlement with a power to raise a jointure for his future wife, and to raise portions for his children. By the settlement made upon his marriage, he exercised these powers; ten years afterwards he filed a bill to set aside the former settlement, alleging that he executed it in ignorance of its purport. *Held*, that, although the court would have otherwise directed it to be set aside, yet the exercise of the power of jointuring, given by it, was a confirmation of the whole transaction, and the bill was dismissed.—*Jarratt* v. *Aldam*, L. R. 9 Eq. 463.

2. A female infant executed a marriage settlement of her share in reversion of two estates. After her husband's death, and after she had attained full age, one of the estates fell into possession, and she directed it to be paid to the trustees under the marriage settlement. The other estate afterwards fell into possession. *Held*, that she had confirmed the settlement in part, and must be taken to have intended to confirm the whole of it.—*Davies* v. *Davies*, L. R. 9 Eq. 468.

Construction.

1. The plaintiffs agreed to ship a quantity of ice to the United Kingdom, "forwarding bills of lading to the purchaser, and upon receipt thereof the said purchaser takes upon himself all risks and dangers of the seas, rivers, and navigation, of whatever nature or kind soever," and the defendant agreed to buy and receive the ice on its arrival, and pay for it in cash on delivery. *Held*, that the clause by which the defendant took upon himself the risks of the seas exonerated the plaintiffs from liability for non-delivery in case of loss, but did not render the defendant liable to pay for the ice in that case. (Cleasby, B., dissenting.) —*Castle* v. *Playford*, L. R. 5 Ex. 165.

2. By 1 & 2 Wm. IV. c. 32, s. 3, "if any person whatsoever shall kill or take any game, or use any dog, gun, net, or other engine or instrument, for the purpose of killing or taking game on a Sunday, or a Christmas Day," he shall be liable to a penalty on conviction. The appellant set snares on Saturday, and on Sunday some of the snares were seen set, and in two of them were two dead grouse. *Held*, that a snare was an engine within the meaning of the statute, and that setting the snares on Saturday and leaving them set on Sunday was using them on a Sunday —*Allen* v. *Thompson*, L. R. 5 Q. B. 336.

3. A testator, by a will executed before the Wills Act (1 Vict. c. 26), gave to his son George (without words of limitation) certain real and personal property, charged with a payment of £100; and provided that, if George should die before his wife, she should have the use of "the above my property and estate" for life, after whose decease he gave the same to the five children of his son William, share and share alike, with survivorship in case of the death of any of them before the estate became vacant. *Held*, that George took only an estate for life, and that the grandchildren took vested remainders as tenants in common after the life estates of George and his wife.—*Bolton* v. *Bolton*, L. R. 5 Ex. 145,

4. A testator bequeathed £250 to each of the two children of S. S. had three children and the testator knew it. The executors paid the child who was of age; and appropriated £250 for the second, and paid the residue to the residuary legatee. *Held*, that the three children were each entitled to £250, which,

with the costs of the executors, must be paid by the residuary legatee.—*Spencer* v. *Ward*, L. R. 9 Eq. 507.

5. A testatrix gave an annuity of £40 to I. in a certain contingency; she also bequeathed to I. a legacy of £30. In a codicil she said, "And I increase the immediate annuity of £30, left by my will to I., to an annuity of £50." *Held*, that I. took an annuity of £50, instead of the legacy of £30.—*Ives* v. *Dodgson*, L. R. 9 Eq. 401.

6. A testator devised to trustees, upon trust to permit his brother-in-law, H. M., and all his brothers and sisters, to enjoy the rents and profits, in equal shares for their lives, with benefit of survivorship where any of them died without leaving children; but where any of them died leaving children, then upon trust to let such children have their parents' share of the rents and profits. One brother of the testator died before the date of the will, leaving children; H. M., and one sister and one brother, died after the date of the will and before the death of the testator, all leaving children; five brothers and one sister survived the testator. *Held*, that the children of H. M. and the brother and sister who were living at the date of the will, were entitled to shares in the rents and profits, but that the children of the brother who died before the date of the will were excluded.—*Habergham* v. *Ridehalgh*, L. R. 9 Eq 395.

7. A testator bequeathed to trustees all his personal estate, "save and except the sum of £500 payable at my death, under a policy of insurance, to my wife Hannah Hall, and to which she is absolutely entitled under the said policy." The only policy of insurance possessed by the testator was payable to himself and his representatives; his wife had no interest in it. *Held*, that the £500 payable under the policy was given by implication to the wife.—*Hall* v. *Leitch*, L. R. 9 Eq. 376.

8. A bequest of "one-fifth part of my residuary estate unto each of my two sons James Clark and Charles Clark absolutely, and to be paid and transferred to them respectively or to such of them as shall be living at the time of the decease of my said wife," is equivalent to a bequest of two-fifths to the two sons equally, or to such as shall be living at the death of the wife; and Charles Clark having died without issue in her lifetime, James Clark was held to be entitled to the two-fifths upon her decease.—*In re Clark's Trust*, L. R. 9 Eq. 378.

