DIARY FOR NOVEMBER.

1. Wed..All Saints. Judicature Act came into force in England, 1875.
4. Sat ...Cand. for Atty. to leave papers with Secy. Law Society.
5. SUN..21*st Sunday after Trinity.*
7. Tues..Primary Examination.
9. Thur..Prince of Wales born, 1841.
11. Sat....Battle of Chrysler's Farm, 1813.
12. SUN..22*nd Sunday after Trinity.*
14. Tues..Intermediate Examination.
16. Thur..Examination for admission. Cand. for call to pay fees.
17. Fri....Examinations for call.
19. SUN..23*rd Sunday after Trinity.*
20. Mon..Michaelmas term begins.
21. Tues..Princess Royal born, 1840.
24. Fri....Paper Day, Q.B.
25. Sat....Paper Day, C.P.
26. SUN..24*th Sunday after Trinity.*
27. Mon..Paper Day, Q.B.
28. Tues..Paper Day, C.P.
29. Wed..Last day for setting down rehearing in Chan.
30. Thur..St. Andrew's Day.

CONTENTS.

THE
Canada Law Journal.
Toronto, November, 1876.

THE removal of the portraits from the walls of Osgoode Hall to allow the cleansing and renewal of the building reminds us that the series of portraits is still incomplete, in that there are none of some of our first chief justices, Osgoode, Powell, Scott, and Campbell. We understand that the material is yet in existence to supply the deficiency. Probably it may not be very perfect, but it would be well for the Benchers to appoint a committee to collect information on the subject and report.

WE call attention to the letter of a valued correspondent, to be found in another place, in reference to some amendments of the law, suggested by another correspondent in a recent issue. A full discussion of practical matters like this by men of experience in the profession cannot but be of much assistance to those who are charged with the subject of legal reforms, though it is not likely to benefit those who, though they have a craze for legislative tinkering in that line, are profoundly ignorant of "the old law, the mischief and the remedy."

POETICAL precedents do not go for much in the Court of Chancery. A case was before the Master of the Rolls a few months ago by way of appeal from the Registrar of Trade Marks, who had refused registration as a "distinctive device" of a word composed of the letters "ÆILYTON." Chitty, Q.C., argued that this word came within the meaning of the statute, and urged that the word "excelsior" upon a banner is called by the poet a strange device. But Sir George Jessel thought that a mere word could

not be registered as a trade mark under the Trade Marks Registration Act.—*Re Stephens*, 24 W. R. 963.

Some misapprehension seems to exist as to the effect of the statute of 1875-6, altering the practice as to payment of money into court. Upon an application made to Mr. Dalton, in a case of *Steinhoff* v. *Royal Canadian Insurance Company*, for an order for the payment out of court of money paid in under a plea of payment into court, the pleadings having been filed in an outer county, the order was refused. Mr. Dalton, held, that the statute only applied to cases where the pleadings were filed in Toronto, and the money paid to the master there; and that the words "at Toronto" are not part of the description of the court, but are intended to restrain the operation of the statute as above. The practice therefore is not altered as regards the outer counties.

The death of Mr. Justice Quain, one of the Justices of the Queen's Bench Division, in England, on the 12th September, is thus alluded to in the *Law Journal*: "The profession will sincerely regret the early death of Mr. Justice Quain. It was known that his health had been for some time bad, and that lately his condition had caused anxiety; but the fatal termination is a painful surprise. The late learned judge, after practising as a special pleader without the bar, was called in 1851, and joined the Northern Circuit. His progress was continuous, though not rapid. He took silk in 1860; and the following year he became Attorney-General for the County Palatine of Durham, in succession to Mr. Hindmarsh. Although only four years on the bench, Sir John Quain fully realised the expectations of his friends. His demeanour was at all times kind and courteous, and his zeal was not less conspicuous than his urbanity. Day after day he became more valuable as a judge, and his death is a great loss to the public service." Later papers announce the death of Mr. Justice Archibald, of the Common Pleas, on the 18th Oct., last. Mr. Archibald was a native of Nova Scotia, and was educated there. He is said to have been a distinguished ornament of the Bench. Mr. Manisty, Q.C. takes the seat vacated by Mr. Justice Quain.

CERTAINTY IN THE LAW.

Upon no subject have many authors and many lawyers been more sarcastic than upon the adherence to precedent which is one of the characteristics of the English law. Tennyson in his "Aylmer's Field" heaps contempt upon "the lawless science of our law,

> "That codeless myriad of precedent,
> "That wilderness of single instances."

Lawrence Sterne also writes that "Precedents are the bane and disgrace of legislation. They are not wanted to justify right measures, and are absolutely insufficient to excuse wrong ones. They can only be useful to heralds, dancing masters, and gentlemen ushers, because in these departments neither reason, virtue, nor the *salus populi* or *suprema lex* can have any operation." In much the same spirit did good old Serjeant Hill make reply to the judge who hesitated in ruling a point and asked his learned brother for a precedent: "When judges are about to do an unjust or absurd action," Hill said, "they seek for a precedent in order to justify their own conduct by the faults of others."

But it is evident that so long as the law is uncodified, the only practicable plan of giving to it that stability and uniformity

which is involved in the very conception of the term "law," is by a strict adherence to judicial precedent. "It is the function of a judge," says Coke, "not to make, but to declare the law according to the golden metewand of the law, and not by the crooked cord of discretion." When a case is decided, a rule is thereby laid down by which subsequent transactions are regulated, and by means of which counsel are enabled to advise upon the rights of their clients in a similar conjunction of circumstances. Lord Macclesfield was wont to say that disregarding settled authority was a removing of landmarks, and that it was often of little consequence how a point was determined at first, so it be but adhered to. And Lord Kenyon often repeated the maxim "*Misera est servitas, ubi jus est vagum aut incertum.*"

Nevertheless, while these things are well recognized, there are many causes conspiring to give uncertainty to the administration of the law at present in Ontario. This arises in part from the fluctuations of opinion among the English judges and in the English courts, which of course have a reflex influence on us. Such diversity of work has been cast on the judges, and so many new courts have been constituted, that a general unsettlement of decisions seems to have resulted. Even in minor matters this is apparent. For instance, we find a standing feud between the Master of the Rolls and the Vice-Chancellor Malins as to the power of the court to grant an administration of the estate of a person deceased in the absence of a duly appointed personal representative. In *Rowsell* v. *Morris*, L. R. 17 Eq. 20, Sir George Jessel held in the negative, and in a series of cases prior and subsequent to *Rowsell* v. *Morris*, the Vice-Chancellor stoutly holds to the affirmative view. Again in *Claydon* v. *Green*, L. R. 3 C. P. 511, it was laid down that the marginal note to a section of a statute in the copy printed by the Queen's Printer, forms no part of the statute itself, and is not binding as an explanation or construction of the section. But in *Re Venour*, 24 W. R. 752, the Master of the Rolls held that such a marginal note is an integral part of the statute, and his construction of the Act was thereby influenced.

Again: the excessive citation of American decisions, which are not authorities, has swayed the conclusions of the Court in some cases in a manner not in harmony with the weight of English decisions, which are authorities. We remember the time when the Court of Queen's Bench under the presidency of Chief Justice Draper, actually declined to make a note of any American cases cited. This was going too far in one direction. But, as a rule, we think it would be well if the pertinency of these cases were limited to points where there is an entire absence of English or Canadian authority, and to matters arising under statutes which have been adopted by the Legislature from United States sources: such, for instance, as the laws relating to Mechanic's Lien, to Patents for Inventions, and to Mutual Insurance Companies.

Again: the multiplication, repeal and amendment of statute law has given rise to much uncertainty. The convenient plan of passing an Act one session, and then passing another on the same subject, but with sundry modifications, the next session, with a clause tagged on at the end repealing all previous enactments which are inconsistent therewith, is a fruitful source of doubt, confusion and entanglement. What again has been more prolific of unprofitable litigation than the Acts relating to the Property of Married Women? Instead of a comprehensive, well defined and clearly-expressed law on this most important subject, we find a conglomeration of sections which have put all the Courts at arm's length in the several interpretations given thereto. We can hope for no

reconciliation of these diverse judicial views, till the whole subject is authoritatively passed upon by the Court of Appeal, or by the Supreme Court. At least one clause in the Mechanic's Lien Act (that most absurd and hurtful of all illogical legislation) wears a most threatening aspect, portending the necessity of many a pitched battle on every word of it ere it be fully subdued to the uses of the much-enduring public. Then we can turn our regards upon the devastation which the Court of Appeal has wrought (and none too soon) upon the goodly growth of cases that developed the doctrine of pressure to its proudest height in *Davidson* v. *Ross*. That doctrine, as elaborated by a course of decisions beginning with Vice-Chancellor Mowat's judgment in *The Royal Canadian Bank* v. *Kerr*, 17 Gr. 47, was finally sublimated to this nicety, that if a debtor on the eve of insolvency crossed the street to one of his creditors, proposed to give him a security, and did give him a security, that transaction was invalid; but if the creditor crossed the street to the debtor, suggested that a security should be given and such security was given, that transaction was unimpeachable. It was high time that the daylight of common sense should be let in on these cases; and this has been done by the decision in appeal which has practically abolished the doctrine of pressure as a question of intent.

In conclusion: it is very desirable that an *equilibrium* as between law and equity should be observed and maintained in the *personnel* of the Appellate Courts. The preponderance of either will encourage and has already encouraged appeals. But with Courts of Appeal well-organized and well-balanced we see no reason to fear that their decisions will command and deserve respect; and that they will secure satisfaction of that practical sort, which shall obviate all necessity for carrying any of our appeals to England.

SECULAR v. RELIGIOUS EDUCATION.

A curious question has arisen and been decided in the Supreme Court of Vermont. It appears that the complainants were members of the Catholic Church in the village of Brattleborough, and that on June 4th, 1875, the priest of the said church, acting in behalf of the complainants, sent to the respondents, who were the prudential committee of that school district, a request that the Catholic children might be excused from attendance at school on "all holy days," and especially on that day, being holy Corpu Christi day. To this note the committee replied that the request could not be granted, as it would involve closing some of the schools and greatly interrupting others.

It further appeared that about sixty Catholic children, by direction and command of their parents, were kept from school to attend religious services on said 4th of June, being, as stated in the bill, "holy Corpus Christi day." A few of them applied for admission to the schools in the afternoon of that day, and all, or nearly all, so applied the next morning. They were thereupon told by the committee that, as they had absented themselves without permission, and in violation of the rules of the schools, which they well understood, they could not return without an assurance from their parents, or their priest, that in future they would comply with the rules of the schools. The committee assured the children, and many of their parents, and also the priest, that if they would promise that the schools should not again be interrupted in like manner they would gladly re-admit said children; but the priest and parents refused to comply with such proposal, and claimed that on all days which they regard as holy they might, as matter of right, take their children from

the schools without any regard to the rules thereof.

The bill prayed an injunction against the committee from preventing the admission of the complainants' children to the said schools, &c.

The judge who delivered the judgment of the Court dismissed the bill, in effect holding, as stated in the head-note of the case (*Ferriter et al.* v. *Tyler et al.* 15 Am. Law Register 570), that it was the right of the directors of the public schools to prescribe the hours of attendance of the pupils, and to make a proper system of punishment for absence, &c: that in doing this the public rights and convenience must govern, without regard to the wishes or convenience or private preference of parents or others: that this rule applied to the attendance of the children on public or private religious worship on week-days during the prescribed hours for school, and that such purpose did not excuse violation of the rules of the school.

One of the editors of the *American Law Register* in commenting on the case very fairly states the questions involved in the following manner: (1.) Whether, in case of conflict, the conductors of the school may lawfully insist upon their rules and regulations, setting aside those of the church where the children receive religious education; in other words, how far school education may interfere with or supersede religious education? (2.) How far the school laws or regulations will control the right of the parents to direct the attendance of their children upon religious services, and expose the children to punishment for obeying their parents in this respect?

