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DIARY FOR MARCH.

1. Sun.....*and Sunday in Lent.* St. David's Day.
3. Tues .....County Court (York) sittings. Osler, J., appointed 1879. Court of Appeal sittings begin.
6. Fri.....Name of York changed to Toronto, 1834.
8. Sun.....*3rd Sunday in Lent.*

TORONTO, MARCH 1, 1885.

THERE is a matter of some little moment which, we think, should be called attention to, viz., the practice springing up among certain of the short-hand reporters of the courts of attending when written judgments are delivered, and taking them down in short-hand, with a view of afterwards supplying what they are pleased to call copies. This is not only a usurpation on the province of the regular court reporters, whose duty and perquisite it is to supply copies of all written judgments, but it leads to exceedingly inaccurate versions of the judgments being circulated, to the perplexity of counsel and the vexation of the judges. The *fons et origo mali* no doubt is that students, when told to go to "the reporter" and procure a copy of such and such a judgment, do not understand that it is the reporter of the court who is intended, but straightway seek out one of the official short-hand reporters, and the latter, finding this the case, have, we suppose, devised the somewhat nefarious scheme above mentioned, and thereby put into their own pockets the fees which of right belong to the reporter of the court, and in return give, not a correct copy of the judgments delivered, but so much thereof as they have succeeded in taking down in short-hand.

WE have before us what appears likely to be the commencement of a most valuable addition to periodical legal literature in Vol. I. No. 1 of the *Law Quarterly Review*. The fact that it is edited by Mr. Frederick Pollock is itself sufficient guarantee of its character. The first article in the present number is on section 17 of the Statute of Frauds. It comprises some interesting introductory remarks on this section by Mr. Justice Stephens, followed by a digest in which the effect of the decisions upon it from 1676 to 1878 are given. To excite interest in the remarks of Mr. Justice Stephens, it may be sufficient to say that the conclusion he comes to is that the 17th section should be repealed, and the cases upon it consigned to oblivion. This article is followed by articles upon the Franchise Bill, by Sir William R. Anson, the King's Peace, by the editor, Homicide by Necessity, by Herbert Stephen, Federal Government, by Professor A. V. Dicey, and a number of other articles by distinguished writers. This is a new departure in periodical legal literature. We know of nothing of the same character as this *Review*, which has preceded it, and we feel sure that all who appreciate the intellectual side of the most intellectual of professions will welcome it with great rejoicing.

LORD COLERIDGE recently made some strong observations on what, he said, was a growing fashion of litigants conducting their cases in person which he considered in many ways open to objection. *Pump Court*, in referring to this, says it probably arises from the idea that the litigant will be allowed to state his case at greater length than would be permitted to counsel

in his behalf. The writer continues "Perhaps, as the result stares them in the face, the curtness often amounting to rudeness, with which the Bar, especially the junior Bar, are treated by some judges, will receive a wholesome check." Time was when such a thing as rudeness, or even curtness on the part of the judges of Upper Canada was unknown. We are only repeating current talk amongst members of the Bar when we say that this cannot truly be said as to each and every of the judges of Ontario. The patient courtesy of Sir John Robinson was the severest rebuke to impatience or rudeness of either student or counsel, as well as the best example of what should be; the caustic polished reminder of a Draper was not given without necessity, and there was no malice in the quaint, blunt rejoinder of the kindest-hearted of men—Sir William B. Richards; but observations have been heard from the Bench during the past few years which, though clever enough, have been neither necessary, courteous, or edifying.

It is refreshing to read the healthy comments of the *American Law Review* on what the writer very happily calls the "blatherskite daily press." There was a time when it was considered to be the province of journalism to lead public opinion in the channel of thought of the purest and best thinkers of the day; the endeavour being to raise men's thoughts and aspirations to a higher level; but now the practice is for the daily press to give to the public the silly or vicious rubbish which the majority prefer, without any desire of helping them to the higher life or more ennobling thoughts of the minority. The text that our contemporary takes is the Adams-Coleridge suit, referred to recently by our English correspondent in much the same terms. He thus writes:—

"The secular newspapers hardly ever attempt to report a judicial trial without making egregious blunders, unless they employ a stenographer and take down every word, including the *dictum* of the judge to the janitor to put some more coal in the stove: and they hardly ever undertake to criticize a judicial trial without making the same spectacle of themselves. This time, the whole American press seems to be running a race with itself, to see how ridiculous it can make itself seem to persons who are well informed on the particular subject in its criticisms on the ruling of Mr. Justice Manisty, of the English Queen's Bench Division, in what is known as the Adams-Coleridge libel suit. That suit grew out of this circumstance: A barrister named Adams paid suit to the only daughter of Lord Coleridge. The Hon. Bernard Coleridge, the eldest son of Lord Coleridge (not the son who was with Lord Coleridge in America—that was Gilbert Coleridge, his secretary), took upon himself to write a letter to his sister, admonishing her that her suitor was of bad character. She acted as girls are apt to act under such circumstances—gave the letter to her lover, and the latter was not ashamed to make it the basis of a libel suit against its author. The principal question was, whether this letter was what is known as a privileged communication, and, hence, not the subject of an action for libel. Mr. Justice Manisty ruled that it was a privileged communication; but in order to save the delay and expense of another trial, in case he should be over-ruled on this question of law by his judicial superiors, he put the case to the jury on the question of damages. They returned a verdict for £3,000. This verdict Mr. Justice Manisty immediately set aside, and reserved the question of the propriety of his ruling for the full court. This is the whole thing in brief, as nearly as we can gather it from the imperfect press dispatches. In ruling as he did, Mr. Justice Manisty did what is done in the English law courts every day. The only difference in this regard between the practice of an English court in a case at law and an American court, is this: The American court, under the same circumstances, would not have allowed the case to go to the jury at all, but would have non-suited the plaintiff. Then, in case of a reversal of this ruling, on error or appeal, a new trial, with the empanelling of a new jury, would become necessary. The English practice is better adapted than ours to take a short cut to the final result, and save expense. If the highest court before which the propriety of Mr. Justice Manisty's ruling is brought for review should reverse his decision, there will be no new trial, but judgment will be entered on the verdict already rendered. This is the whole ground of the insane howl which went up from the rabble of London against the

aristocracy when this decision was pronounced, and which was re-echoed by the blatherskite daily press of America. The whole ground of the commotion turns out to be that a judge ruled, as a question of law, that if a brother write a letter to his sister admonishing her that one who is a suitor for her hand is a disreputable person, this is a privileged communication, and not the ground of an action for libel. Upon the propriety of this ruling we do not venture an opinion, not having examined the question; but we have a clear opinion that if this is not the law, the quicker it is made so the better. If a brother has not the right to write a letter to his only sister admonishing her that she is about to throw herself into the arms of a scallawag or a libertine, what person has a right to convey such information to her? That, we take it, ought to be the law in America, where there is no such a thing as *family* in the sense in which it is understood among the nobility in England."

SET-OFF IN JOINT STOCK COMPANIES.

There is a marked want of uniformity of rule as to the right of set-off in the laws of the Province and of the Dominion respecting joint stock companies.

In Ontario, shareholders in companies incorporated under the Joint Stock Companies' Letters Patent Act, R. S. O. c. 150, while individually liable to the creditors of the company to an amount equal to their unpaid stock are allowed (s. 53, subs. 2) in actions brought by such creditors against them, to raise by way of defence, in whole or in part, any set-off which they could set up against the company, except a claim for unpaid dividends, or a salary or allowance as a president or director.

Neither the Joint Stock Companies' General Clauses Act, R. S. O. c. 149, ss. 35, nor the General Railway Act, R. S. O. c. 165, ss. 30, have any similar provision for set-off.

Nor is there any provision for set-off in the Dominion Companies' Act of 1869, 32-33 Vict. c. 12, ss. 33, or c. 13, ss. 42, or the Consolidated Railway Act 1879, 42 Vict. c. 9, ss. 23.

A clause similar to those in the Acts referred to in the last two paragraphs, viz., s. 80 of the "Railway Act" C. S. C. c. 66, was construed by the Court of Error and Appeal in *Macbeth* v. *Smart*, 14 Gr. 298. The Court reversed a decree of V.-C. Esten, and held, against the opinions of four Equity Judges, that a shareholder in a Railway Company could not set-off, in equity, a debt due to him by the company for moneys he had paid as surety for the railway company.

So in *Bemier* v. *Currie*, 36 U. C. R. 411, GWYNNE, J., held in an action by a creditor of a company against a shareholder that such shareholder could not set-off against his unpaid stock the amount of a judgment and execution held by him against such company; and that the decision of *Macbeth* v. *Smart* was in principle applicable notwithstanding that the shareholder having such judgment and execution could not by reason of his being such shareholder reach with his execution his own unpaid stock.