9. In 1811 the Duchess of Buccleugh made a settlement of the Cardigan family plate upon trust for Robert, Earl of Cardigan, during his life, and after his decease for James Thomas, Lord Brudenell, only son and heir apparent of said Robert, during his life, and after his decease for the first son of said James Thomas, Lord Brudenell; provided, that if such first son should die under twenty-one, without leaving issue male living at his decease, then in trust for the other sons of said James Thomas, Lord Brudenell, successively; but if said James Thomas, Lord Brudenell, should have no sons, or all should die under twenty-one, without issue male living at their decease, then in trust for the other sons of Robert, Earl of Cardigan, successively; and if there should not be any son of said Robert, Earl of Cardigan, or of the said James Thomas, Lord Brudenell, who should live to attain twenty-one, or should die under that age leaving issue male living at his death, then in trust for said Duchess of Buccleugh, her executors, &c. The only son of Robert, Earl of Cardigan, was James Thomas, Lord Brudenell, who attained twenty-one, and died without issue. *Held*, that the failure of sons of Robert, Earl of Cardigan, mentioned in the settlement, meant the failure of such sons as were before mentioned, and that upon the death of James Thomas, Lord Brudenell, without issue, the limitation to the Duchess of Buccleugh took effect.—*Cardigan* v. *Curzon-Howe*, L. R. 9 Eq. 358.

See Class; Commitment; Covenant; Cy Pres; Devise; False Pretences; Forgery; Investment; Settlement, 2; Specific Performance, 2; Will, 1–4.

Contract.

1. The defendant ordered of the plaintiffs "a small cargo" of lathwood, "in all about sixty cubic fathoms," and the plaintiffs accepted the order. The plaintiffs chartered a vessel and loaded her for the defendant's port with eighty-three fathoms of lathwood; on her arrival the plaintiffs' agent set apart the amount of the defendant's order, but the defendant would not accept it. In an action for non-acceptance, *held* (Martin, B., dissenting), that the word "cargo" meant the whole loading of the ship, and that therefore the plaintiffs had not completed the defendant's order.—*Kreuger* v. *Blanck*, L. R. 5 Ex. 179.

2. A building contract provided that the work should be completed by Oct. 2, 1868, but that if by certain contingencies the contractor should in the opinion of the architect have been unduly delayed, it should be lawful for the

architect to grant such extension of time as to him might seem reasonable; and that it should be lawful for the commissioners, in case the contractor (among other things) should not "in the opinion and according to the determination of the architect exercise due diligence and make such due progress as would enable the works to be efficiently completed at the time aforesaid," to determine the contract by a notice in writing. In an action by the contractor against the commissioners for preventing him from completing the contract, they pleaded that he did not in the opinion and according to the determination of the architect exercise due diligence, &c., and thereupon they gave the notice provided to determine the contract. The plaintiff replied that the architect did not grant an extension of time, and that the alleged failure to exercise due diligence, &c., was caused by the default of the defendants and the architect in certain particulars. Upon demurrer, *held*, reversing judgment of C. P., that the contract did not give the architect power to determine whether the failure of the plaintiff was caused by the default of the defendants, and therefore that the defendants could not avail themselves of their own wrong to determine the contract. (Cleasby and Pigott, BB., dissenting.) (Exch. Ch.)—*Roberts* v. *Bury Improvement Commissioners*, L. R. 5 C. P. 310; s. c. L. R. 4 C. P. 755; 4 Am. Law. Rev. 465, 466.

See Company; Construction, 1; Covenant; Guaranty; Principal and Agent, 2, 3; Racing Debt.

Contributory—*See* Principal and Agent, 4.

Conveyance—*See* Title.

Covenant.

1. The plaintiff purchased a piece of land of A, who covenanted that "no buildings except dwelling-houses," not to be of a less cost than £200 each, should be erected on the side of the road opposite to the plaintiff's land. The defendant, Law, agreed afterwards to purchase of A. the land on the opposite side of the road, and agreed to make a permanent fence around the premises purchased, either by railing or walling from four to seven feet high. A.'s agreement with the plaintiff was also recited, and the defendant entered into a similar covenant with A. The defendant raised a boundary wall eight feet six inches high, and in one place eleven feet high, for the purpose of making a vinery on the inner side with a lean-to roof against the wall. *Held*, that the erection of a boundary wall was no breach of covenant, but that the raising of the wall and placing a vinery against it were so. Also that A. was not a necessary party.—*Bowes* v. *Law*, L. R. 9 Eq. 636.

