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WE publish an article on the Division Courts System in Ontario. The writer has had great experience and is most competent to deal with the subject. He makes some valuable suggestions. We trust some of them will receive early attention from those in authority. As to others they are open to question and modification; but as all of them merit consideration, we shall be glad to hear from those of our friends who have especial familiarity with the working of the People's Court.

WE cannot but be amused, notwithstanding that it savours almost too much of the truth to be amusing, when our lively and independent contemporary, *The Western Law Times*, refers to the appointment, in the Maritime Provinces, of the last batch of Queen's Counsel, in these words, "We confess that we have grave misgivings as to the completeness of this list. We fear that if a proper and exhaustive search be made, there will yet be discovered—gathering clams by the sad sea waves, doubtless—at least two members of the Bar in the Maritime Provinces who have not had this 'greatness thrust upon them.' We invoke the sympathy of the public to their lonely state. Their situation is mournful in the extreme."

THE DIVISION COURTS SYSTEM IN ONTARIO.

[COMMUNICATED.]

After many years of experience and various changes and accretions of jurisdiction and otherwise, since the construction of the Division Courts, we find that in the year 1887, the whole of the various enactments were consolidated (C.S.O., c. 51), containing no less than 304 sections. Since this, amendments, or rather, changes, have been made at each of the three sessions of the Legislature, since the consolidation; and these will go on *ad infinitum*. Some of the provisions which remain on the statute book have been only partially acted upon, or are effete, although they still remain unrepealed

It is to be regretted that almost every member of the Legislature who chooses, brings in what is called an amendment of the Act, without proper revision and consideration on the part of the Government, much less by those who are acquainted with the workings of the system, and who might well be consulted as to the expediency or need of the measures proposed. Several of them have been so ill-considered as to lead to frequent embarrassment, and it is to be regretted that what has been aptly termed "the glaring eccentricities of Legislative activity," should be so frequently manifested, and obviously so, by the

persistence of those who conceitedly tinker with what they do not understand. Like the English County Court System there has been produced what experience has developed in England, "a fine crop of inconsistencies and absurdities."

The English County Courts were intended to be instruments for the cheap and speedy collection of small debts, and remedying minor torts, or doing justice to persons who are unable to seek redress in the higher courts; but the present is an expensive and cumbersome incongruity, far away from cheapness and speed.

For many years past it has been made possible for the province to be divided into County Court Districts, under which Judges could divide the work amongst themselves, and perform functions irrespective of the counties in which they respectively reside, and it is to be regretted that that principle was not embodied as a requirement by express provision of the Consolidated Division Courts Act. The tendency of the system in general has been to decentralize the administration of civil justice, but the jurisdiction and powers of the court have been confined principally to the original purpose for which small debts courts were instituted, excepting that it has been increased as to the amount involved or the value of property brought in question. We think it may now be seriously discussed whether the railroad system of our country, which makes it convenient for Judges to travel from place to place throughout the province, does not call for an ignoring of county lines, which on the map appear, for the most part, as if they had been traced out by the journeyings of analined angle worms; and that the boundaries and extent of Division Court Districts might, with great advantage to Judges and suitors, be abolished, and the districts of Division Courts reconstructed according to business centres and populations, and business requirements.

The principle which we believe prevails in England, that a Judge should not administer justice in a county where he was born or where he resides, is as applicable to this country now, as it ever was anywhere, and the advantage of having a stranger to the community to administer justice is so obvious that it strikes one with surprise that the principle does not seem to occur to those whose duty it is to provide for the proper administration of justice, especially when we know that its local application in certain parts of the province proceeds upon no principle whatever of local exigency which does not apply everywhere else in the province. The first thing to be secured is the confidence of the public, and the next the making of the court a useful and reliable instrument for administering justice between man and man; and where the instances of calling a jury in the Division Court are so few, it is all the more desirable that a Judge who acts both as Judge and jury, dealing with both law and fact, should be beyond local prejudice or the suspicion of partiality. Constituted as human nature is, it is not to be supposed that a Judge working in the same field and dealing largely with the same people, should not receive favorable impressions of the integrity and character of some and unfavorable of others who appear before him, and thereby necessarily and unwittingly become more or less prejudiced in their favor or against them. If he ever goes outside his office or his own house, or mixes with the people to any extent, as he necessarily must,

he, in like manner, receives impressions of the same kind; so that his associations from those sources weigh upon his judgment, and are somewhat manifested in his decisions, and thereby inspire distrust of his intregity.

The census of the country is shortly to be taken, not merely as to our population, but as to wealth and other circumstances, and the result would be suggestive as to how to divide the province properly into districts for the local administration of justice. Nothing would be easier than to define a basis on which the experience of those who have been engaged in the administration of the local courts could settle upon a better division than that which now exists. There is no reason whatever why one Judge should be called upon to try five hundred suits in a year, or another Judge one thousand or fifteen hundred, or possibly not more than one hundred, or why the time of one Judge should be occupied once or twice a month, whilst another Judge only holds courts once in every two months. The circuits might be mapped out, now that the railway system of the province, and the convenience of travel, have become so fully developed. As it is, some Judges, in order to avail themselves of this convenience, travel out of their own county, pass by places where Division Courts are held in other counties, in order to reach some distant point in their own county, thereby causing a needless waste of time and expense which a more convenient division of districts and the labor and duties of Judges might avoid. A Judge has very often to travel a whole day, and be away from the county town, where frequent applications are required to be made to him in chambers, in order to reach some distant place to hold a Division Court, where only one or two suits have to be disposed of, which might be very often avoided if some neighboring Judge were to add such a district to some adjoining district in his county. It has been known that, as a matter of expenditure, it would be far cheaper if a Judge, who was to hold such a court, would pay all the debts and costs involved in suits than perform the journey of going to the place where court has to be held; and it is very much the case in this province as it is found to be in England, where Sir R. Harrington stated in his evidence before a select committee in the House of Commons, that, as a rule, he had to travel three hours for every hour he sat in court, and said: "I heard of a case the other day where the Judge telegraphed to enquire what his work at a distant court would be. He was informed that there was one judgment summons for 4*s*. Like a sensible man he paid the money himself, and thus got rid of a long and expensive day's travel for nothing; and I think that every unprejudiced person would be of opinion that the whole of the circuit arrangements require revision with reference to 'Bradshaw's Guide,' and a shifting of the population into the towns."

As regards the jurisdiction of the courts over the subject matters, we think that the provision of the English County Court System, conferring jurisdiction in common law actions and without the written consent of both parties might be very well engrafted into our Division Courts System. Actions founded on contract, except actions for breach of promise of marriage, and without reference to signature of defendant, might very well be conferred. Actions founded on tort, excepting actions for malicious prosecu-

tion, libel, slander, and seduction, might also be conferred up to $100. Counter-claim, unless the plaintiff gives written notice of objection, should be conferred to an unlimited extent; and replevin, equity jurisdiction, and interpleaders transferred from the High Court. High Court actions on contract up to $200, and High Court actions on tort might be relegated to the Division Court up to $100. Jurisdiction should not be conferred capriciously. A court which can entertain an action for false imprisonment, or for assault and battery, might as well entertain a cognate action for malicious prosecution. If it may try an ordinary action of contract, if the sum claimed does not exceed $200 (where the amount is ascertained by the signature of the defendant), why should it not try any action up to that amount whether the amount is so ascertained or not?

It has been well suggested as regards the English County Court System, by Lord Bramwell, and several others, that any action for any amount might be brought in the High Court, or that the defendant might as of right remove it into the High Court if the sum claimed or questions involved exceeded the specified amount. Different amounts might be specified in different classes of business without any agreement; this would be a simple change from the rule which gives unlimited jurisdiction with the written consent of both parties, and in reality the change would be considerable, because it has been found that the law, as to written consent, is practically a dead letter, and when the parties are stripped for the fight "they will not shake hands over the tribunal."