But in *Smart* v. *Bowmanville, &c., Company*, 25 C. P. 503, a company was held entitled in an action by an agent for his salary, to set-off the amount due by him as a shareholder for his unpaid stock.

The Dominion Act for winding up insolvent companies, 45 Vict. c. 23, provides (s. 60) that "the law of set-off as administered by the Courts, whether of law or equity, shall apply to all claims upon the estate of the company and to all proceedings for the recovery of debts due or accruing due to the company at the commencement of the winding up, in the same manner and to the same extent as if the business of the company were not being wound up under this Act."

The clause provides for the application of "the law of set-off as administered by the Courts" in the actions for the recovery of debts due (1) *by* or (2) *to* the company.

Except in respect of companies incor-

porated under the Ontario Letter Patent Act, which provides for set-off, *Macbeth* v. *Smart* may be held to define the law of set-off administered by the Courts in actions by creditors of a company against a shareholder for amount of his unpaid stock, and in so far as the proceedings taken by the liquidator under the Winding up Act against the shareholders of a company partake of the character of such an action, it is probable that case may be found to apply.

And in so far as the claims of creditors proveable against the company resemble the case in 25 C. P. 503, the law of set-off as administered by the Court in that case would enable the liquidator to set-off the amount of any unpaid stock due by such creditor as a shareholder in the company.

These anomalies render the administration of the Winding up Act difficult to both practitioner and judge, and call for legislative action so that the law may be made uniform as respects all classes of claim and all classes of companies.

RECENT ENGLISH DECISIONS.

PROCEEDING to the January number of the *Law Reports* we find they consist of 14 Q. B. D. p. 1-54; 10 P. D. p. 1-5; and 28 Ch. D. p. 1-102. Of the first two of these the only cases requiring notice are practice cases, which will be noted in another place. In the last the case of *Smith* v. *Land and House Property Corporation*, at p. 7, requires noting.

SPECIFIC PERFORMANCE—MISREPRESENTATION—"DESIRABLE TENANT."

Here, in an action for specific performance of a contract for the sale of real estate, the defendants claimed cancellation of the contract or compensation on the ground of misrepresentation by the vendors. The misrepresentation consisted in a statement in the particulars that the property "was let to a most 'desirable tenant.'" As a matter of fact, the vendors knew that the tenant had not paid his last rent, though over-due; and that he had only paid his last instalment but one after threats of distress, and by driblets; and this case shows (1) in the language of Bowen, L.J., that "a tenant who has paid his last quarter's rent by driblets under pressure must be regarded as an undesirable tenant"; (2) that, though it appeared that the words "a most desirable tenant" were inserted by the auctioneer without instructions from the vendor, this did not excuse the latter, for, in the language of Baggallay, L.J., at p. 13, it is "the duty of a vendor to see that the property is not untruly described, and he cannot be held to be excused because a description which the property will not bear has been inserted by the auctioneer"; (3) that where one is sent to a sale merely as an agent for the purpose of buying a property for the best price he can get it up to a certain sum, nothing that he may have heard or said on the occasion of the sale can be evidence against his principals, and therefore evidence was not admitted in this case to prove certain conversations alleged to have taken place between the auctioneer and such agent of the vendees, tending to show that he knew something to the tenant's disadvantage.

STATEMENT OF OPINION—STATEMENT OF FACT.

There are also in this case certain *dicta* of Bowen, L.J., at p. 15, which are worth remembering. He says:—"It is material to observe that it is often fallaciously assumed that a statement of opinion cannot involve the statement of a fact. In a case where the facts are equally well known to both parties, what one of them says to the other is frequently nothing but an expression of opinion. The statement of such opinion is, in a sense, a statement of a fact, about the condition of the man's

own mind, but only of an irrelevant fact, for it is of no consequence what the opinion is. But if the facts are not equally known to both sides, then a statement of opinion by the one who knows the facts best involves very often a statement of a material fact, for he implicitly states that he knows facts which justify his opinion."

MATERIAL REPRESENTATION—REDGRAVE V. HURD.

Lastly, the well-known case of *Redgrave* v. *Hurd*, 20 Ch. D. 1, is commented on in this case by Bowen, L.J., in a way which calls for notice. He says:—"I cannot quite agree with the remark of the late Master of the Rolls in *Redgrave* v. *Hurd*, that if a material representation calculated to induce a person to enter into a contract is made to him it is an inference of law that he was induced by the representations to enter into it, and I think that probably his lordship hardly intended to go so far as that, though there may be strong reasons for drawing such an inference of fact. . . . *Redgrave* v. *Hurd* shows that a person who has made a misrepresentation cannot escape by saying, 'You had means of information, and if you had been careful you would not have been misled.'"

COMPANY — CONTRACT BETWEEN COMPANY AND SHAREHOLDERS — MEMORANDUM OF ASSOCIATION — SUBSEQUENT RESOLUTIONS.

The next case requiring note is *Ashbury* v. *Watson*, at p. 56, which may be briefly mentioned as showing, in accordance with previous cases, that no resolution of a company, special or otherwise, can alter the contract made between the company and all the shareholders as evidenced by the memorandum of association, so that, in this case, certain special resolutions passed by the company in 1872, altering the priorities and payments of the net revenue as between the preference and ordinary shareholders from these prescribed in the memorandum of association, were invalid; and though the fact that the special resolutions had been acted upon till 1883, and dividends had been received on the footing of these resolutions, might prevent any shareholder who had so received such dividends from asserting a claim against the company for any larger payment during the period of such receipts, yet that could not amount to a ratification of an implied contract that the dividends in these shares should always be paid on the same footing.

WILL—"REAL ESTATE WHERESOEVER SITUATE"—LEASEHOLDS.

The next case requiring brief notice is *Butler* v. *Butler*, at p. 66, wherein a testator devised "my real estate wheresoever situate, the V. Park Cemetery excepted" upon certain trusts, and then disposed of "my freehold estate called the V. Park Cemetery, and my personal estate wheresoever situated" upon certain other trusts, and it was contended that by virtue of the section of the Wills Act corresponding to our R. S. O. c. 106, s. 28, so much of his personal estate as consisted of leaseholds for years passed under the gift of the real estates. CHITTY, J., however, decided the contrary, remarking that it struck him as a very extraordinary thing that this argument should be adduced, as far as he was aware, for the first time somewhere about half-a-century after that Act came into operation. He refers to the fact that leaseholds for years are by the Act itself included in the definition of personal estate (R. S. O. c. 106, sec. 7, subs. 3), and observes that to his mind it would be a most extraordinary thing "that an Act of Parliament is to say, in a very cumbersome manner, that a gift of real estate, after the passing of this Act, shall include that which on the face of the Act itself is described as personal estate; that is to say that the Court is bound by reason of this section (R. S. O. c. 106, sec. 28) to impute to a testator, if he uses what I consider to be a technical term, a meaning different from

that which the Legislature has expressly and for the purposes of the Act imposed upon the term."

Infant—Education—Jurisdiction.

The only remaining case requiring mention in this number of the Q. B. D. is *In re Montagu* at page 82. This was a summons on the part of the infant plaintiffs to have a scheme for their education and maintenance under which they were to be brought up as Protestants. The infants it appeared were in the custody of their mother, who was out of the jurisdiction, and who, jointly with two others, was their testamentary guardian. It was urged on behalf of the mother, who opposed the application, that even if the Court should be of opinion that the father intended the plaintiffs to be brought up as Protestants it would not make an order to that effect, because the mother who had control over them was resident out of the jurisdiction, and an order on her would be nugatory. Pearson, J., however, made the order for the plaintiffs to be brought up according to the tenets of the Church of England, saying he would be sorry to impute to the mother any intention to set this Court at defiance, and adding: "But whatever that lady is inclined to do, the other guardians are entitled to have the decision of this Court to guide them. It by no means follows because they have not now that they will not hereafter have the control of the children, and they ought to know what it is proper for them to do, and on that ground alone I should have given my judgment in the case."

A. H. F. L.

OUR ENGLISH LETTER.

(From our own Correspondent.)