2. Covenant that a piece of land should not be used as a site for a hotel, tavern, public-house, or beer-house, nor should the trade or calling of an hotel or tavern keeper, publican, or beer-shop keeper, or seller by retail of wine, spirits, or spirituous liquors, be used, exercised, or carried on, at or upon the same. The defendant sold on the premises wine and spirits in bottles only, in connection with the trade of a grocer, *Held*, that the covenant was directed against a bar, and not against the trade of a wine merchant, and that there was no breach.—*Jones* v. *Bone*, L. R. 9 Eq. 674.

See Injunction; Specific Performance, 2.

Criminal Law.

Indictment for obstructing a train on a railway. The prisoner unlawfully altered the signals at a railway station. A train, which would have passed without slacking speed, was caused by the alteration to come very nearly to a stand. *Held* (Martin, B., dissenting), that this was an obstruction.—*Regina* v. *Hadfield*, L. R. 1 C. C. 253.

See Commitment; False Pretences.

Cruelty—*See* Husband and Wife, 2.

Cy Pres.

Bequest of £300 to the Church Pastoral Aid Society in England, and £200 to the Church Pastoral Aid Society in Ireland; there was no society of that name in Ireland, but the Spiritual Aid Society had objects similar to those of the C. P. A. Society in England, *i. e.*, pastoral aid. *Held*, that there was a clear intention to effect a particular object of charity, which would be carried out by the Spiritual Aid Society, and the legacy of £200 was ordered to be paid to them.—*In re Maguire*, L. R. 9 Eq. 632.

Damages.

The defendant represented to the plaintiff that he had authority to sell the L. estate, which was owned by himself and four others, and the plaintiff made a written offer to buy it for a certain sum. The defendant answered by telegraph, "Your offer for the L. estate is accepted." The other owners afterwards denied the defendant's authority, and sold the estate to another person at a higher price. The plaintiff then brought an action against all the owners for breach of contract; in answer to interrogatories, the joint-owners all swore that the defendant had no authority to make the contract, but the plaintiff proceeded with

his action and was nonsuited. He had also purchased stock for the estate. In an action upon the implied warranty of the defendant, *held*, that the telegram written out by the telegraph clerk, with the authority of the defendant, was a sufficient memorandum within the Statute of Frauds; *held, also*, that the plaintiff was entitled to recover the expense of investigating the title, the damages occasioned by the loss of bargain, and the costs of the former action up to the time when the answers of the joint-owners were submitted to counsel; but that he could not recover for the loss occasioned by the purchase of stock.—*Godwin* v. *Francis*, L. R. 5 C. P. 295.

Dedication—*See* Reverter.

Delivery—*See* Bill of Lading.

Devise.

By a will made before the Wills Act, the testator devised all his real estate to his two brothers and the survivor for their lives, and after their decease unto all the children of his said brothers who should then be living, equally share and share alike: and in case of the death of any of them in the lifetime of either or both of his brothers leaving lawful issue living, then he devised the part or share of such deceased parent unto and equally among all his children who should then be living. The residue of his real and personal estate he gave to his wife and her heirs. *Held*, that the general devise to the children of the brothers was enlarged to a fee by the devise over to the children of such parents as should die before the specified time, and that the brother's children and grandchildren took estate in fee-simple.—*In re Harrison's Estate*, L. R. 5 Ch. 408.

See Ambiguity; Construction, 3, 6; Residuary Clause; Will, 2.

Directors.

L. obtained the consent of the directors of the Estates Bank to an amalgamation with the plaintiff bank, upon payment of a compensation of £6000 to the managers, and certain smaller sums to the chairman, vice-chairman, and other directors. L. then induced the directors of the plaintiff bank to make an agreement with the Estates Bank for their amalgamation, and to promise him a commission of five per cent. on the capital of the Estates Bank. The agreement was carried into effect, and the manager, chairman, and vice-chairman became directors in the plaintiff bank, and received from L. the compensation agreed upon, L. having been paid the commission of five per cent. which had been promised him. In a suit against the directors of the plaintiff bank to recover the money paid to L. and the officers of the Estates Bank, *held*, that the chairman and vice-chairman of the Estates Bank were not justified in receiving the money, and must refund the sums which had been paid them; that the manager must refund all except so much as would be proper compensation for the loss of his office of manager; that the other directors had not acted improperly, and were not liable to repay any thing.—*General Exchange Bank* v. *Horner*, L. R. 9 Eq. 480.

Discovery.

By an indenture of settlement certain estates were conveyed to such uses as the settlors should jointly appoint, and in default of appointment to the settlors for life, with remainders to other persons. By virtue of the power the settlors mortgaged the estates. In a suit to redeem by one of the remainder-men, the mortgagees having admitted that the plaintiff was entitled to redeem, it was *held*, that the plaintiff could not claim the production of the deed of settlement without paying the mortgage debt.—*Chichester* v. *Marquis of Donegal*, L. R. 5 Ch. 497.

Dismissal—*See* Notice, 1.

Divorce—*See* Evidence, 2; Husband and Wife, 2.