The consequences that would flow from these questions being answered in the way they were answered by the Supreme Court of Vermont, seem to us most appalling, and present a picture most discouraging to those citizens of the United States, who have any regard for the future welfare of their country. These latter may be glad to see so monstrous a doctrine combatted by such an eminent jurist as Hon. Isaac F. Redfield of Boston, who in commenting on the case says:

"There can be no doubt that in this case the children were required to disobey their parents, and were punished for not doing so. They might as well have been subjected to corporal punishment as to exclusion from school. Then the case would have been precisely parallel with that of *Morrow* v. *Wood*, 13 Am. Law Reg. N. S. 692, and the able and judicious opinion of Mr. Justice Cole would fully apply to this case. Since the common schools have been compelled, by the contrariety of opinion upon religious subjects in the country, to virtually abandon all instruction upon the subject, it must not be expected that it can be also tolerated in a Christian country, that they should be allowed to teach positive irreligion, or what directly conflicts with Christian teaching upon morals. The first great command of the Decalogue, as to our duty to each other, is, "Honor thy father and thy mother." There could then be nothing more in conflict with Christian teaching than to require the children to disobey their parents. It is creditable, we think, to the Roman church that their children were too well taught in their primary duty to their parents to obey the school, when it came to a conflict between the school and their parents. It is greatly to be feared that we are all quite too indifferent to the general effect of so magnifying the authority and wisdom of the common schools in the eyes of the children, above their parents, in all matters even remotely pertaining to education, and at the same time teaching the children that mere text-book knowledge is superior to all other attainments. There can be little doubt, this may have contributed more than we comprehend to that general disregard and disrespect among the young toward their elders, which is so much deplored by many. But when it comes to the matter of religious teaching, which is so exclusively under the control of the parents, and by the very organic law of the state made sacred above all other rights, it might be supposed no one could fail to comprehend the unreasonableness of the claim here made. What is said in the Constitution of the State about the duty of maintaining schools, and the consequent necessity of their claims being vindicated by the courts, is all very well. But

it must be remembered that the provisions in the Constitution about schools are subordinate to those securing freedom of religious worship. And if we make the case under consideration our own, we shall all be able to comprehend that the demands of the school authority here were most unreasonable and without either law or necessity. We think it unfortunate, both for the interests of the schools and the quiet and good order of the country, that any class of Christians should have been subjected to such hard measures in defending religious freedom, the thing above all others of which we boast the loudest. It seems to us far wiser to mete out to all the most liberal measures upon this subject, especially where, as in the present case, it must be conceded by all that they offer a very plausible, if not, as we think, an invincible legal vindication of their claim. By so doing we shall be able to secure the support of the clearest popular conviction in support of the decisions of the courts, in refusing all countenance towards clearly unreasonable and illegal demands of that character.

We have something perhaps to learn from these sensible remarks in connection with our own common school system. The sentiments of Mr. Redfield on this vital question are entirely in accord with our own views, and are so well and forcibly expressed that we shall not weaken his argument by enlarging upon it.

LAW SOCIETY.

Trinity Term, 40th Victoria.

The following is the *resumé* of the proceedings of the Benchers during this term, published by authority:

Monday, 28th August.

The Treasurer read a letter from Judge Sinclair of Hamilton, resigning his position as a Bencher.

Ordered, That the Treasurer acknowledge the letter, expressing the regret of the Benchers for the loss of Mr. Sinclair's services, that the resignation be accepted, and a call of the Bench made for the last Friday in term, for the election of a Bencher in his place.

Messrs. Rye, Lennox, Archibald, Purdon, and Doherty, were called to the Bar. Messrs. Miller, Morton, and Ogden were granted certificates of fitness without an oral examination.

The petition of Mr. Steele was read.

Ordered, That Mr. Steele be exempted from the Preliminary Examination under the special rules for call to the Bar, adopted 27th June last.

The petition of Mr. S. B. Hall was read.

Ordered, That Mr. Hall be allowed his second examination.

A special committee consisting of Messrs. McMichael, Maclennan, and Meredith, were appointed to take examinations of certain attorneys who have applied for call to the Bar under special rules.

Tuesday, 29th August.

The report of the special examining committee on the examinations of Messrs. McKenzie, Macdonald, and Essory, that these gentlemen were duly qualified, was received and read.

Ordered, That they be called to the Bar.

On petition of Joseph John Curran, Esq., it was ordered that he be allowed to practise as an Attorney and Barrister on payment of his certificate fees for current year, and his arrears of term fees.

The petition of Mr. Rye for the return of the fee of two hundred dollars, paid by him under the special rules, on the ground that he had taken steps for the introduction of a Bill for his call, and should be exempted from the payment of that fee, was granted.

Ordered, That Messrs. Macdonald and Essory, on the same grounds, be exempted from the payment of the fee of two hundred dollars required by the special rules.

Report of the examining committee was received and read.

The report of the committee on Legal Education on the Preliminary Examinations of the Society was adopted.

The consideration of the questions affecting the Law School was adjourned until Saturday, the second September, notice to be given to each Bencher by the Secretary.

Mr. Evans was appointed examiner for next term, and his fee for this term was ordered to be paid.

The abstract of balance sheet for the second quarter of 1876 was laid on the table.

Messrs. McKenzie, Macdonald, Essory, and Lennox were called to the Bar.

The Treasurer read a communication from the Barristers' Society of Nova Scotia, on the subject of the formation of a Dominion Law Society.

Ordered, That the Treasurer do reply to the communication and express the willingness of the Law Society of Upper Canada to co-operate.

A resolution was adopted, directing copies of the Reports of the Superior Courts of Ontario to be sent to the Judges of the Supreme Court of the Dominion, commencing with the current volume.

The Treasurer read a communication from N. C. Moak, Esq., of Albany, U. S., which accompanied a donation of a number of volumes of law books to the library.

Ordered, That the donation be accepted, and the thanks of the Society be given to Mr. Moak by the Secretary.

Saturday, 2nd September.

On petition of Mr. Robert E. Wood,

Ordered, That Mr. Wood's examination for call to the Bar be allowed, and his call next term authorized thereon.

The report of the finance committee having reference to the proceedings to be taken in future in the cases of Attorneys who neglect to take out their annual certificates, was adopted.

The report of the committee on Reporting was presented by the chairman, and was adopted.

The report of the committee on Legal Education was presented by the chairman.

Mr. Richards then proceeded with his resolution for the abolition of the Law School, which was lost.

The report on Legal Education was then taken up.

Resolved, that the examiners and lecturers shall be in future elected for four years each, subject to removal at the discretion of Convocation, but at the election now to take place, one shall be elected for one year, one for two years, one for three years, and one for four years; that after this election no examiner and lecturer shall be eligible for re-election.

That the subjects of the lectureships shall be as follows: Real Property, Equity, Common and Commercial Law, Criminal Law and the Law of Torts.

Mr. Charles Moss was elected President of the Law School, and to lecture on Common and Commercial Law.

Mr. Mulock was elected to lecture on Equity.

Mr. Ewart was elected to lecture on Real Property.

Mr. Delamere was elected to lecture on Criminal Law and the Law of Torts.

Ordered, That rule 38 of the general rules be rescinded, and that all candidates for examination as students or articled clerks be examined both orally and in writing at the same time.

The further consideration of the report of the Legal Education committee, was postponed until Friday, 8th September.

Friday, 8th September.

The petition of Mr. C. A. Meyers to

be allowed a service of two years while he was in the office of Mr. Millard, articles between them having been prepared and inadvertently omitted to be executed until after the two years had expired, was granted and his service allowed.

Mr. Roe's petition to be admitted an attorney under the special rules, was refused.

Mr. Morrow's petition to be allowed his second intermediate examination, was granted.

Æmilius Irving, Esq., Q.C., was elected a Bencher in the place of Judge Sinclair, resigned.

Mr. Armour gave notice that he would move on the first Monday of next term to abolish the Law School.

Mr. McCarthy gave notice for the same day for the reconsideration of the rules adopted in reference to barristers and attorneys.

Mr. Hodgins brought up again report of Legal Examination committee. Report to stand for the same day.

Mr. Martin gave notice for the same day of a motion that students attending the Law School shall pay a fee therefor, and also for the reconsideration of the report on primary examinations.

Mr. McKellar gave notice for the same day of a motion to reduce the annual certificate fee.

SELECTIONS.

JUDGES OF THE ENGLISH APPELLATE COURTS.

No time has been lost in the selection of the judges for the Ultimate and Intermediate Courts of Appeal. The expedition used in their appointment is most laudable, because it is very necessary that ample time should be allowed for conference and correspondence between the judges before next November, with reference to the arrangement of business and the formation of new rules. It is obvious that much care and foresight will be wanted to ensure the despatch of judicial proceedings under the altered state of things contemplated by the new Act. The revolution effected by it does not fall very far short of that already accomplished by the Judicature Acts, and we have no doubt that the judges will devote a large portion of their leisure in the month of October to the consideration of what is to be enacted by them in the shape of rules and orders.

At present, however, we are concerned with the appointments made. The promotion of Mr. Justice Blackburn to be a lord of appeal will be received with universal approbation. For many years his lordship has been before the profession and the public. His great rapidity of discernment, his learning, and his experience are known to every one familiar with Westminister Hall. His keen sense of justice, love of right, and high-mindedness cannot be too highly appreciated. His one fault—namely, excessive eagerness to get at the point of the case, and to leap to a conclusion on it—will disappear altogether in the serene atmosphere of the House of Lords. His lordship will be much missed in Westminister Hall. Some members of the bar were repelled by the brusque manner of the learned judge; but all men capable of seeing beneath the surface found in him the true spirit of a gentleman, the kindest of natures, and the most generous of dispositions.

The Right Hon. Edward Strathearn Gordon, Lord Advocate of Scotland, will be the other lord of appeal, and will supply the place so well filled by the late Lord Colonsay. The presence in the House of a judge thoroughly acquainted with the principles and practice of Scotch jurisprudence is essential, and Mr. Gordon is well qualified to aid their lordships in this respect.

We suppose that the selection of Baron Bramwell, Mr. Justice Brett, and Baron Amphlett to be judges of the Intermediate Court of Appeal will be generally admitted to be wise. Indeed, the appointment of Baron Bramwell and Mr. Justice Brett was a foregone conclusion, while the addition of Baron Amphlett will equalise the common law and equitable forces in that tribunal. Baron Bramwell has for many years been one of the special favor-

ites of the profession. With the bar his popularity could not stand higher. No one who has ever practised before him, whether as a leader or a junior, will forget his consistent courtesy and abundant supply of good humour, or will fail to acknowledge that lofty sense of honour with which his lordship has been ever actuated. In losing him from the High Court of Justice, we have the consolation of knowing that a vast harvest of appeals will still bring the bar into continual contact with him. The solicitors and the suitors have been equally proud of his lordship's talent, discretion, courtesy, and impartiality, and all will wish him well in his new career.

Mr. Justice Brett and Baron Amphlett belong to a younger generation of judges; but the former at a very early stage of his judicial life displayed remarkable force of character, coupled with great knowledge of business, and thorough acquaintance with the principles of the law. No one, indeed, has excelled Mr. Justice Brett in knowledge of the general affairs of life, and of everything connected with the trade of the country. Baron Amphlett has ever shown himself a laborious and painstaking judge, and we doubt not that he will render much help in the Court of Appeal.

In finding ourselves able to speak in language so eulogistic of the judges now promoted, we cannot but add our apprehension that the High Court will suffer by the withdrawal of so much of its force. But the effect of removing eminent men from the scene of action is generally to give impulse to the efforts of those that follow them. Experience teaches us that this is as much the case with the judicial bench as it is with the aspirants to fame in political life.—*Law Journal.*

CROSS-EXAMINATION TO CREDIT.

Cross-examination constitutes the fine art department of the profession of counsel. It requires ingenuity, caution, delicacy of touch, perception of truth, knowledge of human nature, mastery of the subject-matter. Like painting, sculpture, poetry, and music, it commands a multitude of critics, but boasts a limited number of experts. Like them, also, it is of necessity attempted by a great number of persons who possess few qualifications for the enterprise which they undertake. Unlike them, it is an art practised on human beings, not on canvas and colours, on plastic matter, on ideas and sounds.