Under section 79 of the Division Courts Act, in case the debt or damages claimed in an action brought in the Division Court amounts to $40 or upwards, and in case it appears to any of the Judges of the High Court that the case is a fit one to be tried in the High Court, and in case the Judge grants leave for that purpose, the action may, by writ of certiorari, be removed from the Division Court into the High Court upon such terms as the payment of costs, or other terms as the Judge making the order sees fit. As a matter of practice, this provision is notably a dead letter, as experience has shown, and throws a wide difference between providing for the consent to jurisdiction and leaving a party to object to it. The costs of solicitors are so high in the High Court and in the County Court, that many a suitor entitled to redress is prevented from resorting to *any* tribunal, fearing the heavy bill of costs which may be the result; and while it is not desirable to cheapen law, it will be conceded by all fair-minded men that the resort to competent tribunals should be facilitated wherever justice requires it. Small cases may be and are of great consequence to the parties themselves, and where a man has an honest claim there is no reason why he should not come into the court and set his claim before the Judge without the intervention of a legal agent. The Judge has frequently all the work to do where the facts have to be enquired into and sifted, because the parties themselves do not know how to present their cases. The Judge has to examine and find out the questions involved, and to apply the law to them all for himself; but the tribunal should be open to all such, and every man should resort to it with every confidence that an unprejudiced Judge and clear administration of right will deal fairly with him.

In England the administrative working of the County Courts is controlled by the department of the Treasury, presided over by an officer who is known as the Superintendent of County Courts. We have in this province an officer who is called the Inspector of the Division Courts, but his duties are not at all of the character of the Superintendent referred to; his being confined to inspecting the work of the clerks and bailiffs, and the books and courts papers, and to see that proper books are provided, that they are in good order and condition, proper entries and records are made therein, and to ascertain that the duties of the officers of the Division Courts were duly and efficiently performed, and to see that lawful fees only are taxed or allowed as costs, and, when directed to do so by the Lieutenant-Governor, to ascertain that proper security has been given, and exists, and that the security of officers of the court continue sufficient.

It is an essential of our Division Courts System, that there should be a superintending power for properly regulating and dividing the work of the courts, and changing from time to time the limits of the several Division Court Districts, so as to prevent "the creaking of machinery" supplied by the Legislature, and seeing that the system works with greater efficiency. This might very well be added to the department of the Attorney-General. All legislation should pass under the eye of, and be subject to the control and management of the Superintendent. He should be a man of long and wide experience, and the office of Inspector should be subject to his direct control. It would not add very greatly to departmental expense, would prevent friction, and exercise some control upon that ill-considered and perpetual craving for tinkering by legislation with a system which might be easily improved by persons whose experience might be availed of, but who, now, never seem to be consulted.

D. J. H.

COMMENTS ON CURRENT ENGLISH DECISIONS.

(Notes on the February Number of the Law Reports—continued).

COMPANY—SHARES ISSUED AT A DISCOUNT—WINDING UP—SURPLUS ASSETS—SHAREHOLDERS, RIGHTS OF.

In re Weymouth & Channel Islands Steam Packet Co. (1891), 1 Ch. 66, a question arose as to the proper mode of distributing surplus assets of a company which was being wound up. The matter in controversy arose under the following circumstances. The shares of the company for the amount of its original capital were £10 each, and were taken up and paid in full in cash. The company subsequently got into difficulties, and resolved to increase its capital. The market value of its shares at this time was £3 per share. By special resolution the company resolved that the shares for the new capital should be also nominally £10 each, but should be issued at a discount of £7 per share. In pursuance of this resolution, shares were issued as fully paid-up shares to allottees on payment of £3 per share; and the question submitted to the court was as to the relative rights of the holders of the original shares which were fully paid up, and the holders of the shares issued at a discount, as above mentioned. North, J., held that, though the issue of the shares at a discount was *ultra vires* of the com-

pany, the holders of those shares having been many years on the register of shareholders could not, under the circumstances, repudiate their shares, and claim repayment of the £3 per share paid by them, but that they must be treated as shareholders, having paid £3 per share; and that the surplus must be applied first in payment to the original shareholders of £7 per share on the shares issued at a discount, and that the residue of the fund would then be divisible among all the shareholders rateably. On appeal, it was argued for the holders of the shares issued at a discount that there was a contract binding on the other shareholders that the holders of the shares issued at a discount should stand on the same footing as those who held fully paid-up shares. But the Court of Appeal (Lindley, Bowen, and Fry, L.JJ.) were clearly of opinion that the only contract entered into was one with the company, and that there was none with the individual shareholders, and that the latter were not in any way bound by the illegal contract made by the company. The judgment of North, J., was therefore affirmed.

VOLUNTARY SETTLEMENT—VOLUNTARY ASSIGNMENT OF DEBTS—DEBTS GOT IN BY ASSIGNOR—LIABILITY OF SETTLOR'S ESTATE.

In re Patrick, Bills v. *Totham* (1891), 1 Ch. 82, a claim was made against the estate of a deceased person in an administration action under the following circumstances. The deceased had made a voluntary assignment of four certain debts to trustees, with power to sue for the debts, upon trust to sell and convert into money the trust premises, and execute and do such assurances and things as should be expedient, and to apply the proceeds for the benefit of the settlor's wife and other relatives. The debts assigned were secured by chattel mortgages, and there was no express assignment of the securities, nor were they given up to the assignees; and the latter did not give any notice of the assignment to the debtors. The settlor afterwards himself collected the debts, and died intestate, and the trustees now claimed to be creditors of his estate for the amount of the debts so received by the intestate. Kekewich, J., held that the four debts had been completely assigned by, and were subject to the trusts of, the settlement—and on appeal the Court of Appeal (Lindley, Bowen and Fry, L.JJ.) affirmed his decision.

VENDOR AND PURCHASER—MISLEADING CONDITION OF SALE—ASSUMPTION OF FACTS ON WHICH ROOT OF TITLE DEPENDS.

In re Sandbach & Edmondson (1891), 1 Ch. 99, the Court of Appeal (Lord Halsbury, L.C., and Bowen and Fry, L.JJ.), affirming Bristowe, V.C., held that a condition of sale requiring the purchaser to assume certain facts to be true is not misleading, if the vendor believes the facts to be true, even though the condition is intended to cover a flaw which goes to the root of the title; and in such a case it is not necessary to explain in the condition the specific defect in the title which the condition is intended to cover. Lord Halsbury, L.C., who gave the judgment of the Court, however, states that if the facts required to be assumed are known by the vendor to be untrue, the condition would be bad.

COMPANY—CONTRIBUTORY—SHARES ISSUED AS "PAID-UP" WITHOUT PAYMENT.

In re Johannesberg Hotel Co. (1891), 1 Ch. 119, is another decision of the Court of Appeal (Lord Halsbury, L.C., and Bowen and Fry, L.JJ.) as to the effect of shares being issued as "paid-up shares" where no payment had in fact been made. *Spargo's case*, L.R., 8 Chy.D. 407, had established that it is possible that a transaction between a company and an allottee of shares may amount to "a payment in cash," although no cash may in fact be paid by the allottee; and the question was whether in the present case there had been such a transaction between the company and the contributories. Here, the allottees of shares issued as "paid-up shares" without any payment being made, claimed to be creditors of the company, and shares were issued to them by the company as "paid-up shares" in part payment of this debt. The company being subsequently ordered to be wound up, the allottees of these shares were, by the order of Chitty, J., placed on the list of contributories, and from this order they now appealed. The Court of Appeal being of opinion that the appellants had failed as a matter of evidence to show the existence at the time of the allotment of any contract between the company to give, or the allottees to accept, the shares in satisfaction of their claim, they had not brought themselves within *Spargo's case*, which, though binding on the Court of Appeal, was evidently regarded by the Court as open to criticism. The *rationale* of the decision may be gathered from the following observation of Fry, L.J.: "Unless the contract of the hotel company to pay £3,750 to the prospecting company (the appellants), and the contract by the prospecting company to take 2,500 shares in the hotel company, were both subsisting contracts and binding on the two companies, on the 8th October (when the allotment was made), there were not debts on either side which could be extinguished by cross payments."

COMPANY—DEBENTURE-HOLDER—RECEIVER AND MANAGER.

Makins v. *Percy Ibotson & Sons* (1891), 1 Ch. 133, was an action by a debenture-holder of a company whose debentures purported to charge all the company's property both present and future, including its uncalled capital, and the plaintiff applied for the appointment of a receiver and manager of the company's business pending realization, with a view to enable the business to be sold as a going concern. The plaintiff was the sole debenture-holder. Kay, J., following a decision of Sir Geo. Jessel, M.R., in *Peck* v. *Trinsmaran Iron Co.*, 2 Chy.D. 115, made the order, though with some doubt, on the plaintiff undertaking to provide wages for the current expenses, and to be answerable for the receipts of the manager pending his giving security, and to procure the realization of the property as soon as possible.