It is by no means necessary to tell the readers of The Canada Law Journal that by the death of James Bethune, Q.C., the legal profession in Canada has lost one of its brightest ornaments. But it may be some consolation, though it can be but slight, to know that English lawyers feel the loss with almost equal sorrow. Dr. Bethune had been here for some months before his death on important legal business, and he had impressed all who came into connection with him, not only with a profound conviction of his extreme ability, but also with a feeling of affectionate reverence. He was one of those men whom people at once admire and like. The steady pursuit of the law had not deadened his human sympathies or deadened the sociable side of his character. One fears that in England success does not often result in the formation of companionable men. The giants of the English Bar have not, for the most part, any such reputation as Dr. Bethune enjoyed; they become lawyers, *et præterea nihil.* What the reason may be I know not. Perhaps it is that the press of work upon a successful man is more than human geniality can bear; for we hear tales, some of which are not far from truth, of men, who, rather than lose a single brief, make a regular practice of getting up at four every morning, regardless of winter cold or summer heat, and who add hours to the working day, while they shorten the period of their natural life. In them the high ambition for professional fame absorbs the whole man, and the result is not altogether satisfactory; for, when all is said and done, a man should be something more than a lawyer if he is to serve his fellows, and do his duty in life. The life of Mr. Benjamin is a better example of the

true *modus vivendi*. Work flowed into his chambers, but instead of allowing himself to become the slave of his clients he quietly raised his fees. He, as it were, said: "I am a legal instrument of the highest quality, effective beyond all others; if you require my services you must pay for them in proportion to their value." Thus it came that insignificant work flowed away from his chambers to those of ordinary men, and he was able to devote his almost superhuman intellect to the solution of legal questions of the first importance and the finest delicacy.

As usual during the Assizes, the lay press is full of complaints at the inconvenience and loss which the transaction of provincial business entails upon Metropolitan suitors. If one were to believe the papers, one would come to the conclusion that there was no such thing as business on circuit, and that nothing short of the absolute infatuation of the Bar, combined with the ill-fortune of the judges, kept the assize system going. But the fact is, that the press in general forms its estimate purely upon the criminal statistics, and is deliberately, or else very culpably, forgetful of the fact that such trifles as causes do exist. When these are brought to the notice of editors they are contemptuously described as being of a calibre entirely beneath the notice of a judge, as frivolous disputes between neighbours about landmarks, or as quarrelsome litigations. Yet, as a matter of fact, those who have most experience of circuit freely confess that a judge of assize is for the most part brought face to face with differences of a substantial kind. In the small places, indeed, the amount at stake is frequently not very large; but it is important to the parties, and it is a comparatively new and a remarkably pernicious doctrine, which is now obtaining a certain recognition, that the disputes of rich men are worthy of greater attention than those of men of moderate means. Moreover, it is absolutely frivolous to say that the majority of London suits are important from any point of view. Not once or twice in the story of the last sittings did it happen that judges, both on the common law and equity side, galloped through their lists in the course of a morning simply because they were constructed of rotten material; but one never sees an absolutely frivolous case on circuit. The remedy is an increase of the judicial staff and not abolition of circuits.

Essays on the science of law reporting have been the amusement of the Bar and *The Times* during the Christmas vacation, and a fierce controversy has been going on respecting the comparative merits of long and short reports. Upon this matter the opinion of a law reporter may have a certain small value, in spite of the theory that artists are the worst critics in the world. His opinion is to the effect that reports are both too long and too short. Arguments are unduly curtailed, and judgments are diffusely expanded. Now, arguments often contain to the full as much pith as judgments, and from an educational point of view are more valuable. Judgments, on the contrary, especially those which are delivered off-hand, abound in repetitions, and sometimes in ill-considered expressions of opinion, which are ruinous when quoted as *obiter dicta* in subsequent cases. The fact is that Mr. Pitman and his followers have spoiled the art of law reporting and destroyed memory simultaneously. The old reports were far better drawn up than the verbose and lengthy productions now in vogue. In the old reports the pearls of principle were conspicuous, in the new every jewel is surrounded by a mass of meaningless dross.

Of the *personel* of the Bar and the Bench there is little to be written. There are no new judges and no new Queen's

Counsel, the latter fact being the fault of Lord Selborne. His difficulties have been partially exemplified by the deplorable suicide of Mr. Nash, one of the applicants for silk, whose premature death was purely due to over-work, in the same way as the comparatively recent and equally deplorable death of Mr. Oppenheim. Both are instances of that incurable industry which ends in monomania; the last-named especially was a man who was known not to have taken a holiday for years except on Christmas day. It is only on this theory that one can explain the peculiar fact that the successful men commit suicide and the unsuccessful survive.

The complaints concerning the Courts still continue with unabated vigour, and the judges take the leading parts in the chorus of grumbling. Baron Huddleston has taken the despairing line and has ordered all the uncontrollable ventilators in his court to be hermetically sealed. Judge, then, of his horror when on the succeeding day, the Houses of Parliament and the Tower having been wrecked in the meantime, he saw two suspicious looking persons enter the gallery and leave it hurriedly; for his knowledge of science, small and purely forensic as it is, must be quite enough to teach him that an explosion is infinitely dangerous in a place where the atmosphere is confined within metes and bounds. However, we have to thank—not the forbearance of the enemies of society—but something higher, for the fact that the Royal Courts have, up to the present time, escaped the fate of the Houses of Parliament. It is a matter for deep congratulation, however, that the Legislature of the United States should, late in time, have realized their duty in regard to the dynamitard class. That undefined thing—the comity of nations—has certainly been very slow in making its appearance.

London, Feb. 2, 1885.

SELECTIONS.

It will be remembered that not long ago, a decision was rendered by the Supreme Court of Minnesota to the effect that the attachment of a seal to an instrument, in all other respects having the elements requisite to negotiability, destroyed its negotiable character. Though this opinion was consistent with the old theories underlying the doctrine of negotiability, yet, as everyone must have observed, it clashed with the modern view, which has received recognition by no less an authority than the Federal Supreme Court, that bonds have the same commercial character that their unsealed brethren possess. This question came before the Supreme Court of Pennsylvania, in *Kerr* v. *The City of Corry* not long ago. The lower court, relying upon *Diamond* v. *Lawrence County*, 1 Wright 353, adhered to the old view, and permitted the city to show that the bonds in suit were fraudulently issued, though Kerr was a *bona fide* purchaser thereof before maturity. The Supreme Court rejects the fossilized doctrine and places itself on the level of progress of the United States Supreme Court. It declines to be put in that position by which it would be made "to antagonize the sentiment of the commercial world, and the doctrine of every other court, whether in this country or England." The court had not, of course, heard of the Minnesota decision. In concluding its opinion, the court summarizes the law upon bonds with reference to their negotiability thus:

"They have at least a *quasi* negotiability in these particulars; they pass by delivery, and the holder may sue in his own name; the transferee for value holds title as an original obligee; he cannot be affected by equities existing between the previous holders and the municipality of which he had no notice; neither can he be affected by the default of the officers issuing them, unless such default directly affects their power to make and put them upon the market."—*The Central Law Journal.* *

* See *Bank of Toronto* v. *The Cobourg, etc., R. W. Co.*, 20 C. L. J. 49.—Ed. C. L. J.

INTEREST ON COSTS.

A point of practice of some considerable interest to suitors is the question from what date the costs of an action bear interest. There is no doubt that the old equity rule was, that the interest ran, not from the date of the judgment, but from that of the certificate of taxation (see Seton, last edit. p. 130). At common law the matter was not quite so clear, and there were decisions which went to show that the date from which the interest ran was the date of the judgment. In *Schroeder* v. *Cleugh* (46 L. J. 365, C. P.; 35 L. T. Rep. N. S. 850), however, the question was considered by three judges of the Common Pleas Division, after the Judicature Acts had come into operation, and they decided in favour of the old equity rule. So the matter stood when the case of *Hyman* v. *Burt* (76 L. T. 425; W. N. 1884, p. 100) came before Mr. Justice Field in chambers, and he decided in favour of the right date being the date of the judgment. Lastly, the same point came up again before Mr. Justice Pearson, in *Landowners West of England, etc., Company* v. *Ashford*, on the 30th Oct., and the learned judge seemed inclined to decide in the contrary sense to Mr. Justice Field, but, on being told that the decision of Mr. Justice Field was supported by one of Mr. Justice Chitty in *Re The Atlantic Mutual Fire Insurance Company* v. *Huth* on the 21st Dec., 1883, Mr. Justice Pearson felt himself obliged to follow those authorities, which, he said, were too strong for him. It appears, however, that *Atlantic, etc., Company* v. *Huth*, was not a decision at all upon the date from which the interest ran, but upon the question whether, on the facts of the case, any interest at all ought to be paid on the costs or not. The point that the interest ought to run from the date of the judgment does not appear to have been argued or suggested, and Mr. Justice Chitty is stated to have said that interest ran by statute from the date of the certificate, and that the usual 4 per cent. interest must be paid from that date. But for the reference to *Atlantic, etc., Company* v. *Huth* it seems very probable that the decision of Mr. Justice Pearson would have been in accordance with that in *Schroeder* v. *Cleugh*, so that, so far from the point being now a settled one, as would appear at first sight to be the case, it must be regarded as more doubtful than ever, and in an eminently fit condition for the handling of the Court of Appeal.—*Law Times.*

STREET OBSTRUCTIONS.