Easement—*See* Ancient Light.

Election.

A woman on her marriage appointed £3000 by deed to trustees in trust for her husband for life, and at his decease to divide equally among her nephews, reserving power to revoke the trust in favor of her nephews. By her will she revoked all the trusts in the deed, and appointed £1000 to her husband and £2000 to the plaintiff. *Held*, that the husband must elect between the legacy and the life-interest.—*Coutts* v. *Acworth*, L. R. 9 Eq, 519.

Equity—*See* Bills and Notes; Confirmation, 1; Specific Performance, 2.

Equity Pleading and Practice.

1. If a plaintiff has not sufficient title to maintain a suit when he files his bill, he cannot maintain it upon a title subsequently acquired.—*Evans* v. *Bagshaw*, L. R. 5 Ch. 340.

2. Bill to charge a legacy upon real estate; the defendant alleged that he purchased it for a valuable consideration without notice. During the negotiations for the purchase by the defendant, certain letters relating to the plaintiff's claim, passed between the defendant's solicitor and the agents of the vendor. *Held*, that the letters were not written with a view

to the defence of this suit, and were not privileged from production.—*Paddon* v. *Winch*, L. R. 9 Eq. 666.

See Covenant, 1; Revivor.

Evidence.

1. The testator appointed as executors of his will "Francis Courtenay Thorpe, of Hampton, gentleman," and two others. Francis Courtenay Thorpe, of Hampton, was a youth twelve years of age; his father's name was Francis Corbet Thorpe. *Held*, that the description applied only to the son, and therefore there was no ambiguity; evidence that the testator intended the father was excluded. —*Goods of Peel*, L. R. 2 P. & D. 46.

2. Upon a petition for divorce for adultery, the only evidence of the respondent's identity was that of the petitioner. The court refused to act upon this evidence without corroboration.—*Harris* v. *Harris*, L. R. 2 P. & D. 77.

3. Action to recover for work done and materials supplied to certain houses on the order of third persons. It was contended by the plaintiff that the persons giving the order were the defendant's agents, and that the defendant was owner of the houses. *Held*, that evidence was admissible to show that other tradesmen had supplied goods by the defendant's orders for the same houses.—*Woodward* v. *Buchanan*, L. R. 5 Q. B. 285.

4. Notwithstanding the Statutes 32 & 33 Vict. c. 68, enabling parties to any proceedings instituted in consequence of adultery, and their husbands and wives to be witnesses, the court required other evidence than that of the husband to prove non-access, where the object was to bastardize issue.—*In re Rideout's Trusts*, L. R. 10 Eq. 41.

5. Indictment against a woman for endeavoring to conceal the birth of her child by secretly disposing of the dead body thereof. The prisoner had put the body into a field over a wall four and a half feet high separating a yard from the field. The only entrance to the yard was by a narrow passage from the street, and the only entrance to the field was by a gate from a butcher's yard. No person going into the field in his ordinary occupation would see the body. *Held*, that there was evidence for the jury of a secret disposition of the body. —*Regina* v. *Brown*, L. R. 1 C. C. 244.

See Admissions; Ambiguity; Practice.

Executor and Administrator — *See* Administrator Pendente Lite.

False Imprisonment — *See* Reasonable and Probable Cause.

False Pretences.

The prisoner obtained the use of a horse for a day by false pretences; he was indicted for obtaining goods by false pretences. *Held*, that to "obtain" means to obtain the property in a chattel, but does not mean to obtain a loan of it. — *Regina* v. *Kilham*, L. R. 1 C. C. 261.

Fixtures.

The lessee of a coal mine constructed therein three railways in the following manner: sleepers were laid upon the ground, and the rails were fastened to them by dog-nails; large quantities of ballast were then packed under and about the sleepers. The rent being in arrear, the lessor distrained these railways, and subsequently sold them under the distress. The purchasers removed them, and in doing so it was necessary to wrench off the rails and to loosen the ballast with a pick and raise the sleepers with a lever. *Held*, that the railways were fixtures and were not distrainable.— *Turner* v. *Cameron*, L. R. 5 Q. B. 306.

Foreign Judgment.

An English ship, while on a voyage to an English colony, was mortgaged by her owner in England, and the mortgage was subsequently assigned to the plaintiff. In the port of the colony the ship was supplied with necessaries, the captain paid for them by a bill drawn on the owner, which was never accepted, and at maturity, was dishonored. This bill was indorsed to French subjects, who commenced a suit against the captain and ship upon their arrival at Havre, and obtained judgment against them, which the Civil Tribunal confirmed, and ordered the ship to be sold. The plaintiff afterwards commenced in the Civil Tribunal a suit in the nature of replevin, and gave evidence of the law of England upon the subject, but the court, mistaking that law, decided against him. The ship was then sold under the judgment to the defendants. *Held*, that the judgment of the French Court was *in rem*, and under the French law transferred the ownership of the vessel, and that although the question of English law was wrongly decided, the title of the vendee could not be questioned in the English courts. — *Castrique* v. *Imrie*, L. R. 4 H. L. 414.