Liberty to cross-examine is, beyond all doubt, essential to the discovery of truth; and the necessity for this liberty being uncontrolled, so long as the inquiry is confined to relevant facts, is universally admitted in this country. What is to be the measure of the right to cross-examine on matter irrevelant to the issue of the cause or prosecution has been and is much debated. Recently the controversy on this point has become more general; it has passed from the rules or customs of Court into the region of literary discussion, and it is approaching the stage of legislative ordinance.

Whenever in this country we see anything like agitation with a view to Parliamentary interference, we may be quite sure that there has been some practical abuse of a right or privilege. Our law in every part abounds with anomalies, but hitherto no serious efforts have ever been made to correct these from regard for abstract justice or logical consistency. We have been content to remove or alleviate grievances developed in actual life. If, then, we find the public voice asking for a check on cross-examination to credit, we conclude that the professors of the art have been blundering to the prejudice of the public sense of what is fair.

We know of no judicial dictum which can be cited as containing the rule as to cross-examination to credit. Mr. Fitzjames Stephen in his "Digest of the Law of Evidence" expounds the law with a cold-blooded precision characteristic of codes. "When a witness is cross-examined he may be asked any questions which tend (1) to test his accuracy, veracity, or credibility; or (2) to shake his credit by injuring his character. He may be compelled to answer any such question, however irrelevant it may be to the facts in issue, and however disgraceful the answer may be to himself, except in the case provided for in Article 120—namely, where the answer might expose him to a criminal charge or penalty." It might be con-

tended that this exception really represents the very case in which he ought to be compelled to answer; for, if a man has actually committed a crime, although he has not been convicted of it, his testimony must be open to suspicion. On the other hand, an answer may, according to the ideas of the society to which the witness belongs, involve disgrace, although the act disclosed by it ought not to affect the credit of the witness in the opinion of reasonable men.

If, however, the rule is to be reduced to the dimensions of a rigid definition, we perhaps cannot object to the formula rendered by Mr. Stephen, although we quite appreciate the shock which such a naked statement is calculated to give. Fortunately for the comfort of society, there are many extreme rights which no sane man enforces. No landlord distrains the morning after rent day without grave cause. A lawyer's letter generally precedes a writ of summons. Bargains are made and performed, although the parties might get out of them by the help of the Statute of Frauds. Experience, apart from fairness, teaches that legal rights are doubled-edged weapons, which a man should use carefully. So is it with cross-examination to credit. Counsel may find in his brief material for the injury of a witness; but the business of counsel is to succeed in the cause, and an outrage on the feelings of a witness may be resented by a jury. Arbitrators are notoriously averse to attacks of this class on the credit of witnesses, and it is hardly ever good policy to attempt anything of the kind in the conduct of references. Counsel have also to reckon with the judge; and the strength of strong judges is not wisely provoked to adverse action where jurors and audience would instinctively nod assent to a crushing summing-up. There is also the counsel's own sense of right. Nothing can be more monstrous, than for a counsel to ask a question calculated to torture not only the witness, but a host of innocent persons nearly connected with the witness, merely because the question is in the brief, and the client wishes it to be asked. Counsel is bound in honour and out of respect to himself and his profession to consider whether the question ought to be asked, not whether his client would like it put. Counsel is not the mouthpiece of spite or revenge. He is not to adopt a line of conduct which, if universally carried out, would drive truth out of Court by intimidating witnesses. Among other considerations, he should weigh with himself whether the expected answer ought to render the witness unworthy of belief on his oath; whether the act to be revealed is of recent date, so as to make it improbable that the witness has repented his misconduct, and striven to amend his ways. In some cases, also, counsel may perhaps consider whether the good to accrue to his client from the answer is not so small as compared with the enormous mischief to be done to the witness, and to other persons, as to justify him in declining to put the question. We admit that no definite set of rules can be prescribed for counsel. He must judge for himself; and he will have the consolation of knowing that he is not very likely to go wrong if he acts on his own opinion, instead of inclining his ear to the remorseless passion or the unscrupulous greed of the party for whom he is retained.

We do not wish to enter upon the task of illustration, although that method is coming so much into fashion. But we may put one or two instances of recent occurrence. A woman gives evidence, not as prosecutrix, against a prisoner on a charge of theft. The witness is asked a question tending to show sexual immorality on her part on a particular occasion unconnected with the theft. The question is altogether unjustifiable. A man prosecutes a policeman for assault with intent to do grievous bodily harm. The prosecutor is cross-examined for the purpose of showing that he has been frequently charged by the police, and that he had the strongest motive for trumping up a false charge by way of revenge against the prisoner. The cross-examination is obviously just, and the necessity of unlimited authority to the counsel to press the witness home on every point with the utmost severity is plainly apparent. Everybody recollects the famous question on the trial of Orton, which has generally been held unjustifiable, mainly on the ground that the relations between the sexes have no direct bearing on the probability of the witness telling the truth. In these matters, before a judg-

ment can be formed as to the conduct of any man or woman, it is necessary to be thoroughly informed of all the surrounding circumstances; and these circumstances are for the most part unascertainable. Indeed it is much safer to proceed upon the principle that sexual immorality has no bearing at all on the credibility of a witness. We should not allude to this matter, were it not that here we have the very engine by which most important witnesses may be, and indeed are, deterred from coming into Court, to the infinite prejudice of justice.

It is somewhat strange that the notorious Bravo inquest should have given an impetus to discussion on the subject of cross-examination to credit, whereas that case had really nothing to do with the matter. No single question was ever asked during the inquest for the mere purpose of impeaching the credit of a witness. The interrogatories which roused so much, and we may say such universal, reprobation in the Press, were asked as revelant to the issue. They were based upon the theory that the facts disclosed a motive for an assumed crime. Therefore they did not fall within the category of questions which tend to shake the credit of a witness by injuring his character.—*Law Journal.*

GROWING CROPS AND PERSONAL CHATTELS.

A question of more than ordinary importance under the Bills of Sale Act was recently raised in the Common Pleas Division in the case of *Brantom* v. *Griffiths*, 33 L. T. Rep. N. S., 871. Its importance was due to the terms of the 7th section of that Act, according to which the expression "bill of sale" includes bills of sale, assignments, transfers, declarations of trust without transfer, and other assurances of persons as well as power of attorney, authority or licenses to take possession of personal chattels as security for any debt. It also provides that the expression "personal chattels" shall mean goods, furniture, fixtures and other articles capable of complete transfer by delivery, and shall not include * * "any stock or produce upon any farm or lands which by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same shall be at the time of the making or giving of such bill of sale." The only facts of the case which it will be necessary to notice here are few in number. The plaintiff made a claim to certain growing crops, under two instruments by which these crops had been assigned to him. The documents were not registered under the Bills of Sale Act, 1854. The defendant accordingly contended that his claim as execution creditor was good.

In the long series of decisions upon the 4th section of the Statute of Frauds, there will be found a variety of cases in which the question raised was the converse one, namely, whether a sale of growing crops conferred an interest in land within the meaning of the statute. The opinion of Lord Tenterden appears to have been that if the thing would at the time of delivery be a personal chattel, then no interest in the land was conferred. Thus in *Watts* v. *Friend*, 10 B. & C., 446, an agreement to sell the crop produced from certain seed at a price named, was held to be a contract for the sale of goods within the 17th section, and not a contract conferring an interest in land within the 4th section of the Statute of Frauds. Mr. Justice Littledale has also expressed an opinion to the effect that a sale of any produce of the earth reared by labor and expense, whether it was in a state of maturity or not, provided it was in actual existence at the time of the contract, was not a sale of an interest in or concerning land: *Evans* v. *Roberts*, 5 B. & C., 829. In another case, however, when a plaintiff had bought timber whilst standing, and was to cut it down, the contract of sale was held to be within the 4th section, although it did not appear when it was to be cut, or what state it was in as to growth at the time of the contract, *Scorell* v. *Boxall*, 1 Y. & J., 396, and in the same case Baron Hullock distinguished between crops and other articles which are raised by the industry of man; and things, such as trees, which give no annual profit. Although there has been some uncertainty in the law relating to the subject, the principles laid down by Mr. Benjamin in his treatise on

the sale of personal property, (pp. 88-90) based as they are, on the remarks of Mr. Justice Blackburn (Blackb. on Sales, 9, 10), are substantially correct of these principles; the first is that an agreement to transfer the property in anything attached to the soil at the time of the agreement, but which is to be severed from the soil and converted into goods, before the property is transferred by the purchaser, is an agreement for the sale of goods, an executory agreement within the 17th section. The second principle enunciated is, that when there is a perfect bargain and sale vesting the property at once in the buyer between severance, a distinction is made between the natural growth of the soil and *fructus industriales*. The former is an interest in land, the latter are chattels. These distinctions have been dwelt upon by Chitty likewise in his work on contracts. He gives at p. 80 the general rule in somewhat similar terms.

We shall now be better able to appreciate the difficulty in *Brantom* v. *Griffiths*. So far as relates to the provisions of the Statute of Frauds, we have seen that the sale of anything attached to the soil may or may not be a sale of an interest in land according to the time when it is intended that the property should vest in the vendor, and to the nature of the thing sold. We are thus enabled to get to one conclusion, namely, that growing crops are not goods and chattels in point of law for all purposes and under all circumstances. When dwelling upon this point, Mr. Justice Brett quoted with approbation a passage from Williams on Executors (7th edit. p. 709), in which the law is thus stated: "There are certain vegetable products of the earth which, although they are annexed to and growing upon the land at the time of the occupier's death, yet as between the executor or administrator of the person seized of the inheritance, and the heir in some cases, and between the executor or administrator of the tenant for life, and the remainderman or reversioner, in others, are considered by the law as chattels, and will pass as such. These are usually called emblements. The vegetable chattels so named are the corn and other growth of the earth, which are produced annually, not spontaneously, not by labour and industry, and thus are called *fructus industriales*." In the present case the growing crops had belonged to the occupiers of a farm. The plaintiff, after the assignment, allowed the growing crops to remain on the land. Now, if we proceed upon the analogy of the cases upon the Statute of Frauds, the crops in question were chattels within the 17th section. Besides, at common law a growing crop, produced by the labour and expense of the occupier of lands, was, as the representation of that labour and expense, considered an independent chattel: per Justice Bazley in *Evans* v. *Roberts* (sup.) quoted in Benjamin on Sales, p. 90. Hence arises the question, should this analogy be applied to cases under the Bills of Sale Act.

In the judgment of Mr. Justice Brett was cited a number of instances where it is stated that growing crops are considered as mere chattels, but his Lordship nevertheless came to the conclusion that "although they are chattels for some purposes they are not so for all, and therefore they cannot be said to be within the Bills of Sale Act because they are chattels for all purposes, nor without the Act because they are chattels for no purposes." He then proceeds to consider whether they are goods. The argument against the contention that they are goods was, that the Act only includes goods which are capable of complete transfer by delivery, and that the statute only applies to things which at the time when the statute is to be applied to them might be delivered and are not, which is not the case with growing crops; these, therefore, are not within the Bills of Sale Act. This view was adopted by Mr. Justice Brett. A decision of the Court of Common Pleas in Ireland (*Sheridan* v. *M'Cartney*, 5 L. T. Rep. N. S., 27) in which the contrary was held, was adduced as an authority, but overruled on the ground that Chief Justice Monahan overlooked the real meaning of the provision as to stock or produce which ought not to be removed; "For it seems to me," said Mr. Justice Brett, "to apply to farm stock or produce, which is severed from the land, and which could be delivered, but by agreement or custom is prevented from being delivered, such as straw, and other things of a similar nature." Speaking of the quotation at Westminster of authorities

from the Irish and Scotch courts generally, his Lordship remarked that "Irish and Scotch decisions, although they ought to be treated with deference, are not binding upon us in the same way as decisions of the courts in this country." The authority of the Irish case quoted had already been questioned by the Court of Exchequer in *Gough* v. *Everard*, 8 L. T. Rep. N. S., 363, where Chief Baron Pollock said in effect that the decision could be supported only by a liberal interpretation of the statute, and that such an interpretation would be quite inappropriate when the parties were acting honestly. We do not think that the reasoning of the judgments in *Brantom* v. *Griffiths* is altogether satisfactory, although we think the equity of the case has been met. The weak point in the reasoning of the judgment of Mr. Justice Brett appears to be that there is no sequence between his conclusion that growing crops are not chattels for all purposes, and his instances of cases where growing crops are treated as chattels. Perhaps, too, it is unfortunate that nothing, so far at least as can be gathered from the report of the case, was said of the numerous cases upon the construction of Statute of Frauds. As we have already said, we think the result of the case does no wrong; but we should have been better pleased had the reasoning been more strictly logical.—*Law Times.*

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

CARROLL v. STRATFORD.