COMPANY—REMUNERATION OF DIRECTORS—PERCENTAGE ON "NET PROFITS"—SALE OF UNDERTAKING.

Frames v. *Bultfontein Co.* (1891), 1 Ch. 140, was an action by a director of the defendant company to recover remuneration which by the articles was fixed at a sum equal to three per cent. on the "net profits" of the company in each year. The company had resolved on a voluntary winding-up, for the pur-

pose of selling its undertaking and assets to a new company; and a very large profit was made by this sale. The plaintiff claimed 3 per cent. on the profits so made, but Chitty, J., decided that the article in question only applied to the net profits made by the company as a going concern, and not to profits made by the sale of the undertaking and assets in a winding-up; that the directors' remuneration was intended to be a return for their services, to which the sale of the concern was not attributable. The action therefore failed.

COMPANY—WINDING-UP—SURPLUS ASSETS—ORDINARY AND PREFERENCE SHAREHOLDERS—RIGHTS OF, INTER SE.

In re Bridgewater Navigation Co. (1891), 1 Ch. 155, we have another case on company law. In this case there was a contest between ordinary and preference shareholders as to their respective rights in the surplus assets of the company which remained after payment of all liabilities. By the articles of association the directors might set aside out of profits sums as a reserve for specified purposes and other contingencies, in priority to dividends, and subject to that provision the entire profits in each year were to belong to the shareholders. Under a power in that behalf the capital had been increased by the issue of preferential shares with a fixed preferential dividend. The company's undertaking (a steamboat and navigation business) had been sold under an Act of Parliament, and there was a surplus in excess of the liabilities of the company and paid-up capital, and the contest was as to the rights of the shareholders in this surplus, and it was held by North, J., that (subject to the payment of an apportioned dividend on the preferential shares) the ordinary shareholders were entitled to the net profits of the current year, including a balance carried forward from the last year, and a sum reserved for canal improvements, but not so applied; but that they were not entitled exclusively to reserve funds set apart for insurance and depreciation of the company's property, nor to the excess of the net value of plant and works over the value thereof as estimated, nor to any moneys applied out of revenue to capital purposes.

COMPANY—BORROWING MONEY—MORTGAGE OF UNCALLED CAPITAL.

In re Pyle Works (1891), 1 Ch. 173, by the articles of association of a company the directors were empowered to borrow money on the uncalled capital, and it was provided that every director should be indemnified by the company from all loans incurred in the discharge of his duties. In 1882 the company, being in want of money, the directors applied to a bank to be allowed to overdraw the company's account, which was allowed on security being given by the promissory notes of two of the directors, it being verbally agreed that these directors should be indemnified by a charge on the uncalled capital, and the board passed a resolution that the directors who had made themselves liable should be indemnified. The same two directors also gave guarantees to a railway company in consideration of their giving credit for the carriage of goods for the company. The board of directors passed a resolution that a charge on the uncalled capital of the company should be given to the two directors in respect of the overdraft due the bank, and also in respect of the debt guaranteed to the railway company.

and a mortgage was accordingly executed in favor of the two directors pursuant to that resolution. The company being in liquidation, the directors claimed to be paid the amount of the charge. Their claim was contested by the unsecured creditors, on the ground that the guaranteeing of the debts was not a borrowing of money for which the unpaid capital could be mortgaged. Stirling, J., was of opinion, however, that the transaction as regards the overdraft was a borrowing of money for the purposes of the company, and that it was not essential that the security should be given to the lender, but that the mortgage in favor of the guarantors was authorized by the articles; and though the transaction with the railway company did not amount to a borrowing of money, yet that as the articles empowered the directors to issue securities founded on unpaid capital for any legitimate business purpose of the company, that the indemnifying the directors in respect of that claim was such a purpose, and therefore the mortgage was valid as to both claims.

COMPANY—WINDING-UP—PRACTICE—DEBENTURE-HOLDERS ACTION—RECEIVER—LIQUIDATOR—LEAVE TO CONTINUE ACTION.

In re Stubbs, Barney v. *Stubbs* (1891), 1 Ch. 187, is still another decision on a point of company law. In this case an action had been commenced by a debenture-holder against a company, and a receiver had been appointed; and subsequently a winding-up order had been granted; and two questions arose, first, whether the debenture-holder should be allowed to continue his action; and secondly, whether the receiver appointed in his action should be superseded by the liquidator appointed in the winding-up. Kekewich, J., as to the first branch of the application, decided to allow the action to be continued, holding that unless the liquidator is able and willing to give a plaintiff all that he is entitled to in the action without its continuance, the plaintiff ought to be allowed to proceed; and as to the second point, he held that although it is the usual practice in a winding-up to appoint one officer to represent both the company and the secured creditors, such as debenture-holders and mortgagees, yet that practice is not to be extended by appointing the liquidator to be receiver in place of a receiver appointed in the action by a debenture-holder, when the debentures purport to charge the whole of the assets of the company, both present and future, including uncalled capital.

Notes on Exchanges and Legal Scrap Book.

EVERY MAN NOT HIS OWN LAWYER.—The maxim that he who conducts his own cause has a fool for his client has been forcibly illustrated by a recent incident. A Mr. Robert Hymer has given a sum of £50,000 to Hull for a grammar school, and the foundation-stone was laid the other day. Mr. Hymer, it appears, came into all his wealth through his kinsman, the Rev. John Hymer, of Brandsburton, leaving him an annuity of £60, and bequeathing all the rest of his fortune, amounting to about £200,000, to Hull for a grammar school. Here it

is that the strange features of the case illustrating the above maxim come. In order to avoid paying a lawyer's fee, the Rev. J. Hymer had drawn his own will and so worded it that it became void under the Statute of Mortmain. Of course, the will not being provable, an intestacy resulted, and Mr. R. Hymer stepped in as his next-of-kin. It is stated that the case was so clear that the corporation did not even make any attempt to claim the money.—*Law Journal.*

IRISH ACCOUNTS.—The annual accounts of the Irish Supreme Court of Judicature, which were issued on Friday night, illustrate, writes a correspondent, in one or two small matters, the admirable minuteness with which the national accounts are kept. Twenty-three years ago a former Master of the Queen's Bench Division inadvertently paid twice over a sum of £7 2s. 3d. It would appear, accordingly to ordinary canons, that the proper thing to do was for the Master to refund this money out of his own salary. That, however, was not done, and accordingly to this day there stands in the ledger of the Supreme Court of Judicature an item of £7 2s. 3d., entered as a deficiency uncovered by any formal liability of the Consolidated Fund. Nor is this all. Ten years later another over-payment was made. This amounted to one shilling, and the accounts, though perfectly frank in other respects, withhold any clue to the position of the official responsible for it. Still darker mystery broods over a penny in suspense. No date is mentioned when this penny went wrong. All that is stated is that it was in the Chancery Division. It has never been settled whether this penny is owing to the Supreme Court of Judicature, or whether the Supreme Court owes it. Accordingly, year after year, it is entered as being "in suspense," and the Chancery Division is saddled with responsibility for it.—*Freeman's Journal.*

LIABILITY OF SLEEPING CAR COMPANIES.—*The New York Law Journal* has grouped the more important decisions of the United States Courts concerning the liabilities of sleeping car companies, and the rights of the travelling public, as follows: While the company is not liable as an insurer it is bound to furnish sleeping passengers with reasonable protection against theft, as from the very nature of the contract between the parties, it was intended that the passengers should not remain capable of protecting themselves. *Pullman Car Co.* v. *Gardner*, (3 Pennypacker [Penn.], 78), and *Carpenter* v. *N.Y., N.H., & H.R.R. Co.* The company is bound to have watch kept during the entire night (*Blum* v. *Southern Pullman Car Co.*, 3 Central Law Journal, 591).

The almost universal rule is that sleeping car companies are not liable as common carriers, or innkeepers, but only for negligence, and that the burden is upon the plaintiff to offer some proof of negligence in addition to the fact of loss. (See *Pullman Palace Car* v. *Lo[illegible]*, 30 Central Law Journal, 245).