Forfeiture—*See* Burden of Proof.

Forgery.

The 24 & 25 Vict. c. 98, s. 24, makes it felony to forge "any warrant, order, authority, or request for the payment of money." The prisoner forged a receipt for money, and obtained by means of it money from a society;

the jury found that by the custom of the society such documents were treated as warrants, authorities, and requests to pay, and convicted the prisoner. *Held*, that the document was properly described as a warrant, an authority, or a request.—*Regina* v. *Kay*, L. R. 1 C. C. 257.

Fraud—*See* Appropriation; Bills and Notes; Limitations, Statute of.

Frauds, Statute of—*See* Damages.

Fraudulent Conveyance—*See* Charge.

Freight—*See* Insurance, 2; Ship.

Gift.—*See* Construction, 9.

Guaranty.

A bank authorized a company to draw upon it on terms that the company should ship tea and draw upon B. & Co. for its value, accompanied by bills of lading, policy of insurance, and invoice; B. & Co. agreed to accept the bills and forward them to the bank, and agreed to pay the amount due the bank on the 31st December. The company drew bills on the bank; before they fell due the bank stopped payment, but the bills were paid afterwards. The company failed to ship any tea and to perform their part of the agreement. *Held*, that the bank had performed its part of the agreement, and, notwithstanding its failure, B. & Co. were liable; and that their general engagement was not limited to the amount due on the 31st December.—*Ex parte Agra Bank; In re Barber & Co.*, L. R. 9 Eq. 725.

Highway.

In 1811, a road was laid out, fifty feet wide, through a common, by the enclosure commissioners. Allotments of the land on each side were made, and directions given by the commissioners that the allotments should be fenced. About twenty-five feet only of the road were used, and the sides, which were left unenclosed, became covered with fir-trees, heath and furze, which had grown up during the last twenty-five years. A suit was brought by the owner of the adjoining land to restrain the highway board from cutting the trees and furze. *Held*, that the right of the public was to have the whole width of the road free from obstructions, and was not confined to the part actually used; and that this right was not extinguished by allowing the trees to grow.—*Turner* v. *Ringwood Highway Board*, L. R. 9 Eq. 418.

See Commitment.

Husband and Wife.

1. A woman, upon marriage, settled her property in trust for her separate use. After marriage her husband became bankrupt, and certain debts incurred by the wife before marriage were proved against him, but he had no assets, and afterward obtained his discharge. *Held*, that the wife's separate property was liable for her debts.—*Chubb* v. *Stretch*, L. R. 9 Eq. 555.

2. *Held*, by the full court, on appeal, that, if force, whether physical or moral, is systematically exerted by a husband for the purpose of bending his wife to his authority, in such a manner, to such a degree, and during such a length of time as to break down her health and render serious malady imminent, there is cruelty which entitles her to a decree for judicial separation.—*Kelly* v. *Kelly*, L. R. 2 P. & D. 59.

See Evidence, 2, 4; Settlement, 1; Specific Performance, 1; Wife's Separate Estate.

Ignorance.—*See* Confirmation.

Illegal Contract.—*See* Racing Debt.

Indictment.

Indictment, that the defendant "in and upon one Margaret D., a girl above the age of ten years and under the age of twelve years, . . . unlawfully did make an assault, and her, the said M. D., did then unlawfully and carnally know and abuse, against the form of the statute," &c. The jury found the defendant guilty of a common assault. *Held*, that under the indictment, the defendant might be convicted of an assault.—*Regina* v. *Guthrie*, L. R. 1 C. C. 241.

Infant.—*See* Confirmation, 2.

Injunction.

The grantee of a piece of land made a separate agreement with the grantor, that during twelve years and a half no building thereon should be used as a public house. His assignee, one of the defendants, built a house on the land, and let it to the other defendant as tenant from year to year, who used it as a public house. The assignee had notice of the agreement, but the tenant had not. Upon a bill for an injunction, *held*, that the agreement was not binding on the tenant, but that the assignee should be enjoined, the injunction to be suspended until the tenancy should be determined.—*Carter* v. *Williams*, L. R. 9 Eq. 678.

See Receiver; Revivor.

Intention.—*See* Residuary Clause, 2.

Insurance.

1. Policy of insurance against fire upon the stock of wheat, &c., in a mill, containing the following clause: "Goods held in trust or on commission must be insured as such, otherwise the policy will not extend to them." Part of the wheat destroyed was received from farmers,

and mixed in large hutches with other wheat received in the same way, and was either sold by the millers, or ground in their mill; the millers had the option of delivering to the farmers wheat of like quality or paying the market price, but it was not intended that the identical wheat delivered should be returned. The wheat was not insured as goods held in trust or on commission. *Held*, that the wheat was not held in trust, but was sold to the millers, and that it was covered by the policy.—*South Australian Insurance Co.* v. *Randell*, L. R. 3 P. C. 101.