Practice Court—Appeal from.

Held, that an appeal lies from a judgment of the Practice Court to the Court of Appeal on a rule to set aside an award.

[October 24, 1876.—MR. DALTON.]

A rule to set aside an award in favour of the defendants was discharged by the learned judge, sitting in Practice Court. The defendants' costs were then taxed, and judgment entered, when the plaintiff took out a summons for stay of proceedings, on filing the proper bond, pending an appeal to the Court of Appeal.

H. J. Scott shewed cause, and cited *Brown* v. *Overholt*, 14 Q. B. 64, to shew that no appeal lies in such a case. It is a matter of discretion with the Practice Court whether it will interfere with an award or not, and its judgment in such a case is therefore not appealable. Even though the plaintiff should establish his right to an appeal, it does not follow that he has a right to have proceedings stayed. In such cases a stay of proceedings is a favor, the granting of which is wholly in the discretion of the judge, and it should not be granted unless special circumstances are shewn entitling the applicant to this relief: *McCleary* v. *Smith*, 5 U. C. L. J. 212.

Meek, contra. Under the Act as to the Court of Error and Appeal, all decrees of whatever kind of the Court of Chancery are appealable, and by sec. 44 of the A. J. Act of 1873, Common Law has in this respect been put on the same footing with Chancery, so that the case of *Brown* v. *Overholt* is practically overruled. The amount of costs taxed against the plaintiff is very large, and there is danger of his not being able to recover it from the defendants in case the judgment of the Court of Appeal should be in his favour.

MR. DALTON thought that the intention of the recent legislation on the subject of appeals was to allow an appeal from all decisions of the Superior Courts, and the spirit of modern legislation certainly tends in that direction. He therefore made the summons absolute.

Order accordingly.

ELORA AGRICULTURAL INSURANCE COMPANY v. POTTER.

Held that where a reference is directed to "the Judge" of a certain county, the senior Judge is the person referred to.

[Oct. 25, 1876—MORRISON, J.]

This case was referred to the arbitration of "the Judge of the County of Wellington." An appointment under this reference having been given by the Junior Judge of the County, a summons was taken out to set it aside.

W. S. Smith shewed cause.

Osler, contra.

MORRISON, J., made the summons absolute, holding that the word "judge" in the order of reference, must be restricted in its application to the senior Judge.

CLUXTON v. DICKSON.

Date of added plea—Jury notice filed therewith—32 Vict., cap. 6, sec. 18.

Held 1. That a plea added after issue joined refers back to the date of the original pleas, and should not be dated as of the day when it is filed.

2. That such plea is a "last pleading" within the meaning of the Law Reform Act, cap. 6, sec. 18, sub-sec. 1, and may have a jury notice filed with it.

[Sept. 30, 1876—MR. DALTON.]

Action on the case. Issue was joined on the 20th March, 1876, and notice of trial given for the Spring Chancery Sittings at Peterborough. The trial was postponed at the sittings, and on Sept. 18th the defendants obtained leave to add a plea, which was filed as of that date, a notice for jury being served along with it. On the day following the service of the added plea, the plaintiff gave notice of trial for the ensuing Chancery Sittings. Cross summonses were then taken out on behalf of the plaintiff to set aside the jury notice and added plea, and on behalf of the defendant to set aside the notice of trial, and to postpone the trial till the Fall Assizes.

Osler shewed cause to the first summons, and supported the second, contending that the added plea was properly dated as of the day when it was filed, under the 77th section of the C. L. P. Act. Even if it is irregular, the plaintiff has waived the irregularity by giving notice of trial. The jury notice is regular, being filed with the last pleading: 32 Vict., cap. 6, sec. 18. The notice of trial should be set aside, as it had been irregularly given after the defendant has filed and served a notice for jury.

W. R. Mulock, contra. If the plea is irregular the jury notice must fall with it, as no order allowing the defendant to file it has been granted. The plea should be of the same date as the original pleas: *Short* v. *Simpson*, L. R. 1 C. P., 250.

MR. DALTON. It has been the practice of the Courts not to date an added plea, as it is a portion of the original pleas, and relates back to their date, otherwise there would be two sets of pleadings on the record. The plea is, therefore, irregularly dated. I think, however, that it is a "last pleading" within the meaning of the Law Reform Act, and that the jury notice is good. The plaintiff has not waived the irregularity in the plea by serving notice of trial, but he had no right to give such notice for the Chancery Sittings when a jury notice was filed. I therefore discharge the plaintiff's summons, and make the defendant's summons absolute, both without costs.

Order accordingly.

FITCH v. WALKER.

Ejectment summons—Currency of—C. S. U. C., cap. 27, sec. 3.

A writ of summons in ejectment, issued on 30th June, is from effete after midnight of the 29th Sept.

[Chambers, Oct. 14–20, 1876.—MR. DALTON and MORRISON, J.]

A writ of summons in ejectment was issued on the 30th June, 1876, and was served on the 30th September, following.

C. R. W. Biggar, for the plaintiff, obtained a summons to set aside the copy and service on the ground that the writ had expired at midnight on the 29th September.

Mr. Bishop (Fitzgerald & Arnold), contra.

MR. DALTON made the order, holding that the C. S. U. C., cap. 27, sec. 3, which provides that the writ "shall be in force for three months," means three months inclusive of the date of the writ. From this order the plaintiff appealed to to a judge.

Arnoldi, for the appeal, cited *Scott* v. *Dickson*, 1 Prac. R., 360; *Leeson* v. *Higgins*, 4 Prac. R., 340; *Lester* v. *Garland*, 15 Ves., 248; *Webb* v. *Fairmaner*, 3 M. & W., 473; *Young* v. *Higgon*, 6 M. & W., 49; *Isaacs* v. *Royal Insurance Co.*, L. R. 5 Ex., 296; *McRae* v. *Waterloo Mutual Insurance Co.*, (before Galt, J. not yet reported).

Biggar, contra, cited *Converse* v. *Michie*, 16 C. P., 167; *Freeman* v. *Read*, 4 B. & S., 184, 185; *Russell* v. *Ledsam*, 14 M. & W., 588; *Bank of Montreal* v. *Taylor*, 15 C. P., 107.

MORRISON, J. discharged the summons without costs, taking the same view of the law as Mr. Dalton, but considering the question fairly open to argument.

NOTES OF CASES.

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

QUEEN'S BENCH.

HILARY TERM, 1876.

LAWRIE v. RATHBURN ET AL.

Registry Law—Omission to index deed—29 Vict. c. 24—Confusion of property.

The plaintiff claimed lot 25 under a deed from the heirs at law of S., the patentee, executed in 1875. Defendants claimed under a deed from

S. dated and registered in 1867, but the registrar had omitted to enter defendants deed in the abstract index, and in consequence, when the plaintiff enquired at the registry office before taking his deed, he was told that the patentee had made no conveyance. *Held*, under 29 Vict. c. 24, D., that the Registrar's omission did not invalidate the registration, or deprive defendants' deed of its priority.

The divisions of a statute, under which the clauses are arranged and classified, may be looked to as affording a key to the construction.

The plaintiff had cut timber on lot 24, which was his, and on lot 25, believing that he owned both lots, and all had been drawn away together to a lake about three miles distant. Defendants' agent took away a quantity, which had been cut on both lots, being forbidden by the plaintiff, who swore that he could have distinguished the timber cut on each lot by the marks, and told defendants' agent so, but that the agent said he would take it no matter where it came from. *Held*, that defendants were liable in trespass for the timber cut on lot 24.

The authorities as to confusion of property reviewed.

Julia Elizabeth Blackmore, Administratrix of Lewis Harrold Blackmore, deceased, v. The Toronto Street Railway Company.

Street R. W. Co.—Accident to newsboy—Right of action—Negligence—Contributory negligence.

The deceased, a boy selling newspapers, got on a street railway car at the rear end and passed through the car to the front platform, where the driver was standing. He stepped to one side behind the driver, and fell off or disappeared from the car, there being no step on that side, and was killed by the car running over him. He had said just before that he was going on some distance further in the car, and the conductor at the time stated that he had reported the want of a step to the owners of the railway, but it had not been attended to. There was plenty of room in the car, but it was proved that passengers were always allowed to stand on the platform. It was not shewn that the deceased had either paid or been asked for his fare, but it appeared that newsboys were allowed to enter the cars to sell newspapers without being charged.

Held, that the deceased was lawfully on the car, and being so was entitled to be carried safely, whether he was a passenger for reward or not.

Held, also, Morrison, J., dissenting, that there was evidence for the jury of negligence on the part of defendants in the absence of the step, and no such contributory negligence on the part of the deceased as should, as a matter of law, prevent the plaintiff's recovery. A non-suit was therefore set aside.

Upon appeal this decision was reversed, on the ground that unless the deceased was upon the cars as a passenger, on a contract of carriage express or implied, and not as a mere licensee or volunteer, he had no right of action against the defendants for the absence of the step, which was no breach of duty to him, but must take the car as he found it; and that upon the evidence he must be taken to have been a licensee only.

Regina v. William Henry Smith.

Indictment for Murder—Evidence of accomplice—Empannelling Jury—Challenge for cause—Trial of.

Upon a trial for murder it appeared that the deceased was found dead in his stable in the morning, killed by a gun shot wound. The prisoner was a hired man in his house. His widow the principal witness for the Crown, testified that she and her husband went to bed by ten o'clock; that afterwards her husband, being aroused by the noise in the stable, got up and went out; that she heard the report of a gun; that a few minutes after the prisoner tapped at the door which she opened; that he said he had done it; that he told her to keep quiet, and give him time to get into bed, which she did; that she waited a few minutes and then gave the alarm, calling the prisoner and another man who was sleeping in the house, who went out together and discovered the body. She also swore that the prisoner had told her he was planning the murder, but that she did not then consider him in earnest. There was evidence, apart from her own, of her improper intimacy with the prisoner, and a true bill had been found against her for the murder.

The jury were told that there was no direct evidence corroborating her testimony; the rule requiring the evidence of an accomplice to be confirmed was explained to them, and they were directed that before convicting they should be satisfied the circumstantial evidence relied upon by the Crown did corroborate her testimony. They convicted. Questions were reserved under C. S. C. ch. 112, whether the widow was an accomplice, and whether there was sufficient evidence to submit to the jury.

Held, that whether she was an accomplice or not, there was no ground for disturbing the verdict.

Quaere, per Harrison, C. J., whether the widow was an accessory after the fact, and whether if so she was such an accomplice as to require corroboration according to the rule of practice.

Per Wilson, J., she was an accessory after the fact.

After some jurors had been peremptorily challenged by the prisoner, and others directed by the Crown to stand aside, and when only one had been sworn, one M. was called and challenged by the prisoner for cause, At the suggestion of the Court, and with the consent of counsel, M. was directed to stand aside by the Crown "till it was ascertained whether a jury could be empannelled without him, on the understanding that if it appeared necessary or expedient the challenge for cause should be tried in the usual way." After the prisoner had made nineteen peremptory challenges, a juryman was called whom the prisoner desired to challenge peremptorily. The counsel for the Crown then asked the question if M's competency should be tried in the usual way. The prisoner's counsel objected, but the Judge ruled with the Crown, and he certified that he so ruled because it was in accordance with the arrangement under which the juror was directed to stand aside; that no exception was taking to this ruling; that he was not asked to note any objection to the mode of empannelling the jury; and that he was first asked to reserve the question after the assize had finished, when, upon the consent of counsel for the Crown, it was added to the other questions reserved. *Held*, that the jury was properly empannelled.

Mann et al. v. English et al.

Mortgage—Right of mortgagee to maintain trespass or trover for cutting timber—Liability of wrongdoers.