In *Champlin* v. *Village of Penn Yan*, 34 Hun, 33, an advertising banner, twenty-four feet wide and twelve feet deep, was suspended across one of the streets in the defendant village. The top was attached to a wire and ropes which were fastened to the tops of the building fronting on the street opposite to the banner. A rope led from one corner of the bottom of the awning post on the sidewalk, and one running from the other corner of the bottom was fastened to the sill of a window of a house. The jury found that the banner was an object likely to frighten horses ordinarily gentle and well trained. The banner had been up a considerable time. In an action by the plaintiff to recover damages sustained by being thrown from his buggy while his horse, which had been frightened by the banner while passing under it, was running away, *held*, that the defendants was liable. The Court said: "The argument presented by the defendants is this: That it is not the duty of a municipal corporation to remove objects suspended over the street fastened to supports wholly outside of the street, if they are elevated so high as not to actually obstruct the use of the road-bed or sidewalk. In this State the proposition, as stated, has never been approved by any reported decision, nor have I been able to find any rule or authority which supports the argument. I think the doctrine contended for was repudiated in *Hume* v. *Mayor*, 74 N. Y. 264. In that case the erection complained of as an obstruction to the street was an awning made of a permanent roofing of boards over the entire sidewalk, resting against the building and supported on the outer line by wooden posts standing in the ground, near the kerb-stone, and was used wholly for private purposes. This was held to be an unauthorized obstruction, or an encroachment upon the street, and the city was held liable to a person injured

by its fall, for the reason that it was the duty of the city to remove it after notice of its erection. In the opinion of the Court, no point was made of the circumstances that a part of the structure was supported by a post standing in the street. The court referred to several Massachusetts cases, with approval, where hanging objects were supported by fastenings in the face of the buildings which were standing on the line of the street, which were held to be unlawful obstructions. The cases to which I refer are, *Pedrick* v. *Bailey*, 12 Gray, 161; *Day* v. *Inhabitants of Milford*, 5 Allen, 98. The Court, in commenting on these cases, said they are precisely in point upon the question whether such a structure, if in a dangerous position or condition, is a defect in the street, which a municipal corporation, in pursuance of its general duty, is bound to remove or repair. It has been repeatedly held that it is the duty of a municipal corporation to remove objects deposited upon the streets, the natural effect of which is to occasion accidents, frightening horses of ordinary gentleness, although the objects were placed wholly outside of the travelled part of the road-bed. In *Eggleston* v. *Columbia Turnpike Co.*, 18 Hun, 146, the Court remarked: The more common causes of injury and liability are structural defects or neglect to repair the road-bed; but a road may be also rendered unsafe, with consequent liabilities therefor, by unsightly objects placed or permitted to remain upon it, which are calculated to frighten animals employed thereon. See also Sherm. and Redf. Neg., s. 338; *Morse* v. *Richmond*, 41 Vt. 435; *Winship* v. *Enfield*, 42 N. H. 199; *Dimock* v. *Suffield*, 30 Conn. 129; *Bennett* v. *Lovell*, 18 *Alb. Law Jour.* 303; *Harris* v. *Mobbs*, id. 382. We are unable to discover any sensible reason for holding that an object permanently suspended directly over the travelled part of a highway, although fastened to supports outside of the limits of the same, is not an obstruction to travel, if it naturally tends to frighten horses of ordinary gentleness. Such an object drives travel from the street over which it is suspended, because discreet persons will avoid the risk and danger incident to an attempt to pass under the same. It endangers travel and makes it perilous to all travellers riding in conveyances drawn by horses. Such an object placed in a place so conspicuous as this banner was, within the plain sight of horses, is to be distinguished from objects which are suspended over sidewalks and fastened to the face of a building, like a sign or a bracket fastened in the face of a building, on which traders display their goods, or a show-case standing in front of a store. In many of the cases cited the argument is rejected that a road-bed can only be rendered defective by something in or upon the road itself, as being narrow and unreasonable. See *Norristown* v. *Moyer*, 67 Penn. St. 365; *Grove* v. *City of Fort Wayne*, 45 Ind. 429; S. C., 15 Am. Rep. 262."—*Ex.*

REPORTS.

ONTARIO.

(Reported for the CANADA LAW JOURNAL.)

CHANCERY DIVISION.

DIVISIONAL COURT.

Before the CHANCELLOR, and PROUDFOOT, J.

WILSON V. IRWIN.

New trial—Judgment at trial for default of attendance of plaintiff—Rule S. C. 270—Refusal of judge at trial to entertain application to reinstate the cause—Divisional Court, Jurisdiction of.

Where judgment was awarded at a trial in favour of a defendant, in consequence of the absence of the plaintiff, and an application was afterwards made to the judge at the sittings to reinstate the case which he refused to entertain.

Held, the plaintiff might, nevertheless, apply, under Rule S. C. 270, to the Divisional Court at its next sitting to set aside the judgment, and for a new trial.

[February 24.

This action was set down for trial at the special sittings before FERGUSON, J., at Toronto, which commenced in November, 1884. The action was placed on the peremptory list for trial on the 2nd December, 1884. The defendant appeared, but the plaintiff did not, and the action was dismissed An application was afterwards made to FERGUSON, J., at the sittings, to reinstate the case, but he refused to entertain the application.

G. H. Watson, for plaintiff, now moved on notice to set aside the judgment and for a new trial.

Affidavits were filed, sufficiently excusing the non-appearance of the plaintiff at the trial, and disclosing a *primâ facie* case on the merits.

Justin, for defendant, opposed the application. The Court has no jurisdiction to entertain the application. Under Rule S. C. 270, the application may be made to the judge at the trial, or to the Court in Toronto. The plaintiff adopted the first alternative, and applied to the judge at the sittings—he cannot now adopt the other alternative—the only remedy, therefore, he has now is to appeal to the Court of Appeal from the refusal of the judge at the trial to restore the case. This Court has no power to review the propriety of the refusal. *Re Galerno*, 46 Q. B. 379; *McTiernan* v. *Fraser*, 18 C. L. J. 341; 9 P. R. 246. The case is similar to *Hilliard* v. *Arthur*, 10 P.R. 281. In that case a substantive application was (subsequent to the decision of ROSE, J.) made to the Divisional Court for a new trial and was refused.

The CHANCELLOR.—I do not think the application to FERGUSON, J., is any bar to the present motion. That learned judge gave no decision upon the application. He simply said, in effect, the state of business before him was such, that he could not entertain an application to restore the case to be tried before him at that sittings. That left the matter at large, and the plaintiff, under the former practice at law, had certainly the right under such circumstances to apply to the full Court for a new trial, and there is nothing in the practice introduced by the Judicature Act depriving him of that right; and the Court should certainly struggle against a conclusion which would render it necessary for such an application as the present to be carried to the Court of Appeal. *Hilliard* v. *Arthur* appears merely to establish that a Judge in Chambers cannot entertain such applications as this. I think there should be a new trial on the usual terms of payment of costs of the application, and the costs occasioned by the plaintiff having made default.

PROUDFOOT, J.—I concur.

Order for new trial on payment of costs.

Before BOYD, C., and FERGUSON, J.

BELL v. MACKLIN.

Divisional Court, Chancery Division—Setting down motion under Rule S. C. 522, when unnecessary.

Where a cause had been set down by way of appeal to the Divisional Court of the Chancery Division, and had been subsequently struck out by order of a judge, an application made to the Court at the sittings for which the cause had been set down, for leave to set the cause down at such sittings by way of appeal from the order striking it out of the list, was held to be an exception to Rule S. C. 522, and one not requiring to be set down.

This cause was set down by way of appeal to the Divisional Court of the Chancery Division at its sittings held in September, 1884. The cause stood over at that sittings, and was standing in the paper to be heard at the sittings to be held on the 4th December, 1884. In the interval between the September and December sittings an application was made to PROUDFOOT, J., to strike the cause out of the list which was granted.

Parkes (Hamilton), moved at the December sittings on notice for leave to set the cause down at those sittings by way of appeal from the order of PROUDFOOT, J. The motion stood over until the adjourned sittings in February, 1885.

H. J. Scott, Q.C., for defendant Foster, at whose instance the cause had been struck out, submitted that the motion should have been set down under Rule S. C. 522.

The CHANCELLOR.—We do not think this is a motion which is required to be set down. The object of the motion is to expedite the proceedings, and to get the appeal from the order in question heard sooner than it could otherwise be in the ordinary course; to require such a motion to be set down would practically defeat the object of the motion.

The motion was then heard on the merits, and leave granted on payment of costs of the motion.

RINGROSE v. RINGROSE.

The decision of PROUDFOOT, J., reported 10 Prac. Rep. 299, was affirmed with costs.