2. Insurance on freight. The ship while on the voyage insured was stranded on the Welsh coast. The ship-owner discharged the cargo and sent it on to its destination by rail, at an expense of £212, and received the freight. The cargo might have been kept until the vessel was repaired, and then reshipped at an expense of £70. *Held*, that under the suing and laboring clause, the ship-owner was entitled to recover from the underwriters the least reasonable amount for which the goods could have been carried forward, which was £70.—*Lee* v. *Southern Insurance Co.*, L.R. 5 C.P. 397.

3. Insurance on a bottomry bond. The bond provided for its defeasance on payment of the amount, or "in case of the loss of said ship, such an average as by custom shall have become due on salvage," or if the ship should be utterly lost, cast away, or destroyed by perils of the sea. The ship became a constructive total loss, and the proceeds were paid to the bondholder. *Held*, that the policy of insurance on bottomry did not cover a constructive total loss.—*Broomfield* v. *Southern Insurance Co.*, L. R. 5 Ex. 192.

4. Insurance on "homeward chartered freight," by the ship Sir William Eyre, which had been chartered while on her outward voyage for a homeward voyage from Calcutta to England; the voyage insured was "from Clyde to Southland, while there, and thence to Otago, N. Z., and for thirty days in port there after arrival." The ship arrived at Southland, where she grounded during a gale and was damaged, but she was got off, and proceeded to Otago; there a survey was held upon her, and some repairs were recommended by the surveyors, but as there was no dry dock the extent of the damage could not be fully ascertained. The master had not sufficient funds to pay for repairs and other liabilities incurred, and for that reason remained at Otago seven months, until he received funds from the plaintiffs; he then made temporary repairs, and proceeded to Calcutta in ballast, where the ship was put into dry dock, and surveyed, and it was ascertained that the cost of repairs would exceed her value when repaired. The surveys and estimates were duly forwarded to the plaintiffs, who at once gave notice of abandonment to the defendants and to the underwriters on the ship; neither of these notices was accepted. *Held*, reversing judgment of C. P., that, as there was a total loss of the power to earn freight, there was an actual total loss of freight, and no abandonment was necessary; *held*, also, that if notice of abandonment was necessary, as it was given as soon as the plaintiff knew the extent of the damage, it was sufficient. (Cleasby, B., dissenting.) Exch. Ch.—*Potter* v. *Rankin*, L. R. 5 C.P. 341.

Investment.

The trustees under a settlement were empowered to invest the trust fund in "the bonds, debentures, or other securities, or the stocks or funds of any colony or foreign country." The question arose, whether they could invest in the bonds of a French railway, guaranteed by the French government. *Held*, that these bonds were not securities of a foreign government, and therefore the investment could not be sanctioned by the court.—*In re Langdale's Settlement Trusts*, L. R. 10 Eq. 39.

See Trust.

Joint-Tenancy.—*See* Settlement, 2.

Landlord and Tenant.

The plaintiff became weekly tenant to the defendant's father, on terms that the plaintiff should have plenty of time to remove his goods on the termination of the tenancy; and he also had a license from the father to stack timber upon an adjoining wharf, the rent being payable in respect of both. The defendant, after his father's death, received rent from the plaintiff. Subsequently he gave the plaintiff a week's notice to quit, and at the end of the week took possession of the whole premises, and refused to allow the plaintiff a reasonable time to remove his goods. *Held*, that there was no objection to a tenancy determinable by a week's notice to quit; also that there was evidence for the jury that the plaintiff held on the same terms as under the defendant's father, and that he was entitled to a reasonable time to remove his goods.—*Cornish* v. *Stubbs*, L. R. 5 C. P. 334.

See Fixtures; Notice, 2.

Lease.—*See* Appointment, 1.

Lease.—*See* Specific Performance, 2; Wife's Separate Estate.

Legacy.—*See* Ambiguity; Construction, 3-8; Cy Pres; Election; Remoteness; Residuary Clause; Will, 3.

Lien.—*See* Bill of Lading.

Light.—*See* Ancient Light.

Limitations, Statute of.

Suit to recover property to which the bill alleged that the plaintiff's ancestors became entitled in 1769. It was alleged in the bill that the certificate of a marriage which formed the principal link in the plaintiff's title had been destroyed, and the register had been fraudulently mutilated, to destroy the evidence of the marriage, and that a transcript of the register was accidentally discovered by the plaintiff in 1868. The Statute of Limitations provides that, in case of concealed fraud, the right of any person shall be deemed to accrue when such fraud shall or with reasonable diligence might have been first known. *Held*, that by reasonable diligence evidence of the marriage might have been discovered more than twenty years before, and that the plaintiff was barred.—*Chetham* v. *Hoare*, L. R. 9 Eq. 571.