The first count of the declaration alleged that one B. was the owner of certain lands, described, in fee simple, and mortgaged it to the plaintiffs in fee, subject to a proviso for redemption on payment of $1,350, and interest, by instalments, as specified: that it was provided in the mortgage that B. should not, without the plaintiffs' written consent, cut down or remove any of the standing timber until the first four instalments of principal and interest up to a certain date should have been paid; and that if default should be made in paying the interest the whole principal should become due. It then alleged a default in payment of principal and interest, and that the defendants afterwards, without plaintiffs' leave, and against their will, entered on their land and cut down and removed timber and trees, thereby injurrng the land, and making it an insufficient security to the plaintiffs for the mortgage debt. There was also a count in trover for the trees.

It appeared that the mortgage was one under the Act respecting short forms, with the ordinary proviso for possession by the mortgagor until default, and a covenant not to cut timber, as alleged. The jury, in answer to questions, found that R. had cut down the timber, the other defendant, E. assisting him, in order to sell it and level the place depreciated: that the damage thus done was $150; and that defendants did not purchase it from R. (as had been asserted) believing that he was entitled to sell it; but they said, after their verdict had been recorded against both defendants as these answers, that they did not intend to find E. guilty.

Held, that the action was maintainable, and the verdict properly entered against both defendants, the jury having found them to be joint wrong-doers: that the mortgagee was not restricted to his action on the covenant, but might certainly maintain trover; and *Semble* that, though not in actual posession, he might under the circumstances, maintain trespass also.

Quære, whether the first count was in case for injury to plaintiffs' revisionary interest, or in trespass.

Sembls, that it was a trespass; but *held*, that it disclosed a good cause of action.

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS

FOR FEBRUARY, MARCH, AND APRIL, 1876.

From the American Law Review.

(*Continued from p.* 292.)

Legacy.

1. A testatrix bequeathed her personal property to her husband for life, and after his decease to be divided amongst her five children, share and share alike; and if any of her children should die without issue, then that child's share should be divided among the children then living; but if any child should die leaving issue, then that child should take its parent's share. The husband and the five children survived the testatrix, and the children survived the tenant for life. *Held*, that each child was absolutely entitled to a fifth of the property on the death of the tenant for life.—*Olivant* v. *Wright*, 1 Ch. D. 346; s. c. L. R. 20 Eq. 220.

2. A testatrix bequeathed one moiety of her property in trust to pay the income to her daughter A. for life, and the other moiety in trust to pay the income to her daughter B. for life; and she directed her trustees to stand possessed of one moiety of her estate immediately after the death of A., and of the other moiety after the death of B., in trust to pay, transfer, and assign the same unto and amongst all and every the child or children of A. living at the time of A.'s decease, and the issue then living of any child or children of A. who should have died in A.'s lifetime, and all and every the child or children of B. living at the time of B.'s decease, and the issue then living of any child or children of B. who should have died in B.'s lifetime, to be equally divided between them; and if there should be but one such child, and no issue of any deceased child, or no such child, and only one grandchild, or such other issue, then the whole to such one child, grandchild, or other issue; the issue of any deceased child to take the same and no greater share than his, her, or their parent or parents would have been entitled to if living. A. died leaving ten children and one grandchild, the issue of a deceased child; and B. died leaving two children and six grandchildren, the issue of a deceased child. It was contended, that, upon the death of A., one moiety of the property became divisible between A.'s children and grandchild; and that, upon the death of B., the other moiety became divisible between her children. *Held*, that the entire property was divisible upon the death of the survivor of A. and B., and must be divided into fourteen parts, A.'s grandchild taking one-fourteenth, and B.'s six grandchildren taking one-fourteenth, as a class.—*Swabie* v. *Goldie*, 1 Ch. D. 380.

See CHARITABLE BEQUEST; CONDITION, 1; DEVISE; EXECUTORS AND ADMINISTRATORS; ILLEGITIMATE CHILDREN; MARSHALLING ASSETS; WILL, 4.

LETTER.—*See* CONTRACT, 2; LIMITATIONS, STATUTE OF.

LEX FORI.

A pier at Marbella, in Spain, belonging to an English company, was injured by an English steamship. By the law of Spain, in such cases the master and mariners of the ship, and not the ship or her owners, are liable in damages. The company instituted a cause of damage in England against the steamship. *Held*, that the law of England, and not that of Spain, governed the case.—*The M. Moxam*, 1 P. D. 43.

LEX LOCI.—*See* CONTRACT, 2: LEX FORI.

LIBEL.—*See* DEFAMATION.

LIEN.

W. was appointed agent of a company to sell its goods, and the company was to be at liberty to draw bills upon W. for such a reasonable amount as was represented by the goods on W.'s premises. Should W. not have sufficient funds in hand to meet the bills, the company undertook to remit the amount to make up such deficiency. The company drew bills on W., which he accepted. Before the bills became due, the company filed a petition to wind up. *Held*, that W. had a lien on the goods in his possession for the amount of said bills.—*In re Pavy's Patent Felted Fabric Co.*, 1 Ch. D. 631.

LIFE INTEREST.—*See* APPOINTMENT; DEVISE, 2.

LIMITATIONS, STATUTE OF.

To an action for work done the defendant pleaded the statute of limitations. The plaintiff, to show an acknowledgment of the debt, put in evidence the two following letters written to the plaintiff within six years before action began: "I shall be obliged to you to send in your account, made up to Christmas last. I shall have much work to be done this spring, but cannot give further orders until this be done. S."—"You have not answered my note. I again beg of you to send in your account, as I particularly require it in the course of this week." No account was sent in. *Held*, that the debt was taken out of the statute.—*Quincey* v. *Sharpe*, 1 Ex. D. 72.

LIGHTS.—*See* SHIP.

LUGGAGE.—*See* CARRIER.

MAINTENANCE.—*See* CHAMPERTY.

MAINTENANCE AND SUPPORT.—*See* TRUST.

MARRIAGE.

S., who had enjoyed a champagne-supper with W. and his family, knelt on one knee before a daughter, took a wedding-ring from his pocket, and placed it on the daughter's third finger, and said to her, "Maggie, you are my wife before heaven, so help me, O God!" and the two kissed each other. The daughter said, "Oh Major!" and put her arms round his neck. S. and the daughter were then "bedded" according to an old Scotch fashion, which seems to consist in throwing a pillow at the parties. Cohabitation and a boy followed. *Held*, that on the above facts, and all the circumstances of the case, no marriage was contracted under the Scotch Law.—*Stewart* v. *Robertson*, L. R. 2 H. L. Sc. 494.

MARRIAGE, RESTRAINT OF.—*See* CONDITION.

MARRIGE SETTLEMENT.—*See* ELECTION, 2; SETTLEMENT.

MARSHALLING ASSETS.

The personal estate of a testator not specifically bequeathed was insufficient to pay his funeral and testamentary expenses and debts. *Held*, that as between pecuniary legatees, specific legatees, and specific devisees, the pecuniary legacies were the primary fund to supply the deficiency.—*Tomkins* v. *Colthurst*, 1 Ch. D. 626.

See PARTNERSHIP.

MASTER AND SERVANT.

The plaintiff, a licensed waterman and lighterman, was in the employ of the defend-

ant, a corn-merchant and warehouseman, and owner of several barges. It was the plaintiff's duty to attend to the mooring and unmooring of barges: and there were two ways of passing from the defendant's premises to the barges, viz., by going down certain stairs to the water at the end of a street, and thence by wherry to the barges; or by going from the defendant's warehouse through a doorway to the barges, the latter being the way the plaintiff usually adopted. The plaintiff, on leaving defendant's premises by said doorway, was injured by a sack of peas falling on him through the negligence of the defendant's men. *Held*, that the defendant was not liable. —*Lovell* v. *Howell*, 1 C. P. D. 161.

Mortgage.

1. Mortgagees, being of opinion that their security would be insufficient to pay their debt, proved their whole claim against the mortgagor, who was in bankruptcy, and received a dividend under a compromise made without prejudice to securities, and under which the bankrupt's estate was relieved from further liability to creditors. Subsequently the mortgaged property proved sufficient to pay the whole of said mortgagee's debt, and to leave a surplus. There were subsequent mortgagees of said mortgaged property, who claimed that the dividend received by the prior mortgagees should enure to their benefit. *Held*, that said dividend must be repaid to the bankrupt's estate for the benefit of the general creditors.—*Sawyer* v. *Goodwin*, 1 Ch. D, 351.

2. Gray mortgaged Blackacre to Oliver, and subsequently to other parties. Each mortgagee had notice of every other mortgage. Gray then mortgaged Whiteacre to Baker. Baker agreed with Gray to pay off Oliver's mortgage; and Gray agreed to concur with Oliver in a transfer of Oliver's mortgage to Baker, and to give a charge on his equity in Blackacre, subject to the said other mortgages upon it. Oliver's mortgage was accordingly transferred to Baker, who paid to Oliver the amount due on his mortgage. Baker then filed a bill praying a declaration that he was entitled to consolidate his two mortgages, and that the subsequent mortgagees of Blackacre were not entitled to be paid until both his mortgage-debts were paid. *Held*, that Baker was not entitled as against the subsequent mortgagees of Blackacre to consolidate his two mortgages. —*Baker* v. *Gray*, 1 Ch. D. 491.

3. A testator directed that his debts should be paid, and then devised a certain estate to J., one of his executors, subject to and chargeable with the payment of the testator's debts. J. mortgaged said estate to C., and used the mortgage money for his own purposes. C. had no notice of the purpose to which J. intended to apply the mortgage-money. *Held*, that the mortgagee held the estate free from any charge for the payment of the testator's debts.—*Corser* v. *Cartwright*, L. R. 7 H. L. 731; s. c. L. R. 8 Ch. 971; 8 Am. Law Rev. 547.

See Contract, 1; Covenant; Devise, 1, 5.

Name.

Provision in a devise that the devisee must take the arms and name of G. *Held*, that the name of G. must be taken and used after the previous name of the devisee. Using it before the devisee's surname was not a compliance with the condition. — *D'Eyncourt* v. *Gregory*, 1 Ch. D. 441.

Negligence.

The defendant, an agistor of cattle, placed the plaintiff's colt in a field with several heifers, and the colt was there killed by a bull. The bull belonged on land adjoining the defendant's field, but separated from it by a narrow ditch. The defendant knew that the bull had been several times found on his land, the ditch not being sufficient to keep him out; but there was no evidence that the bull was of a mischievous disposition. The jury found the defendant guilty of negligence. *Held*, that the defendant was liable, although ignorant of the mischievous disposition of the bull.—*Smith* v. *Cook*, 1 Q. B. D. 79.

See Master and Servant; Ship.

Notice to Repair.—*See* Lease, 1.

Parishioner.

"Parishioner" takes in, not only inhabitants of the parish, but persons who are occupiers of land, that pay the several rates and duties, though they are not resiant and do not contribute to the ornaments of the church.—*Etherington* v. *Wilson*, 1 Ch. D. 160.

Partnership.

By partnership articles, D. was to be a partner with A. and B. in profits, but not in the capital stock, and he was not required to find any capital. D.'s partnership was to continue for twelve years, at the expiration of which term his interest in the concern was to cease. If D. died during such term, his representatives were to receive a proportionate part of his share of the profits of the current half-year for the period up to his decease, to be ascertained according to the average of the last two preceding half-yearly stock-takings. D. died; after which the business was carried on by A. and B. until A.'s death, and then by B. alone. A creditor of the firm, in respect of a debt contracted while the firm consisted of A., B., and D., claimed to have the whole of B.'s estate applied in payment of all the creditors of A., B., and D., without regard to whether their debts were contracted before or after the death of D., or before or after the death of A. There were in existence specific assets which had belonged to the firm while it consisted of A., B., and D. *Held*, that, under the partnership articles, D.'s executors had a right to have the debts existing at D.'s death paid out of the then existing assets; that the assets then on hand, and now existing *in specie*, must therefore be applied in payment of the creditors of the original firm of A., B., and D., and that, therefore, such creditors could not take B.'s separate assets until his separate creditors had been

paid in full.—*Ex parte Dear. In re White*, 1 Ch. D. 514.

See Bankruptcy, 3.

Payments, Appropriation of.—*See* Appropriation of Payments.