On the question of measure of damage, it has been held that the responsibility extends only to a passenger's clothing and personal ornaments, the small articles of luggage usually carried in the hand, and a reasonable sum of money for travelling expenses, taking into consideration his circumstances in life. It

certainly would be inequitable to the company to charge it with liability for any indefinitely large sum which a man may choose to carry with him and place under his pillow. *Blum* v. *Southern Pullman Car Co.* (supra); *Root* v. *Sleeping Car Co.* (28 Mo. Appeals, 200). *Wilson* v. *B. & O.R.R.Co.* (32 Mo. Appeals, 682).

The two Missouri cases last cited hold, in addition to the propositions above laid down, that a passenger who leaves in his waistcoat, in his berth, a large sum of money, while he goes to the closet at the end of the car, is guilty of contributory negligence as matter of law. If a passenger, before retiring, leaves his clothing and valuables in an empty berth directly above him, which upper berth he has not hired and does not control, it is not as a matter of law such contributory negligence as will bar recovery for loss of the articles. (*Florida* v. *Pullman Car Co.*, 37 Mo. Appeals, 598).

The whole gist of the matter in these sleeping car decisions is that the contract contemplates the passenger's going to sleep, and that the company is therefore bound to take precautions to protect him from stealthy theft. If the passenger is awake the ordinary rules as to taking care of his own property apply. On this point it has been held (*Whitney* v. *Pullman Palace Car Co.*, 143 Mass., 243), where a passenger on a parlor car got off at a station for refreshments, leaving property on her seat which she did not put under the charge of defendant or its agents, and the same was stolen during her absence, that she was guilty of contributory negligence fatal to her action.

CAPITAL PUNISHMENT.—Some time ago Sir James Mackintosh, a most cool and dispassionate observer, declared that, taking a long period of time, one innocent man was hanged in every three years. The late Chief Baron Kelly stated as the result of his experience, that from 1802 to 1840, no fewer than twenty-two innocent men had been sentenced to death, of whom seven were actually executed. These terrible mistakes are not confined to England. Mittermaler refers to cases of a similar kind in Ireland, Italy, France, and Germany. In comparatively recent years there have been several striking instances of the fallibility of the most carefully constructed tribunals. In 1865, for instance, an Italian named Pelizzioni was tried before Baron Martin for the murder of a fellow-countryman in an affray at Saffron Hill. After an elaborate trial he was found guilty and sentenced to death. In passing sentence the judge took occasion to make the following remarks, which should always be remembered when the acumen begotten of a "sound legal training" and long experience is relied on as a safeguard against error: "In my judgment, it was utterly impossible for the jury to have come to any other conclusion; the evidence was about the clearest and most direct that, after a long course of experience in the administration of criminal justice, I have ever known. . . . I am as satisfied as I can be of anything that Gregorio did not inflict this wound, and that you were the person who did." The trial was over. The Home Secretary would most certainly, after the judge's expression of opinion, never have interfered. The date of execution was fixed. Yet the unhappy prisoner was

guiltless of the crime, and it was only through the exertions of a private individual that an innocent man was saved from the gallows. A fellow-countryman of his, a Mr. Negretti, succeeded in persuading the real culprit (the Gregorio so expressly exculpated by the judge) to come forward and acknowledge the crime. He was subsequently tried for manslaughter and convicted, while Pelizzioni received a free pardon. Again, in 1877, two men named Jackson and Greenwood were tried at the Liverpool Assizes for a serious offence. They were found guilty. The judge expressed approval of the verdict, and sentenced them to ten years' penal servitude. Subsequently fresh facts came to light, and the men received a free pardon. Once more, in 1879, one Habron was tried for the murder of a policeman. He was found guilty and sentenced to death. An agitation for a reprieve immediately followed. The sentence was commuted to penal servitude for life. Three years after, the notorious Peace, just before his execution for the murder of Dr. Dyson, confessed that he had committed the murder for which Habron had been sentenced. With these incidents fresh in our minds, let us turn once more to St. Giles and St. James, and listen to the indignant words of Douglas Jerrold: "Oh, that the ghosts of all the martyrs of the Old Bailey—and though our professions of faith may make moral antiquarians stare, it is our invincible belief that the Newgate Calendar has its black array of martyrs; victims to ignorance, perverseness, prejudice; creatures doomed by the bigotry of the Council table, by the old haunting love of blood as the best of cures for the worst of ills,—oh, that the faces of all these could look from Newgate walls! That but for a moment, the men who stickle for the laws of death as for some sweet domestic privilege might behold the grim mistake, the awful sacrilegious blunder of the past, and seeing, make amendments for the future." —*Fortnightly Review.*

PUBLICATION OF SPEECHES BY MEMBERS OF COMMONS.—In his Commentaries on the Constitution of the United States, Mr. Justice Story says: "Although a speech delivered in the House of Commons is privileged, and the member cannot be questioned respecting it elsewhere, yet if he publishes his speech, and it contains libellous matter, he is liable to an action and prosecution therefor, as in common cases of libel. And the same principles seem applicable to the privilege of debate and speech in Congress." § 866.

To this the following note will appear in the 5th ed. of the same work (now in the press), by the editor, Mr. Bigelow:—

The first sentence quoted would now be too broad a statement. A member of Parliament may certainly circulate among his constituents a speech made by him in Parliament. *Wason* v. *Walter*, L.R. 4 Q.B. 73, 95; *Davison* v. *Duncan*, 7 El. & B. 223, 229. (For the law of England before legislation see *Stockdale* v. *Hansard*, 9 Ad. & E. 1: *Wason* v. *Walter*, *supra*.) And it may be doubted whether any such qualification of the privilege as that suggested (of constituency) can be worked in this country. Practically, the qualification is everywhere ignored, if it exists. Members of Congress, if not of the State Legislatures, act upon the supposition that the circulation, by themselves, of their speeches is

(*prima facie*) privileged, and that the privilege is not limited in territory. And if such circulation is privileged, it cannot be limited in that way without absurd consequences. A member of the House of Representatives delivers a speech there, containing defamatory reflections upon some one; on the next day he is transferred to the Senate, and the same speech, with the same reflections, is delivered there; must the speaker be confined to the particular district which he represented in the House, in circulating the first speech, while he has the whole State for the second? Again, the subject of the reflections themselves may concern the whole country, as in the case of an impeachment; in such a case shall one who represents a very poor and degenerate constituency, *e.g.*, the lower part of the city of New York, have the right to circulate his speech there, where it will probably have no effect for any purpose, and be cut off from circulating it among more enlightened people? Again, if a "fair report" of the proceedings of the body may be published (without malice), by newspapers circulating generally, how can it be that a member of that body must not circulate his own speech—assuming that it contains or is accompanied with a fair report of the proceedings—beyond his constituency? Once more, a member's constituency is migratory part of the year, as from June till October; must the member withhold his speeches during that time for fear that, if he sends them for distribution, addressed generally to the postmaster of a common resort of his constituents, copies may be delivered to persons not of his district or State?

It is plain then that any concession that a member of the Legislature may send his speeches to his constituents is a yielding, in this country, of the whole argument (see *Story, ut supra*) against privilege in such cases. And, further, the existence of a privilege itself, for the circulation of a speech by the person who made it, is in ordinary cases warranted and required by the general rule already referred to, by which fair reports of the proceedings may be privileged. "In ordinary cases," we say, for generally the printed sheet contains a sufficient report of the occasion. The real difficulty, so for as there is any difficulty, is with the circulation of speeches which would not be privileged on the footing of a publication, *e.g.*, in the newspapers, of a fair report of the proceedings. And in regard to that case, it is hard to see any reason which can justify circulation among a member's constituency without justifying circulation generally. It is hard to justify either. The true rule, it is apprehended, should be to put the circulation of speeches altogether upon the footing of fair reports, justifying the speaker only as he would be justified as the publisher of a newspaper reporting to the world the proceedings of the Legislature.

It is now too late, however it may have been sixty years ago (Story wrote in 1832), to question a privilege of fair reports; and as for the doctrine of privilege itself, that of course is fundamental. Society could not long exist if to do harm, whether in self-protection or in the discharge of duty, were not permitted. It is only necessary that the justification should be limited to the reasonable requirements of the particular case. I may do harm to my neighbor only in so far as may reasonably appear necessary in the discharge of duty or in protecting myself, my family, or my property.