REVIEWS.

The Law of Salvage, as administered in the High Court of Admiralty and the County Courts, with the principal Authorities, English and American, brought down to the present time; with an Appendix, containing Statutes, Forms, Table of Fees, &c. By Edwyn Jones, Esq., of Gray's Inn, Barrister-at-law. London: Stevens & Haynes, Law Stationers, Bell Yard, Temple Bar. 1870.

This is a book equally useful to the American and the English lawyer. It appears to be a carefully written epitome of the principles of the law of Maritime Salvage. The author does not profess to give all the cases relating to the interesting subject of which he treats, but leading cases, both American and English, are noticed in a clear and succinct manner. The arrangement of the book is good. It is not only a book of principles but a book of practice. We have perused its pages with much interest.

There are three principal chapters. In the first the author explains the value of salvage, its ingredients, and gives instances of salvage service, including life service. Having done this, he, in the second chapter, treats of the persons entitled to claim salvage, discussing the rights of the crew, passengers, shipowner, pilots, tugs, ship's agent, and war vessels. He attempts to reconcile the English and American cases, but without success. The differences, however, where differences are irreconcileable, are judiciously pointed out and ably considered. In the third chapter he treats of the different sets of salvors, and distribution between rival salvors. This is a branch of the subject of no ordinary difficulty. But we must admit that the author boldly undertakes the task of expounding it, and creditably acquits himself. The reference to decided cases is very accurate, and whenever possible the language of the Judge is given. The remaining chapters, eight in number, treat respectively of the amount of salvage, apportionment of salvage contribution, misconduct and negligence, detention by salvors, proceedings to recover salvage, jurisdiction and practice of the Court of Admiralty, jurisdiction and practice of the County Court, jurisdiction of Justices, costs and appeal. In the appendix are given portions of several acts pertinent to the treatise, such as the Merchant Shipping Act, the acts regulating the practice of the Court of Admiralty and the County Court, Admiralty Jurisdiction Acts of 1868 and 1869, Admiralty and other forms, together with Schedules of Fees in Admiralty and County Courts.

Small treatises of this kind are becoming numerous, and, when well prepared, are well sustained, because more convenient in form than larger treatises dealing with wide decisions of the law. Abbot on Shipping is no doubt a standard work of acknowledged value and merit. But the law of last year, owing to the multiplicity of decided cases, is not the law of of this year; and it is much more easy to issue small treatises on subdivisions of a great work than to issue new editions of the great work itself. In this manner the profession are likely to have at hand the latest decided cases on particular branches of law in a form very convenient for use. Such works, when carefully prepared, ought to be encouraged because of their own intrinsic usefulness; and they serve as an introduction to the profession of young men of merit, as yet unknown to fame, who would not have the courage, even if they had the ability and intention, to produce larger treatises. Of this class is the book now before us. It is one of the best of its kind, proving the author to be a good lawyer as well as a good text writer. The book contains about 300 pages, is neatly printed, and haa a copious and convenient index.

The Ontario Law List. By J. Rordans. 6th Edition. Toronto: H. Rowsell, 1870.

The utility of this little volume to the legal practitioners of Ontario is already so well known that it scarcely requires from us any special commendation.

We must, however, congratulate the profession on the appearance of a new edition, and the editor upon the care which has evidently been taken to make it a complete handbook of useful professional information.

The introductory chapter gives a brief sketch of the more important changes effected by recent legislation in the jurisdiction and procedure of the Courts; then we have, in the body of the work, a sketch of the Superior Courts of Law and Equity; a list of county and judicial officers, coroners, &c.; a collection of the Acts respecting the profession, together with the rules of the Law Society as to examinations, &c. Next comes the Law List proper, including the Queen's Counsel, Barristers and Attorneys, with the dates of their appointment, call or admission, and a catalogue, classified according to locality, of the practitioners throughout the Province, with their Law and Chancery agents in Toronto.

In a country like our own, where changes of residence, partnership, and agency, are of daily occurrence, perfect accuracy in a list of this description is of course unattainable, and in all cases of service upon a Toronto agent, we should recommend an inspection of the authorized agency books at Osgoode Hall. When, however, such a reference is inconvenient or impossible, Mr. Rordans' work will be found "a friend in need," and no pains have been spared to render it a reliable authority.

We cannot close even the briefest sketch of this useful volume without commending to the practical consideration of principals and students throughout the country the following remarks from the introductory chapter:

"How many attorneys are there who think it incumbent upon them to instruct, or even to direct the reading of, their clerks? The rule is, that the clerk is worked hard if he takes to work, or let alone if he is idle, though the principal is usually eager enough to claim the credit if the clerk distinguishes himself in the examinations, or obtains a Call with Honors.

"A system more in accordance with the letter and spirit of the articles ought to take the place of this state of things. A spirit of mutual reliance and mutual assistance ought to actuate each, and the principal should be found as anxious to give proper help and instruction, as the clerk to obey his lawful commands."