Pecuniary Legatee.—*See* Marshalling Assets.

Peer of England.

A Peer of the British Parliament is not incapacitated from acquiring a domicile in a foreign country by reason of his duty to advise the Queen when she calls upon him for advice, or to attend the House of Peers whenever his attendance there is required.—*Hamilton* v. *Dallas*, 1 Ch. D. 257.

Per Capita.—*See* Legacy, 2.

Perpetuity.—*See* Charitable Bequest; Specific Performance.

Per Stirpes.—*See* Legacy, 2.

Peril of the Seas.—*See* Danger of the Seas.

Principal and Agent.—*See* Broker; Contract, 3.

Priority.—*See* Partnership.

Promissory Note.—*See* Bills and Notes.

Proviso.—*See* Condition, 1; Settlement, 2.

Proximate Cause.—*See* Charterparty, 1.

Punishment, Eternal.—*See* Church of England.

Reinsurance.—*See* Insurance, 1.

Remainderman.—*See* Devise, 5.

Repugnancy.—*See* Settlement, 2.

Resulting Trust.—*See* Settlement, 1.

Reversionary Interest.—*See* Appointment; Ejectment.

Right of Way.—*See* Way.

Sale.—*See* Bankruptcy, 2-4; Contract, 3; Devise, 5.

Scotch Marriage.—*See* Marriage.

Seaworthiness.—*See* Insurance, 4.

Security.—*See* Bankruptcy, 6, 9; Mortgage.

Settlement.

1. Real estate was settled to such uses as A. and B. should by deed jointly appoint and subject thereto to the use of A. for life, remainder to the use of B. for life, remainder to the use of the first and other sons of B. successively in tail male, with remainder over. A power of sale was invested in four trustees exercisible at the request of A. and B., and the proceeds of any sale under this power were to be settled to the same uses as the property sold. A. and B., in exercise of their power of appointment, appointed a portion of said real estate to certain persons in trust for sale, and to stand possessed of the proceeds upon trusts to be declared in an indenture. No indenture was ever executed. It appeared from other evidence that the power was exercised to avoid the trouble and expense of calling on the trustees to sell. *Held*, that it sufficiently appeared, from the settlement and appointment by A. and B., that there was to be a resulting trust of the proceeds of said sale for the benefit of those who were to take under the settlement, and that said evidence showed that such was the intention of A. and B.—*Biddulph* v. *Williams*, 1 Ch. D. 203.

2. A fund was settled by W. upon trust for his illegitimate daughter for life, and, in case she should die unmarried, in trust for her, her executors, administrators, and assigns; and it was provided that if any estate, interest, or benefit, should, under the trusts, powers, and provisions of the settlement, be undisposed of, or, in the events which should happen, should, but for this proviso, be held upon trust for the crown, or belong beneficially to the crown, then such estate, interest, or benefit, should be held in trust for W. for life, and, after his decease, in trust for W.'s wife absolutely. The daughter died unmarried and intestate. *Held*, that the daughter was absolutely entitled to said fund at her death; and that said proviso was consequently repugnant to law, and void; and that the crown was therefore entitled to the fund.—*In re Wilcox's Settlement*, L. R. 1 Ch. D. 229.

3. By a post-nuptial settlement, reciting that D. was desirous of making provision for his wife and his children by her, D. settled property upon trust to pay the income to his wife for life, and, after her decease, in trust for all and every the child and children of D. by his wife begotten or to be begotten, who, being a son or sons, should attain twenty-one, equally to be divided among them and their respective executors and administrators; and, if there should be but one such child, the whole to be in trust for such one or only child, and *his or her* executors and administrators; and there was a provision concerning the application of the dividends of the presumptive share of every child "towards *his or her* respective support, maintenance, and education, until such *his or her* respective share shall become vested, or *he or she* shall previously die." D. and his wife died, leaving sons and daughters who had all attained twenty-one. *Held*, that the daughters were entitled to share in the property.—*In re Daniel's Settlement Trusts*, 1 Ch. D. 375.

4. By a marriage settlement, £50,000 belonging to the wife was conveyed to trustees to pay the income to the spouses for life, and, on the death of the survivor, to pay over the whole to the child or children as the spouses should appoint. The husband bought certain estates, and borrowed £25,000 of said trust fund to pay the price, securing this sum on said estates; and he afterwards executed an entail of the estates. The spouses subsequently by deed appointed that the $25,000 secured as aforesaid should "be settled on and belong to our eldest son and other members of our family in succession, being heirs in possession of the entailed estates." Said sum was also referred to in the deed as

the sum which "we have allotted and apportioned, and do hereby allot and apportion as the share of our eldest son, or, failing him, of the heir of entail succeeding to the said entailed estate." The deed also contained this clause: "It being our desire and appointment that said trustees should, immediately on the death of the survivor of us, renounce and discharge said [security on said estate,] and disburden said lands and estates." *Held*, that the eldest son was absolutely entitled to said $25,000; and that said final clause, expressing a desire, did not take away from the ownership created by the previous clauses. *McDonald* v. *McDonald*, L.R. 2 H.L. Sc. 482.

5. A husband and wife had three children, A., B., and C. On the marriage of A., an estate called Sonna was settled on said husband and wife for life, remainder to A. for life, remainder to his sons in tail male, and in default, &c., to B. for life, remainder to his sons in tail male. On the marriage of B., an estate called Ballycommon was settled on said husband and wife for life, remainder to B. for life, remainder to his sons in tail male, and in default, &c., to C. for life, and after C.'s death to A. for life, remainder to the *second son* of A. and the heirs male of his body, and in default to the third, fourth, fifth, and every other son of A., *save and except an eldest son*, severally and successively in tail male, the elder of such sons other than an eldest son to be preferred and take before the younger of such sons, and, in default or failure of such issue, over. A. had one son. B. had no issue. C. had her life-estate in Ballycommon, and died. It was contended that the phrase, "save and except an eldest son," was intended to apply only to the case of a son of A., who had younger brothers, and not to the case of A.'s having an only son. *Held*, that A.'s son was not entitled to Ballycommon.—*Tuite* v. *Bermingham*, L. R. 7 H. L. 634.

See Election, 2.

Shareholder.—*See* Bank.

Ship.

A sailing vessel under way was overtaken and run down by a steamer. *Held*, that it was not the duty of the sailing vessel to exhibit a light over her stern.—*The Earl Spencer*, L. R. 4 Ad. and Ec. 431.

See Carrier; Charterparty; Collision; Danger of the Seas; Freight; Insurance, 1, 2, 4; Lex Loci; Salvage.

Shop.—*See* Dwelling-Place.

Slander.—*See* Defamation.

Special Damage.—*See* Defamation.

Specific Devisee.—*See* Marshalling Assets.

Specific Legatee.—*See* Marshalling Assets.

Specific Performance.

Lease for forty years, with concurrent lease for ninety-nine years, if A., B., and C., or any of them, should so long live, with covenant by the lessor to put in another life or lives in place of said A., B., and C., should any of them die during said forty years. The lease for forty years was void. A. died, and the lessor appointed no life in his place. The lessee brought a bill for specific performance. *Held*, as the only ground for specific performance was that the covenant created an equitable estate at the time of execution of the lease, and as such estate would be for more than three lives, and therefore void by statute, the covenant could not be enforced. Bill dismissed.—*Moore* v. *Clench*, 1 Ch. D. 447.

Statute.—*See* Interest; Lease, 2; Wager; Will, 4.

Steamship.—*See* Carrier; Collision.

Steam-Tug.—*See* Collision.

Surety.—*See* Bankruptcy, 6.

Tacking.—*See* Mortgage, 2.

Tenant for Life.—*See* Devise, 5.

Tenant in Common.—*See* Devise, 8.

Ticket.—*See* Carrier.

Title.—*See* Lease, 2; Mortgage, 3.

Trespass.

The wife of the brother of a man who had died in a fit of delirium tremens removed certain jewelry belonging to the deceased from the room where he died, and put them in a cupboard in another room for safety. The jewelry was stolen, and the executor of the deceased brought trespass against the brother and his wife. At the trial, the judge directed the jury to find for the defendants. A rule was obtained for a verdict for the plaintiff for one shilling; or for a new trial, if the court should be of opinion that on the above facts the plaintiff was entitled to a verdict. *Held*, that the plaintiff was entitled to recover as the defendants did not show that the removal was reasonably necessary for the preservation of the jewelry. Verdict for one shilling without costs.—*Kirk* v. *Gregory*, 1 Ex. D. 55.

Trover.—*See* Broker, 1; Trespass.

Trust.

Trustees who are authorized to expend a certain sum in the maintenance and support of children may pay the expenses of education from such sum.—*In re Breeds' Will*, 1 Ch. D. 226.

See Devise, 6; Election, 1; Executors and Administrators, 2; Settlement, 1.

Unseaworthiness.—*See* Insurance, 4.

Vested Interest.—*See* Devise, 2, 3.

Voluntary Settlement.

A silk merchant assigned two policies of insurance for £1,000 each upon his life to trustees for the benefit of his wife, and, a year later, assigned to said trustees his household furniture in trust for his wife and children. The trader died eight months later, insolvent. At the time of the first assignment, the merchant was doing a business of £100,000 per annum; but an inquiry showed that his liabilities then exceeded his assets by £1,293,

and that, at the time of the second assignment, they exceeded his assets by £10,726. A creditor, whose debt was contracted after the first but before the second assignment, filed a bill for a declaration that both said assignments were void. No creditor was before the court whose debt was contracted before the first assignment. *Held*, that both said assignments were fraudulent against the plaintiff and other creditors, and void.—*Taylor* v. *Coenen*, 1 Ch. D. 636.

Voyage.—*See* Insurance, 2.

Wager.

The plaintiff agreed with A. that if he should prove the curvature or convexity to and fro of the surface of any canal, river, or lake, by actual measurement and demonstration to the satisfaction of W., then A. was to receive the sums which the plaintiff and A. had deposited with W. to abide the issue. W. decided in favor of A.; and the plaintiff objected to his decision, and demanded back his deposit. By statute, no suit shall be brought to recover any sum of money alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event of any wager. *Held*, that said agreement was a wager, and that the plaintiff was entitled to recover back his deposit from W.—*Hampden* v. *Walsh*, 1 Q. B. D. 189.

Waiver.—*See* Lease, 1.

Warranty.—*See* Damages; Insurance, 4.

Way.

A road to a farm house, farm-lands, and a piece of woodland, had been used immemorially for agricultural purposes. About thirty years before the filing of the bill in this case, a wing was added to the farm-house and a new stable built, and the materials together with sand and gravel were carted over said road; and a few years later the farm-house was altered from a clay tenement into a brick cottage, and the materials carted over the road; the road was also used by persons having the right of shooting on the farm. The tenant of part of said farm-lands prepared to build a house on his land, and a bill was filed praying an injunction. *Held*, that the tenant had no right of way for carting materials for the proposed new house.—*Wimbleton and Putney Commons Conservators* v. *Dixon*, 1 Ch. D. 362.

Will.

1. Certain alterations in a will bore date prior to the date of the will. *Held*, that, in the absence of further evidence, the alterations must be presumed to have been made after the date of the will, and must be rejected.—*In the Goods of Adamson*, L. R. 3 P. and D. 253.

2. A testator wrote his will in his own handwriting, and concluded it with the words, "Signed, published, and declared by the said Thomas Pearn, the testator, as and for his last will and testament, in the presence of us," &c. The testator in the presence of two witnesses, said that he wrote said clause and the whole will, and the witnesses signed the will. There was no signature to the will other than that in said attestation-clause. *Held*, that the will was duly executed.—*In the Goods of Pearn*, 1 P. D. 70.

3. A testator directed his residuary real estate to be sold, and the proceeds divided among twelve persons. The testator made a codicil, directing that certain real estate purchased after the date of the will should be disposed of as directed by the will as to said residuary estate. This codicil was attested by A. and B., two of said residuary devisees, after the passage of the Wills Act, which made void devises to attesting witnesses to wills. Subsequently the testator made a second codicil, which he described as a codicil to his last will, but which made no reference to the first codicil. *Held*, that the second codicil did not operate as a re-execution of the first codicil, and that consequently the two-twelfths of the real estate which would have gone to A. and B. under the first codicil, if it had been properly attested, fell into the residue, and must be divided between said twelve residuary devisees.—*Burton* v. *Newbery*, 1 Ch. D. 234.