COMMON PLEAS DIVISION.

(Reported for the LAW JOURNAL by W. H. Deacon, Esq.)

TEEVENS v. SHIPMAN.

Illegally issuing marriage license.

Action by the father of a minor against an issuer of a marriage license for illegally issuing a license whereby the plaintiff's daughter was married while under age, and the father lost her services, and was otherwise injured.

Held, per CAMERON, C.J., C.P., that the action was not maintainable.

[Pembroke, Oct. 14, 1884.

This action was tried at the Pembroke Fall Assizes, 1884, before CAMERON, C.J., C.P., and a

jury. The facts were that on the 8th July, 1884, a suitor of the plaintiff's daughter went with a friend to the defendant, who was duly authorized to issue marriage licenses in Ontario, for the purpose of getting a license to marry the plaintiff's daughter who was only eighteen years of age. The applicant told the defendant that the girl was only eighteen years of age, and that the plaintiff was not consenting to the intended marriage. The defendant said he would make that all right, and interlined the words "does not" in the affidavit made to procure the license so as to make it read "Bernard Teevens is the person whose consent to said marriage is required by law, and the said Bernard Teevens *does not* consent to the said marriage." The affidavit was sworn to in that form, and the license then issued upon which the plaintiff's daughter was, on the 14th of July, married without her father's knowledge or consent.

On these facts being proved, the learned judge intimated that the action would not lie, but some other witnesses were allowed to be called who proved that after the marriage the daughter returned to the plaintiff's house, and remained there until the 28th July, when her father consented to the union, and she and her husband went to a priest of the Roman Catholic Church and had her former marriage blest, it having been performed by a Methodist Minister and the parties being Roman Catholics.

M. J. Gorman, for the plaintiff, urged that the defendant was liable, as without his illegal act the marriage could not have taken place. That the plaintiff had an absolute right to withhold his consent, and that there could be no right without a remedy for the breach of it. That the defendant's act was similar to that of one who entices away a servant. He cited the followiug authorities among others:—*Evans* v. *Walton*, L. R. 2 C. P. 615; *Maunder* v. *Venn*, 1 M. & M. 323; *Jones* v. *Brown*, 1 Esp. 217; *Brasyer* v. *McLean*, L. R. 6 P. C. 398; *Ashby* v. *White*, 1 Sm. L. C. 251-85; *Bonomi* v. *Backhouse*, 28 L. J. Q. B. 381; Addison on Torts, 39 *et seq.*; *Toms* v. *Whitby*, 35 U. C. R. 195-210; R. S. O. cap. 124, secs. 11 and 13.

The defendant did not appear, and was not represented at the trial.

CAMERON, C.J. C.P., *held*, that it did not necessarily follow from the illegal issue of the license that the parties would act on it by being married; nor did it necessarily follow from the marriage that the girl would leave her father before coming of age. That the enticing away was the act of the husband and not of defendant, and that independently of the fact that the father consented to the union before the girl actually left his house, the action could not be maintained, but that the last fact put the matter beyond all question, and dismissed the action, but without costs, as defendant was not free from blame.

COUNTY COURT OF ONTARIO.

KEAN V. CUDDAHEE.

Transcript from Division Court—Irregularity therein—Sale of lands thereunder—Jurisdiction—Title to land.

A County Court Judge, sitting as such, has no authority to go behind the transcript and review the proceedings in the Division Court.

Held, that a return of *nulla bona* against the goods of the "defendant," there being more than one, is an irregularity, which would render the judgment void, but

Held, also, that as the lands had been sold, and the rights of the purchaser had intervened, the application must be refused, as there is no machinery to bring the sheriff's vendee before the Court, and the title to land would incidentally come in question.

This action was commenced by an attachment issued out of the Seventh Division Court of the County of Ontario against the defendants, as absconding debtors, and judgment was obtained therein.

This was made a judgment of the County Court of the County of Ontario by a transcript from the Seventh Division Court, and the lands were advertised and sold under this judgment, and the money paid over to the plaintiff.

The defendants (husband and wife, the land being in the latter's name) reside in Cleveland, Ohio, and had so resided since their departure from Canada, shortly before the commencement of the proceedings in the Division Court.

They now apply to set aside the judgment on the grounds: (1.) that the attachment was vexatiously and improperly issued; (2.) that they were not absconding debtors within the meaning of the Act; and (3.) that the transcript and judgment are irregular and defective, inasmuch as they set out that the bailiff returned *nulla bona* as to the "defendant," not saying which of them.

The defendants moved promptly upon becoming aware of the proceedings, but the sale by the sheriff had previously taken place. There was no affidavit of merits, and the defendants did not deny the plaintiff's claim.

DARTNELL, J.J.—I do not think I can entertain this application on either of the two first grounds. Sitting as a judge of the County Court, I conceive I have no authority to review the proceedings of the inferior Court. The application should be made in the latter Court, and if the attachment and proceedings were therein set aside a subsequent application could be made to set aside the transcript and execution founded thereon. If I had to try the question upon the affidavits filed I would have no hesitation in arriving at the conclusion that the plaintiff had ample grounds for the issue of the attachment.

The third objection is more serious, and, except for the reasons I shall presently give, I should be prepared to set aside on this ground the transcript and judgment founded thereon. I have already held in the case of *The Ontario Bank* v. *Madill*, that in case there is more than one defendant the use of the singular "defendant" instead of the plural is a fatal defect, as there was no sufficient return of *nulla bona* against *both* the defendants. I fully agree with the observations of my brother Sinclair, where he says: "Great care should be observed in the preparation of the transcript under these sections, in view of the authorities referred to, and every attorney would consult the best interests of his client by a careful examination of it before filing." There is still more cogent reason for care where the proceedings are by attachment and the owner of the land has not been personally served, or become cognizant of what is being done to expose his land to be sold under the hammer of the sheriff.

But it seems to me that, the rights of third persons having intervened, I cannot interfere. There is no machinery for bringing the purchaser before this Court, and the transcript and judgment practically form links in the chain of his title. In such case the title to land would come in question. It was urged that no proceedings could be taken in equity until this judgment was successfully attached. I agree that where the judgment is void for irregularity only the equitable jurisdiction of the Court cannot be invoked to set it aside. But these defendants, I think, are not precluded by the facts, or by the results of this application, from commencing an action in which the plaintiff and the purchaser could be joined as defendants to set aside the judgment as being vexatiously and improperly obtained. See *Tait* v. *Harrison*, 17 Chy. 458.

The defendants admit the debt, and, as far as they are concerned, the question is only one of costs, as it has been stated before me that the purchaser is willing to reconvey the lands upon recovering back what he has paid.

I dismiss the application, but considering the ircumstances, without costs.

J. A. McGilvray (Uxbridge), for the defendants.

J. B. Dow (Whitby), for the plaintiff.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

CHANCERY DIVISION.

[Feb. 12.

WEST V. PARKDALE.

CARROLL V. PARKDALE.

The judgment of WILSON, C.J., reported 22 C. L. J., 384, affirmed.

Per BOYD, C.—The village corporation has no capacity conferred upon it by municipal legislation to act as agents for other corporations. These municipalities have large original powers directly conferred by the Legislature involving the construction of, and the interference with, streets and highways within their territorial limits; but there is no law enabling them to act in the execution of such work as the representations of other limited corporations. So, on the other hand, whatever rights may be exercised by the railway companies under Orders in Council and Railway Acts, they as corporations have no power to delegate any part of these rights and privileges to mnnicipal bodies, nor have municipal bodies any capacity to receive or exercise any such delegated functions. The action of the Parkdale authorities in this case was not as agents of the railways but as principals, doing work which the municipality was not legally authorized to undertake. As a corporation Parkdale entered into the construction contract with the people by whom the work was actually done, and so have become liable as a corporation for the injurious consequences to the plaintiffs resulting from that work.

Per PROUDFOOT, J.—The Order in Council imposes no duty and confers no right upon the defendants in regard to the construction of the subway. It is strictly confined to the railway companies, and authorizes *them* to do all the works requisite.

The defendants were not acting under their municipal powers, for these did not extend to works beyond their own boundaries, as are the works in this case, and the proper steps had not been taken as required by the Municipal Act.

They may employ agents, engineers, overseers and workmen, but they cannot act in that capacity.

Assuming it to be necessary to show the act complained of to be within the scope of their authority, in order to make them liable therefor, it is shown here; for by taking the proper steps under the Special Act 46 Vict. c. 45 (O.), they might have executed the work in question. Not having done so they are trespassers, but within the scope of their authority, and therefore liable.

McCarthy, Q.C., *Osler*, Q.C., and *J. H. McDonald*, for the appeal.

S. H. Blake, Q.C., *Lash*, Q.C., and *Dr. Snelling*, contra.

Divisional Court.] [Feb. 23.