Comment is needless, and the advice is good. But at the same time students must remember that the practice which, to a certain extent, prevails in this country, of giving salaries to articled clerks, is partly responsible for the evil spoken of—and so long as the very proper and wholesome "spirit of mutual reliance and mutual assistance" is affected by a mercantile spirit, making the relation, to a certain extent, one of dollars and cents, so long will this unsatisfactory state of things continue.

APPOINTMENTS TO OFFICE.

LIEUTENANT-GOVERNOR.

THE HON. ADAMS GEORGE ARCHIBALD, of the City of Halifax, in the Province of Nova Scotia, a Member of the Queen's Privy Council for Canada, to be Lieutenant-Governor of the Province of Manitoba, from and after the day on which Her Majesty the Queen shall, by Order in Council, issued under the British North America Act, 1867, admit Rupert's Land and the North West Territory into the Union or Dominion of Canada.

THE HON. ADAMS GEORGE ARCHIBALD to be Lieutenant-Governor of the North West Territories from and after the day aforesaid. (Gazetted July 23rd, 1870.)

JUDGE SUPERIOR COURT, QUEBEC.

LOUIS EDOUARD NAPOLEON CASAULT, of the City of Quebec, in the Province of Quebec, one of Her Majesty's Counsel learned in the Law, to be a Puisne Judge of the Superior Court for Lower Canada, now the Province of Quebec, in the room and place of FELIX ODILON GAUTHIER. (Gazetted June 4th, 1870.)

ASSISTANT JUDGE SUPERIOR COURT, QUEBEC.

THOMAS KENNEDY RAMSAY, of the City of Montreal, one of Her Majesty's Counsel learned in the Law, to be Assistant Puisne Judge of the Superior Court for Lower Canada. (Gazetted September 5th, 1870.)

JUDGE SUPERIOR COURT, NEW BRUNSWICK.

HON. ANDREW RAINSFORD WETMORE, of St John, New Brunswick, Esquire, one of Her Majesty's Counsel learned in the Law, to be a Puisne Judge of the Superior Court of Judication of the said Province, in the room of the HON. NEVILLE PARKER, deceased. (Gazetted May 28th, 1870.)

DEPUTY JUDGE.

ALLAN JAMES GRANT, of the Town of L'Orignal, in the County of Prescott, and of Osgoode Hall, Barrister-at-Law, to be Deputy Judge of the County Court of and for the United Counties of Prescott and Russell. (Gazetted August 8th, 1870.)

NOTARIES PUBLIC.

JAMES F. GARROW, of the Town of Goderich, Barrister-at-Law. (Gazetted June 25th, 1870.)

BENJAMIN CRONYN, of the City of London, Barrister-at-Law. (Gazetted June 25th, 1870.)

FREDERICK WRIGHT, of the City of Toronto, Attorney-at-Law. (Gazetted June 25th, 1870.)

CHARLES WALLACE BELL, of the Town of Belleville, Barrister-at-Law. (Gazetted July 16th, 1870.)

RUSK HARRIS, of the City of Toronto, Barrister-at-Law. (Gazetted July 16th, 1870.)

JAMES RUTLEDGE, of the Town of Bowmanville, Barrister-at-Law. (Gazetted July 16th, 1870.)

JAMES CROWTHER, of the City of Toronto, Barrister-at-Law. (Gazetted July 30th, 1870.)

JAMES TILT, of the City of Toronto, Barrister-at-Law. (Gazetted July 30th, 1870.)

ABRAHAM DENT, of the Village of Mitchell. (Gazetted August 13th, 1870.)

HENRY SMITH, of the Town of Cobourg. (Gazetted August 13th, 1870.)

EDWIN D. KERBY, of the Village of Petrolia. (Gazetted August 13th, 1870.)

JAMES MAGEE, of the City of London, Barrister-at-Law. (Gazetted September 10th, 1870.)

GEORGE WILLITS LOUNT, of the Village of Newmarket, Barrister-at-Law. (Gazetted September 10th, 1870.)

JAMES F. LISTER, of the Town of Sarnia, Attorney-at-Law. (Gazetted September 10th, 1870.)

FRANCIS COCKBURN CLEMOW, of the City of Ottawa, Attorney-at-Law. (Gazetted September 10th, 1870.)

ALEXANDER GRANT, of the Town of Stratford, Attorney-at-Law. (Gazetted September 17th, 1870.)

JAMES SMITH READ, of the Village of Orangeville, Attorney-at-Law. (Gazetted September 24th, 1870.)

ALEXANDER GOFORTH, of the Village of Fergus, Barrister-at-Law. (Gazetted September 24th, 1870.)

ASSOCIATE CORONER.

THOMAS CUMINES, of the Village of Welland, Esq., to be an Associate Coroner within and for the County of Welland.