4. A will contained a devise of lands to "Elizabeth Ely, her heirs and assigns for ever." Through the words, "Ely, her heirs and assigns for ever," a line had been drawn as if by a pen, and above the erased words was written the word "Ely." *Held*, that there was a revocation of a clause within 29 Car. 2 c. 3, sect. 6; and that the devise was of an estate for life only.—*Swinton* v. *Bailey*, 1 Ex. D. 110.

See Condition, 1; Charitable Bequest; Devise; Election, 1; Executors and Administrators; Illegitimate Children; Legacy; Marshalling Assets.

Words.

"*Building.*"—*See* Covenant.

"*Composition.*"—*See* Bankruptcy, 9.

"*Dwelling-Place or Shop.*"—*See* Dwelling-Place.

"*Let.*"—*See* Lease.

"*Maintenance and Support.*—*See* Trust.

"*Parishioner.*"—*See* Parishioner.

"*Suffering.*"—*See* Gaming.

REVIEWS.

Leading Cases in Constitutional Law. By Ernest C. Thomas, Bacon Scholar of Gray's Inn; late Scholar of Trinity College, Oxford. London: Stevens & Haynes, Bell-yard, Temple Bar. 1876.

This is a neat little volume of about one hundred pages, founded apparently on the success of Indermaur's Epitome of Leading Cases at Common Law and Equity. We can fancy, however, that it has been much more difficult to compile,

inasmuch as there is no extended work from which the cases on the subject can be abridged, but they had to be collected here and there from the Reports at large. The book consists of some forty-six cases with nine brief *excursus* upon the points illustrated by the cases. The latter are not reported at length, but merely consist of what might be called head notes, containing generally a statement of the case, the argument in short, and the points actually decided. We recognize among the cases such old familiar friends as *Ashby* v. *White*, and *Fabrigas* v. *Mostyn*, with those famous cases of the *Seven Bishops' Case* and the *Ship Money Case*. As the reading of the majority of the profession is not sufficiently extensive to include an accurate knowledge of constitutional cases, we can safely recommend them to purchase this little volume, whereby they can acquire a sufficiently practical knowledge of the subject. We notice a rather curious error in one of the cases, where Sir William Scott and his brother Lord Eldon are made the same person.

CORRESPONDENCE.

Suggested Amendments of the Law.

To the Editor of the Law Journal.

Dear Sir,—Permit me to mention one or two objections, to which it seems to me some of the proposals for the Amendments of the Law, mentioned in the last issue of your paper, are open.

The first proposition is to make a *fi. fa.* lands bind the interest of a mortgagee. As the law at present stands this kind of interest before foreclosure can only be reached under a *fi. fa.* goods, for the obvious reason that the mortgagee's beneficial interest is personalty and not realty in the eye of law. To make a *fi. fa.* lands bind the mortgagee's interest would be a departure from this principle. It is possibly supposed that this would compel purchasers from the mortgagee to search in the Sheriff's office for executions, but does not a *fi. fa.* goods now bind the mortgagee's interest just as effectually as a *fi. fa.* lands would, and if purchasers can now be found to buy from a mortgagee, notwithstanding, a *fi. fa.* goods in the Sheriff's hands, is it not every bit as likely that they will buy, notwithstanding a *fi. fa.* lands? I do not think the amendment proposed would prevent the mortgagee dealing with the mortgage security to the prejudice of his execution creditor. I would suggest that some provision for compelling the mortgagee to deliver up possession of the security to the Sheriff, or other officer having the execution, would be a more feasible way of meeting the difficulty.

The second proposition I do not think accords with sound principles of justice. An execution creditor and a prior purchaser for value, who has not registered his conveyance, stand on an entirely different footing; the one has advanced his money upon the express security of the land purchased or mortgaged, the other has not. To enable the latter to realise his debt out of the property which another has honestly bought and paid for, merely because that other person has omitted to register his deed—an omission be it observed which in no way prejudiced the execution creditor, or induced him to give credit to the debtor,—seems repugnant to common sense as well as equity.

With regard to propositions 8, 9, and 10, it seems to me the remedies suggested do not go sufficiently to the root of the matter. I would venture to suggest that the right of dower as well as curtesy should be absolutely and beyond a doubt abolished. It may be said that curtesy is already abolished, but the statute is so worded as at all events to afford a peg to hang an argument on, that after the death of the wife, the husband would be entitled to claim, (see however observation of Harrison, C.J. in 37 Q. B. 551.) Doubtless the Chief Justice's view of the statute is correct, but it would be as well to put the matter beyond doubt.

In lieu of dower I would suggest that a definite proportion of the husband's realty of which he may die intestate should be allotted to the widow absolutely, subject to the claims of the creditors of the husband. And I think the husband should have a similar interest in the lands of his wife.

In conclusion let me draw the attention of your readers to two noteworthy passages from Maine's Ancient Law, (4th ed.) At page 273 he says: "The history of Property on the European Continent is the history of the subversion of the feudalised law of land, by the Romanised law of moveables; and though the history of ownership in England is not nearly completed, it is visibly the law of personalty which threatens to absorb and annihilate the law of realty." And again at page 283 he says: "In all the countries governed by systems based on the French codes, that is, through much the greatest part of the Continent of Europe, the law of moveables, which was always Roman law, has superseded and annulled the feudal law of land. England is the only country of importance in which this transmutation, though it has gone some way, is not nearly finished."

I would only add to this that all amendments of the law affecting realty should in my humble judgment be made with the distinct intention of bringing the law of realty into accord with that of personalty, as far as the nature of the thing will admit. This, I conceive, is the obvious tendency of the age.

G. S. H.

Rate of Interest upon Judgments.

To the Editor of the Law Journal.

Sir,—By the C. S. of C. c. 58, s. 8, it is declared that "six per centum per annum shall continue to be the rate of interest in all cases where, by the agreement of the parties or by law, interest is payable, *and no rate has been fixed by parties or by law.*" The usury law having been abolished, parties are at liberty to agree for the payment of *any* rate of interest. Where it is at a higher rate than 6 per cent., is the agreement to the effect that the higher rate shall be only claimable to the time of *maturity*, or to the time of *subsequent payment?*

Can a plaintiff endorse his execution for the higher rate from the date of his judgment? In *Howland* v. *Jennings*, 11 C. P. 272, and in *Montgomery* v. *Boucher*, 14 C. P. 45, the higher rate was allowed until judgment—in the latter case at 20 per cent. In both cases it was considered that the rate agreed on was the measure of damages subsequent to the maturity of the notes. In *O'Connor* v. *Clark*, 18 Gr. 422, the higher rate was also allowed. By the law of England 4 per cent. is the rate prescribed by statute upon all judgments.

The above queries have been suggested by the late case of *Dalby* v. *Humphrey*, 37 Q. B. 514.

Querist.

[1. Parties may agree for a given rate of interest till payment is made, in which case it will run till that time. Or they may agree for a given rate to a certain period, and the interest at that rate will run to that period, but not necessarily at the same rate thereafter.

2. No greater rate than six per cent can be recovered upon judgments. But an interest will run upon the full amount of the judgment which is often interest upon interest.—Eds. L. J.]

Construction of Will.

To the Editor of the Law Journal.

Sir,—I have met with this extract from a will: "I will and devise to my three daughters the other half (of the fund to be derived from sale of certain land) to be divided in the following manner namely to Kate and Bridget each equal and double the amount of that to

be given to Johanna." Perhaps some reader of your journal will "cudgel" his brain for the construction to be put on it.

Yours,

Law Student.

Division Courts—Renewing Execution.

To The Editor of the Law Journal.

Sir,—Are Division Court Clerks entitled to charge for renewals of executions? Their tariff does not appear to make any provision for this duty to be performed monthly at the request of the parties requiring the execution to be kept in force.

Yours, &c.,

A Subscriber.

[We are inclined to think that the charge could not be sustained. At the same time, it would be most reasonable that such a fee should be allowed. The service has to be performed, and ought to be paid for. In analogous cases in the higher Courts a fee is provided.—Eds. L. J.]

FLOTSAM AND JETSAM.

Unlicensed Practitioners.—The Judges of the English County Courts which correspond with our Division Courts have a summary way of dealing with unlicensed practitioners. It is a pity our judges were not clothed with similar powers. The *Law Times* reports the following:

Mr. Barrow, the newly appointed judge of circuit 20, sitting recently at the Grantham court, expressed strong views on the subject of Agents in County Courts.

When the judgment summonses came on, a man appeared as agent for the plaintiff in one case, unknown to his Honour, who made an order for imprisonment. Subsequently the same person came up as plaintiff in a case of his own, whereupon his Honour questioned him as to his former appearance. The witness said that he was then acting as agent.

His Honour.—You came here to appear for a person, and are not an attorney. I have a good mind to commit you to prison. I will not have any person here who is not an attorney. Do you mean to say that any judge has allowed you to appear here an an advocate?

Witness—Not as advocate—it was a judgment summons case.

His Honour then cancelled the order he had made in the case referred to, and said plaintiff might appear at the court himself.

Witness.—Will your honour adjourn it?

His Honour.—No, I shall not. I will have no agents here unless they are attorneys. Gentlemen have to spend a sum of money which is perfectly frightful in order to qualify themselves as solicitors, and yet these persons come here and take the bread out of their mouths by appearing as agents. No, not in a court that I preside over. I am very glad I found it out. His Honour also announced that if plaintiffs did not choose to appear themselves in judgment summons cases, they would be struck out for the future.

At the close of the court, his Honour remarked to Mr. Thompson, the registrar, that he would not permit any collectors to come there and make applications for judgment summons.

Mr. Thompson asked whether the purchaser of a person's debts would be allowed to appear? The custom was very prevalent in this part of the country for persons who did not care for the trouble of collecting their own debts, to make them over to an agent by assignment, duly executed by deed. The collector then sued in the name of the original owner, and took what measures he could for proving the debts. He asked whether the collectors in such cases would be allowed to appear?

His Honour said he would consider the question during the circuit. Afterwards he remarked that collectors would not be allowed to come there and act as advocates. But he would not stand in the way of letting them prove their cases, when there had been a real *bona fide* assignment of debts to themselves.

The Law's Long Arm.—At the Hull police court last week, James Octavius Ward, a merchant, was charged with forging and uttering a bill of lading which purported to refer to a parcel of wool and other merchaudise to arrive by the Russian steamer *Korniloff*, Captain Demme. Ward raised money on this bill of lading and absconded. A description of the prisoner was sent to all parts of the world, and eventually Ward was arrested in Fiji. Three times he was

taken before magistrates and each time discharged for want of evidence; but Sub-inspector Hannan, the Fijian officer, feeling convinced that he was the man for whom a reward of £100 was offered, watched his man from one island to another, and for the fourth time arrested him and charged him with some breach of local law, on which he secured his remand until the authorities at Hull could be communicated with and an officer sent out. Detective Trafford, of the Hull force, was despatched to Fiji. On arriving there he fully identified Ward, and re-received him into his custody. The officer and his prisoner having arrived in Hull, Ward was taken before the court on the following day. Captain Demme was present, and deposed that the signature on the bill of lading produced was a forgery. He also stated that on the voyage to which the fictitious document referred he brought nothing but grain. This evidence being taken, the prisoner was remanded.—*Exchange.*

The Law of Book Sales.—At the Sheffield County Court on Wednesday, says *The Daily News*, the judge, Mr. T. Ellison, had an action before him of a very novel character. The plaintiff, Mr. J. Langley, is a merchant at Hull, and the defendants are Messrs. Smith & Sons, the well-known news agents and book-stall keepers. In March last the plaintiff was at the Victoria railway station, Sheffield, and went to the defendants' book-stall. There he saw two volumes of a work by Jules Verne, each being marked one shilling. He wished to purchase one of them, but the manager of the stall said he could not sell one volume without the other. The plaintiff thereupon took up one of the volumes and tendered half a sovereign in payment. The manager, however, retained two shillings out of the half-sovereign. The plaintiff refused to take the second volume, and brought his action to recover the shilling which the manager had retained. It was contended by Mr. Porritt, who appeared for the plaintiff, that the volumes being exposed for sale, and a price marked upon them, a purchaser was entitled to insist upon buying a separate volume. Even if the plaintiff was compelled to buy the two volumes, the manager had no right to detain the other shilling against his will. His remedy was to sue for the shilling as a debt. For the defendants, it was proved that the second volume had been sent to Hull twice, and been refused. His honor held that as the books were exposed, and a price marked upon them, a purchaser was justified in merely buying one volume. If the defendants were entitled to the second shilling, they should have sued for it, and not have detained it. He gave a verdict for the amount claimed, with costs.—*Exchange.*

Solicitor's Lien.—The current number of reports contains a case the parallel of which must frequently occur in practice, and which illustrates, in a manner worthy of note, the extent to which a solicitor is entitled to claim a general lien on papers. We allude to the case of *Ex parte Calvert, re Messenger*, 45 Law J. Rep. Bankr. 136. The case was heard by the Chief Judge, on appeal from the County Court Judge, and resulted in a reversal of the decision given in the Court below.