SMITH v. GRAY.

Foreign commission—When granted.

Held, on appeal, affirming the order of PROUDFOOT, J., that a commission should not be granted to take evidence abroad till after issue joined in the action, and not unless it be shewn on affidavit what evidence the party seeking the commission expects to obtain.

H. D. Gamble, for the defendant.

Arnoldi, for the plaintiff.

Boyd, C.] [March 3.

MILLER v. STILLWELL.

Held, following *Dayer* v. *Robertson*, 9 P. R. 78, and *Lowson* v. *Canada Farmers*, in *ib.* 185, that the time for appealing for an order of the Master in Chambers runs from the date of the decision, not from the date of the entry of the order.

W. M. Hall, for the defendant,

Watson, for the plaintiff.

PRACTICE.

Mr. Dalton, Q.C., Rose, J. } [Feb. 11.

MCCULLOUGH v. SYKES.

A motion by the defendant to set aside an order for leave to issue execution in this action, made under the circumstances set out in the judgment of the Master in Chambers, was refused with costs,

Harman, for the motion.

George Bell and *C. E. Jones*, contra.

NOTES OF RECENT CASES IN MANITOBA.

FROM MANITOBA LAW REPORTS.

Fencing railway—Accident—Liability of company.

Action for the value of an ox, killed by defendant's locomotive. The animal was on the prairie close to the track. The engineer reversed the engine and whistled, but, before the train could be stopped, the animal having got on the track, was run over and killed.

Held, 1. That the evidence did not disclose such negligence as would entitle the plaintiff to recover.

2. That where the land adjoining the railway is unoccupied, the company is not bound to erect fences at that part of their line.—*McFie* v. *Canadian Pacific Railway Co.*

Mandamus to purchase bridge—Bridge company—Local charter—Navigable river—Jurisdiction of Legislative Assembly.

By an Act of the Legislative Assembly of Manitoba, 45 Vict. c. 41, the Brandon Bridge Company was incorporated and empowered to build a bridge across the Assiniboine River; and, by another Act, 45 Vict. c. 35, incorporating the City of Brandon, power was given to the mayor and council to purchase any bridge built, or being built, within the city.

On an application by an adjoining land owner for a *mandamus* to compel the city to purchase the bridge,

Held, 1. The Act authorizing the building of the bridge was *ultra vires* of the Local Legislature.

2. That the title of the Bridge Company was not such as would be forced upon an unwilling purchaser.—*Re Brandon Bridge.*

Criminal information—Foundation for libel—Public officer.

Held, 1. A criminal information will not be granted except in case of a libel on a person in authority, in respect of the duties pertaining to his office.

2. Where the libel was directed against M., who was at the time Attorney-General, but alleged improper conduct upon his part when he was a judge, an information was refused.

3. The applicant for a criminal information must rely wholly upon the Court for redress, and must come there entirely free from blame.

4. Where there is a foundation for a libel, though it fall far short of justification, an information will not be granted.—*Regina* v. *Biggs*.

Mortgage suit where mortgage assigned—Covenant by mortgagee for payment—Remedy against mortgagee as surety.

On an assignment of a mortgage, the mortgagees covenanted to pay the assignee all moneys secured by the mortgage, according to its terms, in the event of default being made by the mortgagors.

In a suit for sale the original mortgagees were made parties, and a personal order was asked as against them.

Held, 1. That no order could be made against the original mortgagees for immediate payment, but only an order for payment of any deficiency after a sale.

2. That the original mortgagees were entitled upon payment forthwith after decree of principal, interest, and the costs of an undefended action at law against them upon their covenant, to be discharged from further liability; and to an assignment of the plaintiff's securities upon payment of any costs he might have against the other parties. —*Taylor* v. *Sharp*.

Issue of patent on false representations—Acts in force in Manitoba.

Held, 1. Where a patent is issued in error, through the false and fraudulent representations of the patentee, he may be declared to be a trustee of the land for the party legally entitled thereto.

2. The laws in force in Manitoba have been as follow:

Up to 11th April, 1862, the law of England, at the date of the Hudson's Bay Company's Charter.

On 11th April, 1862, the law of England, at the date of Her Majesty's accession was introduced.

On 7th January, 1864, the law of England, as it stood at that date, was declared to be the law of Assiniboia.—*Keating* v. *Moises*,

LAW STUDENTS' DEPARTMENT.

A discussion has been going on in the American legal journals as to the sort of education likely to be most beneficial to young men intending to enter the legal profession. Without at present offering any opinion on the subject we give the following extract from the *American Law Review*, one of the ablest legal periodicals published either in England or America:—

"Our able contemporary, the *American Law Record*, disagrees with us in the views expressed on this subject in our July-August number, It characterizes them as 'the American idea, the hot-house system, captivating but superficial.' We do not intend to renew the discussion, but we do think that it is unfair to characterize a system which directs the studies of a boy at an early age into the channel of his life work, as a hot-house system. It seems more appropriate so to characterize a system which consumes five or six years of vigorous youth in the acquisition of knowledge comparatively useless, and which does not bring the boy to the study of his profession until he has become a man, and feels the desire which every young man feels of becoming the head of a family and taking his proper station in society. The loss, the almost irreparable loss, of those five or six years drives him in the early stages of his manhood into a race to catch up lost time. This race involves in itself the study of his profession by the hot-house process; and while the attempt to learn the law in one or two years, which the college graduate, in a hurry to get married and established in his profession, makes, may not be 'captivating,' what he learns by such a process will certainly be 'superficial.' Our learned contemporary says:—

"'It is begging the question to assert that the study of law by a boy between sixteen and twenty-one will indoctrinate him in the "principles of the law to the extent which no after study can reach." All the great lawyers of England have been University men, and we believe it will be found substantially the case in this country.'

"This statement is erroneous in point of fact. All of the great lawyers of England have not been University men. Some of the greatest have not been. Lord St. Leonards was not. He was the son of a barber, and graduated into the law from the position of a sweep in a solicitor's office. Unless we are mistaken, Lord Tenterden was not. Sir John Barnard Byles was not, but he was engaged in mercantile pursuits until thirty years of age. The late Judah P. Benjamin, who before his death held briefs in more than half of the appeals in the House of Lords, was not. He entered Yale College, but did not graduate, Coming to this country, the statement of our contemporary is almost the reverse of true. Many of our very best lawyers and judges have not been University men. Chancellor Kent was; but, according to one of his private letters, the course of instruction in Yale, from which he was graduated, was, at that date, almost contemptible. We take it that the course of the St. Louis High School was better.

Charles O'Connor was not. Mr. Justice Miller was not, but there is not his equal on the bench of the great court in which he sits. Judge Dillon was not; but we have not a more learned or profound lawyer in America, or, it might now be added, a more successful one. The list might be indefinitely extended. The inquiry would show that an University education neither enables a man to become a great lawyer, nor does the lack of it prevent him from becoming such. What our colleges need is an elastic course of studies, which shall embrace a course of special preparation for each of the different learned professions, as well as a general course of study for those who have leisure and means and who aspire to be considered educated gentlemen. Such a course of study for a lawyer will embrace Latin, possibly French; but it will not embrace Greek, the higher mathematics, astronomy or navigation. It might as well embrace Hebrew, Sanscrit, architecture, civil and political engineering and theology."

ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

Discrimination in railway facilities and constitutionality of statute relating to railway traffic.—*American Law Register*, July, 1884.

Liability of railway servant for illegal acts in course of his employment—*Ib.*

Liability of railways and other public carriers for injury to live stock in the course of transit.—*Ib.*, Dec., 1884.

Bail in Criminal Cases (An exhaustive article referring fully to the English and American law and authorities).—*Criminal Law Mag.*, Jan., 1885.

Popular errors in the Law of Conveyancing—(Effect of deed *proprio vigore*—Trustee joining with married woman in conveyance of separate estate—Necessity for sealed instrument.)—*American Law Review*, Nov.-Dec., 1884.

Liability of Municipal Corporations for negligence.—*Ib.*

The rights and duties of Corporations in dealing with stock held in a fiduciary capacity.—*Ib.*

American institutions and laws, being the annual address delivered before the American Bar Association by Hon. John T. Dillon.—*Ib.*, Jan.-Feb., 1885.

The right to emblements upon foreclosure of mortgages of real estate.—*Ib.*

English lawyers of recent times.—*Ib.*

The French Bar.—*Ib*,

Reformation in Equity of contracts void under the Statute of Frauds.—*American Law Register.*, Feb.

Liability of medical practitioners for death caused by improper treatment.—*Ib.*

A synopsis of the more important Imperial Acts etc., relating to Manitoba and the North-West Territories.—*Manitoba L. J.*, Feb.