The privilege in question is of course of the kind called *prima facie;* that is, it exists on the footing that the act of the sender was not malicious—not done, *e.g.*, with an indirect motive of wrong. (As to malice in that sense see *Stevens* v. *Midland Ry. Co.*, 10 Ex. 356; *Abrath* v. *Northeastern Ry. Co.*, 11 Q.B.D. 440, 450, Bowen, L.J.; s. c. 11 App. Cas. 247.) But the mere sending a speech beyond one's constituency, far from establishing, could not even, in reason, be evidence of malice.—*Melville M. Bigelow in Harvard Law Review.*

AN INNKEEPER'S LIEN AND LIABILITY.—A lien is the right of a bailee to detain chattels until some pecuniary demand upon or in respect of them has been satisfied by the bailor. Such is the definition of a lien given by Mr. Wharton in his work on "Innkeepers," p. 116; and the learned author proceeds to show that there are two kinds of lien, particular and general, the innkeeper's lien being of the former kind, and arising from the fact that the innkeeper has to "bestow an extraordinary amount of care in the preservation of his guest's goods." Hence, the law in return gives him this power of retaining his guests' goods. The definition of a lien given in Brett's "Commentaries on the Present Laws of England," vol. 1, p. 426, is very similar to Mr. Wharton's. It is as follows: "The right to retain the property of another until some pecuniary demand upon or in respect of it has been satisfied by the owner. Liens are of two kinds, particular and general. A particular lien consists in the right to retain goods in respect of labor or money expended upon them. Particular liens are favored by the law." The truth of this last short sentence is borne out by the recent case of *Gordon* v. *Silber*, 59 Law J. Rep. Q.B., 507; L.R. 25 Q.B.D., 491. For two months Martin Silber paid his bills at the hotel at which he was staying. He was then joined by his wife, who brought with her a large quantity of luggage, and they remained at the hotel for about four months. When they left their bill was unpaid, and the hotel proprietors claimed a lien on the luggage brought by the wife, and retained it. A payment on account was subsequently made. The husband having become insolvent, the action which had been commenced against him and his wife was continued against her in respect of her separate estate for the balance of the bill. The wife defended the action on the ground that board, lodgings, etc., were provided by the hotel proprietors on the order and credit of her husband, and counter-claimed for delivery to her of the luggage retained as aforesaid. From the evidence it appeared that the plaintiffs had looked primarily to the husband for payment, but thought that they could always "go back" on the goods. The goods were unquestionably the wife's separate property. The case was tried by Lord Justice Lopes, sitting in the Queen's Bench Division. The Lord Justice held that the claim for payment against the wife could not be sustained, but that the lien had attached on the luggage; and in doing so expressed himself as follows: "If the guest has brought goods to the inn to which he has no title that will not deprive the innkeeper of his lien, because he is obliged to receive the guest without inquiries as to his title. It seems, therefore, the lien is commensurate with the obligation to receive the guest and to keep safely and securely

his goods. The right of lien of an innkeeper depends upon the fact that the goods come into his possession in his character of innkeeper as belonging to a guest." His lordship also pointed out that the lien would attach even if Mr. Silber had stolen the goods. Few will deny the reasonableness of this decision, and it is comforting to feel that, while married women are acquiring new rights, they are not able to shirk the correlative liabilities. It seems that in old days it was even doubtful whether the person of the guest could not have been detained when the bill was not paid, but there is now no doubt that this is not the law ("Cross on Lien," p. 343). The innkeeper is liable, as we have stated, for the safety of his guest's goods, but the relation of landlord and guest must be established before the liability will be incurred. This is shewn by the case of *Strauss* v. *The County Hotel and Wine Company*, 53 Law J. Rep. Q.B., 25; L.R. 12 Q. B. Div., 27. There the plaintiff arrived by train at Carlisle Station, and entrusted his luggage to a porter to be conveyed to an hotel belonging to the defendant company, where he intended to stay. A telegram which he received shortly after his arrival made him change his mind, but he took some refreshments, on the waiter's suggestion, in the refreshment room which forms part of the station, but belongs to, or, at all events, is under the management of the defendants, and is directly connected with the hotel by a covered way. He had previously directed the hotel porter to lock up his luggage. Later on the same day the plaintiff discovered that part of his luggage was lost, and he brought this action to make the proprietors of the hotel liable for it as innkeepers. "We do not," said the present Lord Chief Justice, in deciding against the plaintiff, "at all lay it down that no action would lie against the defendants as bailees if the loss were occasioned under such circumstances as would make them liable. No such question arises here, and what we decide is that there is no evidence here to establish the relationship of landlord and guest, which is necessary in order to make the defendants liable as innkeepers." Mr. Justice Mathew referred to the plaintiff's contention that the relationship of landlord and guest had been established either with the porter at the station or with the waiter in the coffee-room, but held that there was no evidence of the relationship contended for.—*Law Journal.*

CHINESE COURTS.—The course of American politics, we usually acknowledge, is like a stream flowing over shifting sands—liable to get a little muddy and sometimes to change its channel; but in contrast to this we point to our courts of justice, apart from turmoil, inaccessible to bribes, unswerved by the stress of party conflict. The Chinese have studied these courts, and though they can hardly pretend to have mastered the mysteries of their intricate apparatus, it strikes our critics that no system could be more skilfully designed for the purpose of defeating justice. A court consists of three elements—bench, bar, and jury, the second and third apparently serving no other ends than to prevent law and to screen the guilty. In China, where there is neither bar nor jury, the processes of law are not only more expeditious, but as the Chinese assert, more certain. In their eyes the jury is open to three objections: (1) while the weigh-

ing of evidence requires a trained mind, the jurors are chosen at random and are chiefly uneducated men; (2) their verdict is required to be unanimous, making conviction next to impossible in cases that admit of a difference of opinion; to secure impartiality, they are required to declare beforehand that they have formed no opinion on the subject; they are accordingly men who either do not read or do not reflect. In addition to these objections, much time is lost in impanelling a jury; and then the Judge has to instruct them how to understand the evidence. Why not permit the Judge and a couple of assessors to pass on the facts in the first place? It is amusing to an Oriental to learn that these jurors are locked up and deprived of food in order to compel them to agree, and that one man who can endure hunger longer than the others may thereby procure the release of a prisoner. Such is the palladium of our liberties—an institution which ranks among the noblest privileges of Magna Charta! As for the bar, in the estimation of the Chinese its theory is thoroughly immoral, and the practice founded on it is a game of trickery and deceit. One of our great writers gives a comical picture of a Judge who averred, when he had heard one side, that he could understand the case, but who always suffered from a confusion of ideas when he came to hear the other. The function of a lawyer is to compel a Judge to hear the other side. The lawyer, however, is by the rules of his profession permitted to present only a one-sided view of the case. He seeks not the triumph of right, but the success of his client. The opposing counsel strives to determine the court in a contrary direction, and between these contending winds the arrow of justice will not fail to go straight to the mark! Each advocate browbeats the other's witnesses; he lays snares for the unwary; and to weaken their testimony he does his best to ruin their reputations. One who has the gift of eloquence appeals to the sympathies or prejudices of the jurors, who, being unsophisticated men, are liable to be carried away by his oratory. He acquires a name for power over a jury, and the litigant who can offer him the heaviest fee is almost sure to win his suit. What an original scheme for the promotion of even-handed justice! In some of our courts our visitors see a statue representing a blindfolded goddess holding aloft a pair of scales. That emblem expresses perfectly the Chinese ideal of the character of a Judge, but to express ours it ought to exhibit the counsel for the litigants as doing their best by surreptitious means each to turn the scale in his own favor. The task of weighing rival claims in such circumstances must transcend even the powers of a goddess. By means of these aids to justice rogues are set free to prey on society; wills of honest testators are broken; creditors are defrauded of their dues; and more than all, through this cumbrous machinery the processes of law are rendered so expensive that the poor are deterred from attempting to defend their rights. Whatever else our Chinese visitors may borrow, they are pretty certain not to transplant either bar or jury.—*Forum.*

POPULAR LAW.—In Boswell's "Life of Johnson" a story is told of one Betty Flint, who was charged with stealing a counterpane. The Judge, who was partial to the fair sex, observed that the prisoner was good-looking, and let

her off. "And now," said Miss Betty Flint—"now that the counterpane is my own, I shall make it into a petticoat." The remark seemed uncalled for, and must have filled the minds of those present in court with a vague feeling that injustice had been done somehow and to somebody. But it is not unlikely that disinterested parties were pleased with the acquittal of the prisoner, because she was evidently a woman of some personal attractions. Now, it is a principle of English popular law, even to this day, that a pretty woman can commit no offence; or if she can, then that there are always extenuating circumstances. These extenuating circumstances are usually a good figure, bright eyes, plump cheeks, a well-shaped nose, and satisfactory lips.