Messenger, the bankrupt, mortgaged to one Mr. Johnson freehold property. The solicitor, Mr. Calvert, acted as solicitor both for the mortgagor and mortgagee. Before and at the time of the mortgage the title-deeds of the property were in the custody of Mr. Calvert, and after the mortgage the deeds were allowed to remain in Mr. Calvert's hands. Upon the bankruptcy of Messenger the property was sold by direction of the trustee, subject, of course, to the mortgage, and the purchase-money was paid to Mr. Calvert. In accounting to the trustee, Mr. Calvert claimed to deduct for his own use a sum of money representing the amount due to him by Messenger, at the time of the mortgage, for professional costs, basing his claim on his legal right to hold the deeds.

Now, it was clear upon the facts that up to the time of the mortgage the solicitor had a good lien on the deeds for his charges. The question, therefore, was whether Mr. Calvert, although he never actually handed over the deeds, at the date of the mortgage, to the mortgagee, was to be regarded in law as having done so, and as having thereby given up his lien. This contention appeared too subtle to the Chief Judge, who preferred to rely on the substantial fact that Mr. Calvert never had let the deeds go out of his possession, and so had done no act to determine his lien. The case of *Colmer* v. *Ede*, 40 Law J. Rep. Chanc. 185, decided by Vice-Chancellor Stuart, was cited in confirmation of the opinion of the Chief Judge; and, when that case is carefully read, it becomes manifest that the Vice-Chancellor had really adjudicated upon the point presented to the Court of Bankruptcy. The decision seems to be in accordance with good sense, and it certainly cannot fail to be satisfactory to the profession.—*Law Journal.*

Flotsam and Jetsam.

The Bench and its Critics.—A question of some importance to prisoners was raised at the Edinburgh Police Court a few days ago—namely, whether they commit an offence against the law by criticising the sentence passed on them. A blind man named Callaghan was sentenced to pay a fine of 10s., with the option of three days' imprisonment, and to find £1 caution, or to suffer three days' additional confinement, for the offence of permitting a quantity of foul water to be thrown from his window, which fell on a passer by. The prisoner, as he was being removed from the bar, remarked, "Well, that is a very severe sentence, and it is all through spite." "Bring that man back to the bar," shouted the sheriff. The prisoner was accordingly replaced at the bar. "Do I understand you, sir," asked the sheriff, "to say that I inflict that sentence through spite?" The prisoner replied that he "never heard of such a sentence for such a trifling matter." "Very well," rejoined the sheriff, "you will be imprisoned for three days for contempt of court." The prisoner as for the second time he was being removed from the bar, remarked, "I will make them repent for it;" and sure enough the sheriff did show subsequent signs of repentance, for he afterwards instructed the clerk of the court to revoke the sentence passed for contempt of court, observing that he "now thought a prisoner was quite entitled to pass an opinion upon his sentence."—*Pall Mall Gazette.*

The rule that an attorney must first write before proceeding to action is a harsh one, inasmuch as he can, even in England, collect no fee for such labor. In *Holmar* v. *Stevens*, 33 L. T. Rep. 48, an attorney had written and made a charge therefor. A tender of the original debt was made, but the payment of this charge being refused, a writ was issued to collect both debt and charge. Upon a motion to set aside the writ, Willes, J., after referring to those facts, said: "It appears, then, that this writ was issued, not for the purpose of enforcing payment of the client's claim, but for the purpose of exacting payment of what the attorneys had no legal right to. The writ is the commencement of the action, and an attorney has no claim for any letter until a writ is issued. The attorneys having no legal right to charge for the letter, the issuing of the writ for the purpose of exacting payment for it, is merely an abuse of legal process." And Byles, J., added that "the attorney's letter does not prevent the tender of the principal without any costs." An American attorney of our acquaintance did more wisely. When accounts were placed in his hands, he uniformly sent a letter requesting payment to the debtor, for which service he usually charged twelve and a half cents. This was, as a rule, paid without demur. One man, who was the recipient of such a letter, refused to pay the charge therefor, on the ground that it was not legal. At the same time he tendered the amount of the debt claimed in bank bills. The attorney refused to receive the bills, on the ground that the bank might be insolvent, whereupon the debtor started for the bank, in order to procure "legal tender." A summons was immediately issued and served upon the debtor before he had procured his "legal tender." He paid costs.—*Albany Law Journal.*

A commercial traveller journeying through Normandy halts at a village inn and orders an omelette to be made of six eggs for his breakfast. He is suddenly called away on business, and departs without either eating the omelette or paying for it. Twenty years elapsed before, journeying through Normandy again, he reappeared at this particular inn. The landlord is still alive. "I owe you something for an omelette," begins the *commis voyageur*. "Made with six eggs," adds the landlord; "you do, and with a vengeance!" "Well," pursues the commercial traveller, "here are sixteen francs; that will be pretty good interest on the prime cost of the omelette." "Sixteen francs!" repeats the *aubergiste*, disdainfully. "I want 1,600,000 francs, 12 sous, and 2 liards." "How so?" asked the debtor, aghast at the demand. "Just in this wise," answered mine host. "Those six eggs would have produced so many chickens; by selling those chickens I would have been enabled to buy two pigs; by selling so many pigs I should have been able to buy so many cows; thence so many carts, horses, farms, houses, and so forth. And I intend to sue you for 1,600,000 francs before the tribunal at Caen." The case is duly tried, and for a while matters look dismally for the commercial traveller, when the judge—he is a Norman judge, and a very wary one—intervenes. "I wish," he says, "to ask the plaintiff one question. Were the six eggs broken in order to make them into an omelette?" "They were," says the plaintiff." "Then," adds the judge, "there is an end of the case. The remunerative career of the eggs ceased as soon as they were put into the frying-pan." Verdict for the defendant.—*Exchange.*

LAW SOCIETY OF UPPER CANADA.

OSGOODE HALL, TRINITY TERM, 40TH VICTORIA.

DURING this Term, the following gentlemen were called to the degree of Barrister-at-Law. The names are given in the order in which the Candidates entered the Society, and not in the order of merit:

PHILIP MCKENZIE.
THOMAS HUNTER PURDOM.
JOHN TOBIAS LENNOX.
HEBER ARCHIBALD.
WILLIAM BURTON DOHERTY.
FRANCIS RYE.
ALEXANDER JOHN B. MACDONALD.
EMMANUEL THOMAS ESSORY.

And the following gentlemen received Certificates of Fitness, namely:

HENRY PETER MILLIGAN.
IAN ALEXANDER MORTON.
ALBERT OGDEN.
J. JAMES KEHOE.
ERASTUS BLAIR STONE.
WILLIAM BURTON DOHERTY.
ALBERT CLEMENTS KILLAM.
WILLIAM WYLD.
FREDERICK WILLIAM CASEY.
W. COSBY MAHAFFY.
ROBERT EDWIN WOOD.
JOHN S. L. WADE.

And the following gentlemen were admitted into the Society as Students-at-Law:

Graduates.

JOHN NICHOLSON MUIR.
GEORGE CLAXTON.
ROBERT DOBREE CAREY.
WILLIAM GEORGE EAKINS.
ALEXANDER CAMPBELL SHAW.

Junior Class.

GEORGE MUIRHEAD.
JOHN S. MCBETH.
COLIN CAMPBELL.
JAMES HENRY.
WILLIAM ALEXANDER MACDONALD.
ALEXANDER DUNTROON MACINTYRE.
EDWARD N. LEWIS.
ALFRED CRADDOCK.
ROBERT A. PRINGLE.
JOHN R. HANEY.
JAMES LEAYCROFT GEDDES.
WILLIAM HUMPHREY BENNETT.
THOMAS CHASE PATRICK.
LENDRUM MCMEANS.
ABRAHAM NELLES DUNCOMBE.
SIDNEY WOOD.
JAMES B. O'BRIAN.
BERNARD MCCANN.
VICTOR CHISHOLM.
JEFFREY MCCARTHY.
MANLEY GERMON.
TREVASSA HERBERT DYRE.
ALEXANDER FORD.
ALEXANDER STEWART.
THOMAS H. JONES.
WILLIAM CHARLES PERRY.
SYDNEY BERGIN.
FRANKLIN FORSTER NOXON.

Articled Clerks.

JOHN WILLIAMS.
ROBERT STRACHAN.

After Hilary Term, 1877, a change will be made in the Preliminary Examinations.

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

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

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

Law Society, Easter Term.

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

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

That the subjects and books for the second Intermediate Examination be as follows :—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases. Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law, C. S. U. C. c. 88, and Ontario Act 38 Vict. c. 16, Statutes of Canada, 29 Vict. c. 28, Administration of Justice Acts 1873 and 1874.

That the books for the final examination for Students-at-Law shall be as follows :—

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

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

That the subjects for the final examination of Articled Clerks shall be as follows :—Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

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

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

1st year.—Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Griffith's Institutes of Equity, C. S. U. C. c. 12, C. S. U. C. c. 42, and amending Acts.

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

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

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

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

J. HILLYARD CAMERON,
Treasurer.

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

To the Benchers of the Law Society :

The Committee on Legal Education beg leave to submit the following report :

Your Committee have had under consideration the representations made from time to time to the Benchers, and referred to your Committee, respecting the different courses of study prescribed for Matriculation in the Universities, and for Primary Examination in the Law Society, and now recommend :—

1. That after Hilary Term, 1877, candidates for admission as Students-at-Law, (except Graduates of Universities) be required to pass a satisfactory examination in the following subjects :—

CLASSICS.

Xenophon Anabasis, B. I.; Homer, Iliad, B. I. Cicero, for the Manilian Law ; Ovid, Fasti, B. I., vv. 1 300 ; Virgil, Æneid, B. II., vv. 1-317 . Translations from English into Latin ; Paper on Latin Grammar.

MATHEMATICS.

Arithmetic ; Algebra, to the end of quadratic equal tions ; Euclid, Bb. I., II., III.

ENGLISH.

A paper on English Grammar ; Composition ; An examination upon "The Lady of the Lake," with special reference to Cantos v. and vi.

HISTORY AND GEOGRAPHY.

English History, from Queen Anne to George III., inclusive. Roman History, from the commencement of the second Punic war to the death of Augustus. Greek History, from the Persian to the Peloponnesian wars, both inclusive. Ancient Geography : Greece, Italy, and Asia Minor. Modern Geography : North America and Europe.

Optional subjects instead of Greek :

FRENCH.

A paper on Grammar. Translation of simple sentences into French prose. Corneille, Horace, Acts I. and II.

or GERMAN.

A paper on Grammar. Musaeus, Stumme Liebe Schiller, Lied von der Glocke.

2. That after Hilary Term, 1877, candidates for admission as Articled Clerks (except graduates of Universities and Students-at-Law), be required to pass a satisfactory examination in the following subjects :—

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

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

4. That all examinations of Students-at-Law or Articled Clerks be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

THOMAS HODGINS, *Chairman.*

Osgoode Hall, Trinity Term, 1876.

Adopted by the Benchers in Convocation August 29, 1876.

J. HILLYARD CAMERON,
Treasurer.