Seizure under bill of sale in default of payment on demand.—*Irish Law Times.*, Dec. 27, 1884.

The Law of Commission.—*Ib.*

Overcrowding on railways.—*Ib.*

Compromise by executor.—*Ib.*

Dr. Johnson as legal adviser.—*Ib.*

Liability of Railway Companies for unpunctuality in running trains.—*Ib.*, Jan. 17.

Interdicts against dealing with particular traders. *Ib.*, Jan. 24.

Owner's liability for his dog.—*Ib.*

Common words and phrases—Emoluments—Horse—Roadway, roadbed—Gunpowder—Reasonable doubt—Plying—Milk—Manual labour—Public place—*Albany Law Journal*, Feb. 7.

Presumption of marriage.—*Ib.*

FLOTSAM AND JETSAM.

LORD O'HAGAN, late Lord Chancellor of Ireland, died on 1st of February last at the age of seventy-three.

LORD PHILLIMORE, ex-judge of the High Court of Admiralty, died on 4th of Febuary last at the age of seventy-five.

"SIR," said a fierce barrister, "do you on your solemn oath swear that this is not your handwriting?" "I think not," was the cool reply. "Does it resemble your writing?" "No, sir, I think it don't." "Do you swear that it don't resemble your writing?" "Well, I do." "You take your solemn oath that this writing does not resemble yours in a single letter?" "Y-e-s, sir." "Now, how do you know?" "Cause I can't write."—*Ex.*

"YOU hev heern, gentlemen of the jury," said an eloquent advocate, "you have heern the witness swar he saw the prisoner raise his gun; you hev heern him swar he saw the flash and heerd the report; you have heern him swar he saw the dog fall dead; you hev heern him swar he dug the bullet out with his jack-knife, and you hev seen the bullet produced in Court; but whar, gentlemen, whar, I ask you, is the man who saw that bullet hit that dog?"—*Ex.*

Flotsam and Jetsam.

On one of the many official excursions made by boat to Fortress Monroe and Chesapeake Bay, Chief Justice Waite of the Supreme Court, Judge Hall of North Carolina, and other dignitaries of the bench were participants. When the government steamer had got fairly out of the Potomac and into the Atlantic, the sea was very rough and the vessel pitched fearfully, Judge Hall was attacked violently with sea-sickness. As he was retching over the side of the vessel and moaning aloud in his agony, the chief justice stepped gently to his side and laying a soothing hand on his shoulder said: "My dear Hall! can I do anything for you? just suggest what you wish," "I wish," said the sea-sick judge, "your honour would overrule this motion!" It is said that Henry Ward Beecher was once crossing the ocean in company with a sea-sick clerical friend, who complained bitterly of the voyage. To whom Bro. Beecher responded, "why, you know in grace we are always a-bounding." A clerical friend of ours, in crossing the English Channel, remarked to a sick friend, "This is a nasty bit of water." His friend, sadly gazing over the side of the vessel, replied, "It ought to be by this time."

One has to go away from home to learn the news. An exchange (which is very much distressed that Canada is part of the British Empire and not one of the States of the Union) tells us almost in tears that "the Governor General (of Canada) is a foreigner; so is the able Prime Minister, Sir John A. McDonald; so, unless we are misinformed are other members of the Cabinet. Our information is that many commercial houses in Canada are merely branches of English houses; that the best situations in these houses are filled by young Englishmen sent out for that purpose, and we certainly know that young and enterprising Canadians are crowded out into the States in large numbers where they find more elbow-room and less English competition." As our contemporary apparently desires to "believe a lie" rather than otherwise, it is a pity to undeceive him, but a little investigation would have shown him that there is a false statement in every sentence in the above absurd paragraph. We are surprised that the editor of a really excellent and most readable periodical should allow some joker to make his pages ridiculous.

Some twenty years ago it was held in *Reg.* v. *Collins*, that if a pickpocket puts his hands into your pocket with intent to steal whatever he finds there, he cannot be convicted of an attempt to steal, if the pocket has really nothing in it. On the authority of this case, Mr. D'Eyncourt the other day refused to commit for trial a "well-known London pickpocket," who was so overwhelmed with surprise at this view of the law as to fall into a fit at once. But was the magistrate quite right? Mr. Justice Stephen, in his "Digest of the Criminal Law," "submits" that in such a case the pickpocket, although he does not in law attempt to steal, commits an assault on the owner of the pocket with intent to commit a felony; and, looking to the expediency of discouraging pickpockets as much as possible, we cannot but think that a committal would have been justified. Again, even in *Reg.* v. *Collins*, it was admitted that had a question been submitted to the jury whether there was anything in the pocket which might have been taken, and they had found that there was, the indictment might have been sustained. Now the evidence before Mr. D'Eyncourt appears to have been that of a policeman, who said not that the pocket was empty, but that he did not know it to contain anything. The pickpocket, be it remembered *had pleaded guilty*.

An extraordinary instance of the peculiarity of Chinese notions of justice, as embodied in the law of the land, has occured at the Mixed Court at Shanghai. An old man, clothed in rags, was brought before Huang and Mr. Giles, and charged with attempting to commit suicide by drowning himself in Soochow Creek. The accused's son, a cleanly looking youth, appeared to give evidence against his father, and was at once ordered by Huang to go down on his knees before the bench. Mr. Giles remarked that it appeared to be the Chinese custom when a son charged his father with any offence to make him go down on his knees like an accused person, and this being so, he thought it best not to interfere. The circumstances of the case were then explained to the court. It was stated that the son was an assistant in a barber's shop, earning the munificent salary of 900 cash a month in addition to his food. Out of this he helped to support his father; but the old man was not satisfied with what he got, as his son had promised to let him have 12,000 cash a month—an amount rather difficult for the boy to pay out of a monthly salary of 900 cash. The old man upbraided his son for walking about in good clothes, while his poor father was in rags, and announced his intention of committing suicide in consequence of his son's unfilial conduct. The son, fearing that the old man would carry out his intention followed his father to the edge of Soochow Creek, when the father seized hold of the boy and jumped into the

water, dragging his son with him. Luckily the water was shallow and the boy was strong, so he managed to land both himself and his progenitor safely on the bank. His worship, having heard this story, to the amazement of all the foreigners in court, ordered the boy who had saved his father's life to be rewarded with 100 blows. Huang explained to Mr. Giles that it was a principle in Chinese law when a son prosecuted his father to begin by giving the son 100 blows. Chief Inspector Cameron, anxious to save the boy from his undeserved punishment, explained that the police were the prosecutors in the case, and that it was only at their instigation that the boy gave evidence; and Huang then graciously remitted his sentence, at the same time handing over the would-be suicide to the fostering care of his son, who will apparently have to maintain his father out of his slender income of about ten dollars per annum.

Another instance, no less extraordinary, of peculiar justice, as administered in China, shows that the ladies at all events have some pretty substantial rights. This appears by the recent decision of a Court in Foochow, A man being convinced that his wife was unfaithful to him prepared to kill her—a remedy which the law sanctions. His unworthy spouse, however, was too quick for him, and, instead of allowing her husband to kill her, she killed him. This was also recognized by the court as one of the rights which belong to condemned wives, when they can exercise them; and on the conclusion of the trial the woman was dismissed with a reprimand for not having immediately informed the authorities of her huband's death, and thus made arrangements for his burial.

A "BARRISTER" has written as follows to the London *Times* with reference to the *Law Reports*:—

"What, apparently, is wanted is some definite responsible head who should be able and powerful enough to say that this or that case shall or shall not be reported; some one, in fact, to stand between those who wish their cases to be reported and the unfortunate professsion who have to read them. I think almost every one will agree that if one-half of the present cases in the Chancery Division were either cut out altogether or cut down to reasonable limits the reports would be all the better for the process. What is the use of reporting the judgment of a judge of first instance at a length, say, of six pages, when one and a-half suffice for the judgment of the Court over-ruling him? What is wanted is something between the old system and the present, and I would suggest: (1) *That one responsible editor, or two, if necessary, be appointed at a salary or salaries sufficient to make it worth the acceptance of a first-rate man.* (2) That the reports come out quarterly instead of monthly. (3) *That it be entirely in the discretion of the editor or editors what cases shall be reported.* (4) That the reporters be directed to excise argument and unnecessary portions of judgments as much as possible, and not to report every case with witnesses simply because it is one; and I suggest that judges in the Chancery Division, especially, be requested to shorten their judgments as much as possible. I feel sure if this were done the reports would be vastly improved, and lastly, but by no means least, the principles upon which a case is decided would be more looked to than they are now. *Owing to the multitude of reported cases, diligent search is now made to find a case whose facts are on all fours with the one to be decided, while half a dozen are passed over in which the principle is precisely the same.*"

AT a recent meeting of the Judges the absence of a distinguished Lord Justice was stated, by the last of the Vice-Chancellors, to be due to his having other fish to FRY; whereupon a learned brother declared that, notwithstanding a popular belief to the contrary, BACON was incurable.