When women produce an equal effect on public opinion with men, we shall probably find it laid down as a corollory to the principle above mentioned that a handsome man cannot transgress the law. The beauty of the race may then be expected to improve very rapidly, for it is clear that the ugly and law-abiding part of the community will be at the mercy of the unrestrained Venus and Adonis; they will consequently suffer severely in the battle of life, and probably not survive very long. It is already a noticeable fact that the handsome Latin races are less law-abiding than the pudgy-faced Teutons. Perhaps the explanation is to be found in the connection between good looks and inability to commit crime in the eyes of so-called administrators of the law.

A second principle of popular law is that if a man has been nearly convicted of a crime he ought to be punished to some extent. In such cases moral certainty ought to override legal technicalities. Thus there is a sentence on record of a western Judge which probably gave general satisfaction at the time it was pronounced. A man was charged with forgery and a number of other offences, but the prosecution succeeded in establishing only the charge of forgery. For this the Judge sentenced the prisoner to one year's imprisonment; "but," he added, "you are sentenced to an additional fourteen years for general cussedness." Nothing could be more in accordance with popular notions of justice.

Connected with this principle is the theory that when a serious crime has been committed a corresponding punishment ought to be meted out to someone or other, just as during the siege of Paris by the Germans it is related that people went about exclaiming that somebody ought to get shot. There were long periods when only buildings suffered, and though the French soldiers loudly proclaimed that they were ready to die for their country, somehow or other they failed to do it. This gave an air of unreality to the siege in its earlier stages—it was not business, and it was not war. It is the same in popular law. Thus some English travellers were once touring in Arabia, when they were set upon by a band of robbers and deprived of their baggage. They proceeded to complain to the local Cadi, who promised to bring the marauders to justice. When the day came on which the Cadi was accustomed to administer the law, the Englishmen were invited to attend the court, and were accommodated with seats on what, for want of a better word, may be called the bench. Coffee was handed round, and everything was done to make the Englishmen feel that they

were the objects of courteous sympathy. They were called upon to state their case, which they did, and found no difficulty in establishing it. "Well," said the Cadi, "what punishment would you like the prisoners to be subjected to? Shall they be scourged, or bastinadoed, or thrown into a dungeon? You have only to name the sentence, and I will pronounce it." The Englishmen decided in favor of scourging. "Bring in the prisoners," exclaimed the Cadi; and now for the first time those unhappy men were introduced into the court. "You are convicted," said the magistrate in his sternest tones, "of robbing these honorable Englishmen. It is intolerable that this kind of lawlessness should prevail, and you are sentenced to be scourged." In a moment the prisoners were stripped and the punishment began. "Stop!" exclaimed one of the Englishmen, "those are not the men!" "My dear friend," replied the Cadi, while the scourging continued merrily, "of course they are not the men. But they will do very well. It is perfectly impossible for us to catch the scoundrels who robbed you: but it is necessary in the interests of justice, that somebody should be punished for such offences, if only to bring home to the minds of the real robbers the kind of sentence that would be passed upon them if they were really caught." This theory of the scapegoat seems to have been almost instinctive with all peoples and at all times. In cases of doubt it insures that every offence shall be followed by an adequate punishment. If the offender can be punished, so much the better; if not, a "whipping-boy" or scapegoat must be punished instead. It is a curious idea, and very repugnant to enlightened modern thought; but it lingers on in unwritten popular codes of law, as may be gathered from the free and easy way in which mobs are wont to wreak their vengeance on the innocent when they are unable to touch the guilty.

Mob law is the law of passion and emotion. "I hate you; I never hate without good reason: therefore you are bad and ought consequently to be punished," this is its fundamental precept, and *mutatis mutandis*, we may put "love" for "hate." But this kind of argument is not confined to localized mobs merely; there is the rabble rout of sentimentalists who find in certain newspapers (which shall be nameless) a common rallying-ground. These men are fond of talking of the "Spirit of the Age." They would condemn the advocates of Lynch law: they would despise a Judge who was not impartial; but they think that in appealing to the Zeit-Geist, or Spirit of the Age, they are taking up a quite unexceptionable position. Now, the Spirit of the Age is nothing more than the emotions of Brown, Jones, and Robinson, the aforesaid sentimentalists, when they find that the law says one thing and they desire another. If a pretty woman is condemned to be hanged, Brown, Jones, and Robinson, scream in chorus that hanging women is opposed to the Spirit of the Age. But if an ugly old hag is sentenced to death, these worthy gentlemen read the account of her execution with complacent satisfaction. Our modern prætors, the Home Secretaries, are always getting into hot water because they fail properly to interpret this vague and shifting spirit; but the petitions and deputations with which they are pestered during periods of excitement are really nothing more than a thinly veiled attempt to revert to emotional or mob law.

"Is it not lawful for me to do what I like with my own?" is a question that is very often asked by persons not accustomed to "exact thought." A man's wife is his own; therefore he may beat her. A man's house is his own; therefore he may make it a nuisance to his neighbors. A man's life is his own; therefore he may take it. These are some of the deductions which are made every day from the above maxim of popular law. And we find even well educated persons drawing conclusions hardly less valid than those given above. Thus it is the commonest thing for women who have jilted their adorers to endeavor to retain the household goods given them in contemplation of marriage. So, too, a man who has attached "fixtures" to the house he rents will often loudly bemoan his fate at not being allowed to remove them when he goes into fresh quarters. The law of the land is here altogether out of sympathy with the popular notion of what law ought to be. The tenant has paid for the fixtures; he considers them his own; and yet he finds it is not lawful for him to do what he will with them.

There arises from all these conflicts between popular and statute law a vague distrust of the latter, which is not without its good results, inasmuch as it discourages too frequent lawsuits. "The law," wrote Charles Macklin, "is a sort of hocus-pocus seance, that smiles in yer face while it picks yer pockets; and the glorious uncertainty of it is of mair use to the professors than the justice of it." The above view has probably more followers than that of Hooker, who declared that "of law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage; the very least as feeling her care, and the greatest as not exempted from her power." Perhaps, however, Macklin and Hooper speak of different kinds of law.—*London Globe.*

Correspondence.

GRAND JURIES.

To the Editor of THE CANADA LAW JOURNAL:

In a late issue of your journal you invite suggestions for a substitute for grand juries, and I have put my ideas in the shape of a bill, which with a little more consideration might provide a substitute without much trouble, judging from the success attending the proceedings in the County Judges Criminal Courts, in which, as a County Crown Attorney, I have had over sixteen years experience. It will lie with the local houses to abolish grand juries as no longer needed; there is no necessity for a special officer, as exists in Scotland. My suggestion is as follows:

Her Majesty, by and with the advice and consent of the Senate and House of Commons, enacts as follows:

1. That sections 140, 173, 174, 175, 176, and 177 of cap. 174, R.S.C., are hereby repealed, and the following substituted: "140, No bill of indictment for

any offence shall be presented for trial to any court unless the prosecutor or other person presenting such indictment has been bound by recognizance to prosecute or give evidence against the person accused of such offence, or unless the person accused has been committed to or detained in custody, or has been bound by recognizance to appear to answer to an indictment to be preferred against him for such offence, or unless the indictment for such offence is preferred by the direction of the Attorney or Solicitor-General for the Province, or by the direction or with the consent of a court or Judge having jurisdiction to give such direction or to try the offence."

2. That the second schedule to said chapter 174 is hereby amended by striking out the words "the jurors for our Lady the Queen upon their oath present," wherever they occur in the forms in said schedule, and substituting therefor the words "on behalf of our Lady the Queen it is charged."

3. That after a prisoner has been committed for trial or has elected, in the County Judges Criminal Court, to be tried by a jury, the County Crown Attorney, or other officer representing the Crown, shall prepare an indictment setting forth the offence for which the prisoner has been committed and present it to the then next Criminal Court having jurisdiction, at the opening of such court.

4. That it shall be no objection to such indictment that the offence complained of be charged both as a felony and as a misdemeanor and in any number of ways, so long as only one offence is charged therein, but this section shall only apply to indictments charging a felony.

5. That the prisoner so committed for trial and indicted as aforesaid shall, on the opening of said court, or so soon thereafter as may be convenient, be arraigned upon such indictment.

6. That upon and after arraignment the same proceedings for the trial of the prisoner shall be had as are now had upon the trial of the prisoner upon an indictment.

7. The Attorney or Solicitor-General, Presiding Justice or Judge, may direct an indictment to be preferred against any one whom a grand jury may now indict.

8. That the officer representing the Crown as aforesaid, shall before presenting an indictment to the court, endorse thereon the names of the witnesses intended to be called, in chief, by the Crown.

9. That the duties heretofore imposed on grand juries are hereby imposed on the Counsel for the Crown, County Crown Attorney, or other officer representing the Crown, as the case may be.

Yours, etc., COUNTY ATTORNEY.

ELECTION OF BENCHERS.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—As the statutory election of Benchers is soon to take place, I venture to suggest that it should, as a matter of prudence, be preceded by a proper pro-

cess of enquiry and selection, and that nothing ought to be taken for granted when important interests are at stake and a responsible franchise has to be exercised by the electors.

The honor of the profession would be best subserved were certain methods, in themselves objectionable, eschewed, and essential enquiries into personal character and gentlemanly instincts and fitness of habits properly and fairly made.

Let us examine what are the methods of some electors. A circular is formulated and forwarded to electors, purporting to give an account of a meeting of a local Bar Association—where, in point of fact, no such association has been formed—or, we will say, from some other quarter a circular is issued by a coterie, presented in the name of the "Local Bar," informing the electors elsewhere, that the choice of the so-called "Local Bar" has fallen upon Mr. So-and-so, who is nothing more than the choice of the clique. At the same time the circulars ask all and sundry, in the other counties, to support their respective nominees, undertaking at the same time in return to support whatever candidate may be nominated and notified to them, as the choice of the persons receiving the circulars.

In a few days another circular is received by the same electors contradicting one of those first sent, whereby it is announced that two other persons have been nominated and their names forwarded as the choice of the "Local Bar!"

The effect of these and the absurdity of this perversion of the objects of the election law of the Law Society, and the consequences they might lead up to, are only too obvious and deplorable to need elucidation.

Let me give you, sir, a practical example, which I refer to with reluctance; but it is, nevertheless, my duty to state a fact, *i.e.*, that in the county in which I reside, nothing short of a political canvass has been set on foot to ensure the election of an old practitioner, who has, I frankly acknowledge, merits which I will mention, but whose demerits, such as want of dignity and intemperate habits, totally unfit him for so honorable and responsible an office. He stands fairly in his profession; under ordinary circumstances he is a good, clever lawyer and has a good repute abroad (where his habits are not generally known), but whom, in other respects, such as infirmity of temper, intemperate habits, and ungentlemanly instincts, it would be hard to beat, and would be no honor to the Bench of the Law Society. If drinking in low dives; if becoming occasionally saturated with whiskey; if pettifogging and bullying before Justices of the Peace, as a means of "shining as a whale amongst minnows" for the edification of the unwashed million; if abusing, in the lowest, meanest language, the counsel opposed to him; if "spread-eagleism" and bombast and vulgar arrogance; if superficial coloring and gloss, as a make-believe for profundity; if performing unprofessional pranks before a petty Magistrate's Court in the country—which he would not dare attempt in a regular Court of Justice—afford an outfit for the position, then he is the man, and he ought to be elected.

All I can say further to the members of the profession abroad who think otherwise, is to enquire into the pranks that some men "cut up" at home,

where they think there is no account taken of their habits and arrogance and ungentlemanlike demeanor. Do not be satisfied to act upon their general professional repute or success, or by the accident of the silk gown (which has ceased to be a mark of honor in the profession); or by the political status which has caused the Attorney-General to entrust to their care the conducting of the Crown prosecutions at the Assizes? Enquire of those who know them and their characters and habits; do not elect a man who, after he is a Bencher, might be seen, when thirsty, tripping across Queen street, to get a drink in any of the low dives near Osgoode Hall! as he does in his own county.

Recently a scene occurred before a Bench of Magistrates in a country village of one of the western counties, wherein I practice my profession, which beggars description, for it was a cruel and disgraceful fanfaronade, enacted between a Queen's Counsel, who performed the part of fanfaran, who is a candidate for re-election to the Bench, on the one hand, and a junior member of the Bar, on the other; both on the same side of politics. The latter had, in the exercise of the right of private judgment at the meeting of the Law Association, a few days before, favored the nomination of another person as the local candidate for the Bench, at and for which the learned Queen's Counsel took umbrage and bottled up his wrath, to be uncorked for this magistrate's show. The occasion was not one from which the legal profession derived one particle of respect or sympathy. The exhibition was simply disgraceful; it was not one calculated to inspire respect for one "wearing silk" and holding Her Majesty's commission as one of Her Counsel learned in the law.

To the electors I say, in repetition, enquire and judge for yourselves. If the profession has no honor to guard and no important interests to conserve, let the thing go; but as for me, I will not vote for any such man, I care not who nominates him.

Let me remind the electors, in conclusion, of the old proverb, "*Cucullus non facit monachum!*" and that neither seniority at the Bar, nor the silk gown, nor reputation abroad, nor political intrigue, *per se*, is not, or all combined are not, the only essential qualifications to the Bench of the Law Society.

FIAT JUSTITIA, RUAT CŒLUM.

DIARY FOR MARCH.

1. Sun. .....*3rd Sunday in Lent.* St. David.
2. Tues.....General Sessions and County Court Sittings for trial in York.
5. Thur.....York changed to Toronto, 1834.
8. Sun.....*4th Sunday in Lent.*
9. Mon.....Civil Assizes at Toronto.
10. Tues.....Court of Appeal sits. Prince of Wales married, 1863.
13. Fri.....Lord Mansfield born, 1704.
15. Sun.....*5th Sunday in Lent.*
16. Mon.....Chancery Sittings H.C.J. at Toronto.
17. Tues.....St. Patrick's Day.
18. Wed.....Arch. McLean, 8th C.J. of Q.B., 1862. Sir John B. Robinson, C.J., Ct. of Appeal 1862.
19. Thur.....P. M. S Vankoughnet, 2nd Chancellor of U. C., 1862.
22. Sun.....*6th Sunday in Lent.* Palm Sunday.
23. Mon.....Sir Geo. Arthur, Lieut.-Governor of Upper Canada, 1838.
26. Thur.....Bank of England incorporated, 1694.
27. Fri. .....Good Friday.
28. Sat.....Canada ceded to France, 1632.
29. Sun.....*Easter Sunday.*
30. Mon.....Easter Monday. B.N.A. Act assented to, 1867. Lord Metcalfe, Gov.-General, 1843.
31. Tues.....Slave trade abolished by Britain, 1807.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [Dec. 31.

CUMMING *v.* LANDED BANKING AND LOAN COMPANY.

Trusts and trustees—Executors—Breaches of trust—Taking securities in name of one of two joint executors and trustees as "trustee"—Pledging securities for advance—Misapplication of moneys advanced—Following securities in hands of pledgee.

The judgment of BOYD, C., 19 O.R. 426, affirmed.

E. Blake, Q.C., and *Mackelcan*, Q.C., for the defendants.

A. H. Marsh, Q.C., for the plaintiffs.

Div'l Court.] [Dec. 31.

HYATT *v.* MILLS.

Crown patent—Construction—Land described as "north part" of lot—Uncertainty—Tax sale—Adverse occupation—R.S.O., c. 193, s. 191.

A patent of land from the Crown is to be upheld rather than avoided, and to be construed most favorably for the grantee.

Where land was granted by a Crown patent describing it as the north part of lot 13, containing sixty acres, and the original plan of the township showed the lot with centre line running through the concession, and showed the part south of the line as one hundred acres, and the part north of the line as eighty acres; and it appeared that, prior to the grant of the north part, there had been a grant of the southerly part, containing one hundred acres, describing it by metes and bounds, which were evidently intended to include all the land south of the line, although they actually fell short of doing so,

Held, in a contest between the plaintiff claiming under the patentee of the north part and the defendant claiming under sales for taxes based upon the lands sold being patented lands, that the patent was not void for uncertainty, but that under the words "the north part" the whole of the lot lying to the north of the centre line passed to the grantee and those claiming through him.