The Lord Chief Justice wished it to be understood that he had no objection to being addressed as "Duke Coleridge," though another judge expressed great annoyance at being styled KAY, C. B., to which title he observed he could not (strange to say) lay any claim.

The genial Sir Richard arrived in a very old gown, which he admitted was a very "Baggallay" array, but apologised for on the ground that it might have been worse—it might have been COTTON.

Mr. Justice Stephen announced that on that occasion he did not propose to offer any "Commentaries."

Sir Henry Hawkins was obliged to run away to play "Old Harry" with a few murderers.

A barefaced Baron felt satisfied that the presence of his brother GROVE would not prevent their enjoying a fair FIELD.

Denman explained that, in calling out D——— BRETT, he was not alluding to the Master of the Rolls, but was merely asking for a peerage.

The meeting congratulated itself on possessing the light of DAY and a NORTH aspect, but was so prolonged that one member had to CAVE in.

Law Society of Upper Canada.

During Michaelmas Term the following gentlemen were called to the Bar, namely:—John Alexander Mackintosh, Adam Carruthers, Arthur Burnaby, Henry Herbert Collier, James D. L. C. Robertson, John Douglas, James Alexander Hutcheson, Joseph Alphonse Valin, James Cæsar Grace, David Thorburn Symons, Dyce Willcocks Saunders, William Torrance Allan, Edmund Weld, Thomas Bulmer Bunting, William Navis Sorley, Isaac Norton Marshall, Frank Russell Waddell, Thomas James Decatur, Alexander George Frederick Lawrence, George Weir, William James Nelson, William David Jones, William Acheson Proudfoot, David F. McArdle; and the following gentlemen were admitted to the Society as Students-at-Law, namely:—Graduates: Frank Ambridge Drake, George Watson Holmes, Arthur Stevenson, Herbert Langell Dunn, John Frederick Dumble, Nicholas Fenar Davidson, Clement Rowland Hanning, Edward Holton Britton. Matriculants: Alexander Clarke, Henry Augustus Wardell, Herbert Ferdinand Bowie, Duncan Henry Chisholm, Fergus James Travers, John Thomas Hewitt, Richard Vercoe Clement, James Alexander Haights Campbell, Robert Lazier Elliott, Robert Gordon Smyth. Juniors: George Carnegie Gunn, Herbert William Lawlor, James Arthurs, William Pinkerton, George Davey Herd, Forbes Beyne Geddes, Robert Elliott Lazier, Frederick Forsyth Pardee, William Locklin Billings Lister, Reginald Murray Macdonald, Ernest Edward Arthur Duvernet, Frank Stewart Mearns, Arthur Trollope Wilgress, Stephen Dunbar Lazier, Robert Segsworth, James Henry McGhie.

During Hilary Term, 1885, the following gentlemen were called to the Bar, namely:—Frank Hedley Phippen, Francis R. Powell, Henry John Wickham, John Workman Berryman, Richard Henry Hubbs, Henry Lawrence Ingles, William Albert Matheson, John Bell Jackson, Norman N. A. McMurchy, Frederick Luther Rogers, John Lawrence Murphy, Thomas Irwin Forbes Hilliard, Hume Blake Elliott, Richard M. C. Toothe, Alexander Campbell Shaw, Joshua Denovan, E. A. Miller, Frederick W. Hill, Duncan Charles Murchison, Thomas Moffat, Manly German, George McLaurin, and the following gentlemen were admitted as Students and Articled Clerks, namely: Graduates, John Henry Cosgrove, Alexander Henderson, Jr.; John Arthur Tanner, Francis Alexander Anglin. Matriculants: Alfred E. Cole, Dioscore J. Husteau, William Charles Mikel. Juniors: William Henry Moore, George Washington Littlejohn, Arthur N. George Ellis, George Smith McCarter, William Albert Smith, Ernest Napier Ridout Burns, Edmund Sheppard Brown, John Patrick O'Gara and William Walton passed the Articled Clerk's examination.

SUBJECTS FOR EXAMINATIONS.

Articled Clerks.

1884 and 1885.

- 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.

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

Students-at-Law.

1884.

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

1885.

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

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.

Composition.

Critical Analysis of a Selected Poem:—

1884—Elegy in a Country Churchyard. The Traveller.

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

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek:

FRENCH.

A paper on Grammar,

Translation from English into French prose.

1884—Souvestre, Un Philosophe sous le toits.

1885—Emile de Bonnechose, Lazare Hoche.

or NATURAL PHILOSOPHY.

Books—Arnott's elements of Physics, and Somerville's Physical Geography.

First Intermediate.

Williams on Real Property, Leith's Edition; Smith's Manual of Common Law; Smith's Manual of Equity; Anson on Contracts; the Act respecting the Court of Chancery; the Canadian Statutes relating to Bills of Exchange and Promissory Notes; and cap. 117, Revised Statutes of Ontario and amending Acts.

Three scholarships can be competed for in connection with this intermediate.

Second Intermediate.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Gov-

Law Society of Upper Canada.

ernment in Canada; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three scholarships can be competed for in connection with this intermediate.

For Certificate of Fitness.

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

For Call.

Blackstone, vol. 1, containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jusisprudence; Theobald on Wills; Harris' Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, the Statute Law and Pleadings and Practice of the Courts.

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

1. 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 on the books of the society as a Student-at-Law, upon conforming with clause four of this curriculum, and presenting (in person) to Convocation his diploma or proper certificate of his having received his degree, without further examination by the Society.

2. A student of any university in the Province of Ontario, who shall present (in person) a certificate of having passed, within four years of his application, an examination in the subjects prescribed in this curriculum for the Student-at-Law Examination, shall be entitled to admission on the books of the Socity as a Student-at-Law, or passed as an Articled Clerk (as the case may be) on conforming with clause four of this curriculum, without any further examination by the Society.

3. Every other candidate for admission to the Society as a Student-at-Law, or to be passed as an Articled Clerk, must pass a satisfactory examination in the subjects and books prescribed for such examination, and conform with clause four of this curriculum.

4. Every candidate for admission as a Student-at-Law, or Articled Clerk, shall file with the secretary, six weeks before the term in which he intends to come up, a notice (on prescribed form), signed by a Bencher, and pay $1 fee; and, on or before the day of presentation or examination, file with the secretary a petition and a presentation signed by a Barrister (forms prescribed) and pay prescribed fee.

5. The Law Society Terms are as follows:

Hilary Term, first Monday in February, lasting two weeks.

Easter Term, third Monday in May, lasting three weeks.

Trinity Term, first Monday in September, lasting two weeks.

Michaelmas Term, third Monday in November, lasting three weeks.

6. The primary examinations for Students-at-Law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity and Michaelmas Terms.

7. Graduates and matriculants of universities will present their diplomas and certificates on the third Thursday before each term at 11 a.m.

8 The First Intermediate examination will begin on the second Tuesday before each term at 9 a.m. Oral on the Wednesday at 2 p.m.

9. The Second Intermediate Examination will begin on the second Thursday before each Term at 9 a.m. Oral on the Friday at 2 p.m.

10. The Solicitors' examination will begin on the Tuesday next before each term at 9 a.m. Oral on the Thursday at 2:30 p.m.

11. The Barristers' examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2:30 p.m.

12. Articles and assignments must be filed with either the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

13. Full term of five years, or, in the case of graduates of three years, under articles must be served before certificates of fitness can be granted.

14. Service under articles is effectual only after the Primary examination has been passed.

15. A Student-at-Law is required to pass the First Intermediate examination in his third year, and the Second Intermediate in his fourth year, unless a graduate, in which case the First shall be in his second year, and his Second in the first six months of his third year. One year must elapse between First and Second Intermediates. See further, R.S.O., ch. 140, sec. 6, sub-secs. 2 and 3.

16. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive certificates of fitness, examinations passed before or during Term shall be construed as passed at the actual date of the examination, or as of the first day of Term, whichever shall be most favourable to the Student or Clerk, and all students entered on the books of the Society during any Term shall be deemed to have been so entered on the first day of the Term.

17. Candidates for call to the Bar must give notice, signed by a Bencher, during the preceding Term.

18. Candidates for call or certificate of fitness are required to file with the secretary their papers and pay their fees on or before the third Saturday before Term. Any candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

FEES.

Notice Fees	$1 00
Students' Admission Fee	50 00
Articled Clerk's Fees	40 00
Solicitor's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fee	1 00
Fee in special cases additional to the above.	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

Copies of Rules can be obtained from Messrs. Rowsell & Hutcheson.