Doe Devine v. *Wilson*, 10 Moo. P.C. 502; *Nolan* v. *Fox*, 15 C.P. 565; *Regina* v. *Bishop of Huron*, 8 C.P. 253, specially referred to.

At the time of the conveyances to the plaintiff's predecessor in title and to himself, the defendant was in adverse occupation of lands sold for arrears of taxes, having a *bona fide* claim or right thereto, derived mediately under the sales for taxes.

Held, that, although the sales may have been invalid, s. 191 of R.S.O. c. 193, applied to them, and the conveyances, as regards the lands sold for taxes, were void; and want of knowledge of the adverse occupation on the part of the plaintiff and his predecessor could not alter its effect.

Douglas, Q.C., and *Moss*, Q.C., for the plaintiff.

Matthew Wilson, Q.C., for the defendant.

Div'l Court.] [Dec. 31.

ISRAEL *v.* LEITH.

Easement—Severance of tenement by conveyance—Rights of drainage and aqueduct—Implied grant—Express grant—Notice—Registry laws.

Where the owner of two adjoining lots of land conveys one of them, he impliedly grants to the grantee all those continuous and apparent easements which are necessary for the reasonable use of the property granted, and which are

at the time of the grant used by the owner of the entirety for the benefit of the part granted; and rights of drainage and of aqueduct are within this category of easements.

The owner of two adjacent semi-detached houses, built upon separate lots, conveyed one house and lot and retained the other. The one conveyed was drained and supplied with water through the other. The plaintiff claimed an easement for the house so conveyed over the other house, which had been subsequently conveyed to the defendant. In the conveyance under which the plaintiff claimed there were general words sufficient to pass the rights claimed by way of express grant. This conveyance was registered before that to the defendant.

Held, that the plaintiff was entitled as against the defendant to the rights claimed, whether these rights were to be treated as arising under an implied or an express grant; if the Registry Act were to be left out of consideration, the plaintiff claiming under a prior legal grant, although an implied one, would not be effected by the fact that the defendant claiming under a subsequent grant, although an express one, was a purchaser without notice; if the rights in question were to be treated as arising under an implied grant, they were outside the effect of the Registry Act, and must prevail by reason of priority; if the rights were to be treated as arising under an express grant, although the Registry Act would apply, there was nothing in it to take away the rights acquired by the plaintiff; and the conveyance under which the plaintiff claimed, being duly registered, though not directly against the defendant's lot, was notice of the conveyance of everything which, according to law, passed under the description contained in it or as incident thereto.

Dicta of PATTERSON, J.A., in *Carter* v. *Grasett*, 14 A.R. at pp. 709, 710, dissented from.

Bicknell for the plaintiff.

Kappele for the defendant.

Div'l Court.] [Dec. 31.

ONTARIO INVESTMENT ASSOCIATION *v.* SIPPI.

Company—Calls—R.S.O. c. 157, s. 45—Validity of transfer of shares.

The plaintiffs, who were incorporated under the Ontario Joint Stock Companies' Letters Patent Act, R.S.O. c. 157, sued the defendant for a call upon certain shares of their capital stock subscribed for by them at the time of their incorporation in 1880. The defendant made a transfer of these shares in 1887, before any actual call had been made by the directors; but it was contended that there was a statutory call by virtue of s. 45 of the Act, and that by s. 48 the transfer, otherwise valid, was invalid for non-payment of such call.

It is provided by s. 45 that "not less than ten per centum upon the allotted stock of the company shall, by means of one or more calls, be called in and made payable within one year from the incorporation of the company."

Held, that a call under the Act means a call made by the directors in pursuance of the powers given to them by the Act, s. 44; that s. 45 is directory only; and that the neglect of the directors to make the call thereunder had not the effect of making the defendant in arrear for the ten per centum in respect of his shares so as to prevent his making a transfer of them.

W. R. Meredith, Q.C., for the plaintiffs.

Gibbons, Q.C., for the defendant.

Chancery Division.

Full Court.] [Jan. 19.

SHORE *v.* SHORE.

Power of appointment—Defective appointment—Appointment by will instead of by deed.

Where one by deed of trust provided that certain lands shall go to his three children in default of appointment by deed, and afterwards made a will under seal, whereby he devised as residue "all the rest of my estate, real and personal, to which I shall be entitled at the time of my decease, to W.," who was one of the three children,

Held, that this could not be regarded as an execution of the power of appointment, nor even as such a defective execution as equity would aid.

Per MEREDITH, J. There is no significance in the fact of the will being sealed, in this province, at all events, when the sealing as well as the signing of wills is so common a practice.

W. Cassels, Q.C., for the plaintiff.

Smith, Q.C., for the executors.

Idington, Q.C., for the other defendants.

Full Court.] [Jan. 19.

TRUSTEES R.C. SEPARATE SCHOOL *v.* TOWNSHIP OF ARTHUR.

Separate schools—Incorporation—R.S.O., 1887, c. 227, ss. 21-24.

When a notice to convene a public meeting of persons desiring to establish a Separate school for Roman Catholics was given, purporting to be a notice within ss. 21-23 of the Separate Schools Act, R.S.O., 1887, c. 227, but which appeared to have been signed by six persons, of which two were residents of School Section No. 9, whereas the others were residents of School Section No. 10, and one was, moreover, not the head of a family,

Held, affirming the judgment of FERGUSON, J., that there had been no valid incorporation of the proposed trustees of the Separate school.

Per BOYD, C. It is sound doctrine that in the acquisition of corporate powers the methods prescribed by the Legislature should be substantially and even strictly followed.

R.S.O., 1887, c. 227, s. 67, does not extend to a disagreement which involves the original status as a corporate body upon an objection raised by the municipality wherein the alleged Separate school corporation seeks to exercise taxing and governmental powers, but applies to matters of internal economy and regulation wherein the legal status of the trustees as a corporation is assumed. Other parts of the Separate school law considered by MEREDITH, J.

Hoyles, Q.C., and *Guthrie*, Q.C., for the plaintiff.

Kingstone, Q.C., for the defendants.

ROBERTSON, J.] [Jan. 30.

FULLER *v.* ANDERSON.

Will—Construction—Words importing entail applied to personal estate.

A testator, whose estate consisted wholly of personalty, made his will in the following words: "I give, devise, and bequeath all my real and personal estate of which I may die possessed to Ellen Cedar, . . . to have and to hold unto her and the heirs of her body through her marriage with me, their and each of their sole and only use forever."

Held, that Ellen Cedar was entitled absolutely to the residue of the estate.

M. Cowan for the plaintiffs.

Hoyles, Q.C., for the adult defendant.

J. Hoskin, Q.C., for the infant defendant.

BOYD, C.] [March 4.

HICKEY *v.* HICKEY ET AL.

Will—Devise—Misdescription of land.

A testator owning lots 6 and 8 in the 1st concession, devised the same in his will in two devises, as "My property known as lot x x x., 2nd concession, etc."

Held, that his lots in the 1st concession passed.

A. McKechnie for the plaintiffs.

J. Hoskin, Q.C., for the infant.

Practice.

MR. HODGINS.] [Dec. 23.

REILY *v.* CITY OF LONDON.

Discovery—Examination of person by surgeons.

In an action to recover damages for bodily injuries caused to the plaintiff by the alleged negligence of the defendants,

Held, that the court had no power to order the plaintiff to attend and submit to an examination of her person by surgeons chosen by the defendants.

Swabey for the defendants, the City of London.

W. H. Blake for the other defendants.

Middleton for the plaintiff.

[Affirmed by STREET, J., 7th March, 1891.]

BOYD, C.] [Feb. 11.

TOWNSHIP OF LOGAN *v.* KIRK.

Costs—Taxation—Defendants severing—Counsel fee on examination of witnesses out of the jurisdiction—Costs of examination for discovery.

In an action by a municipality against a contractor, one of his sureties and the executors of a deceased surety, three separate defences were delivered by different solicitors. It did not appear that the separate solicitors were employed for the mere purpose of increasing costs.

Held, that the defendants were not liable in any joint character, and were entitled to tax separate bills of costs. Upon taxation a fee was properly allowed for counsel in British Columbia attending upon examination of witnesses there. An objection that a person examined by the defendants for discovery was not an officer or representative of the plaintiffs should have been

taken at the outset and was not open on taxation.

Douglas Armour for the plaintiffs.

C. J. Holman, J. M. Clark, and *W. M. Douglas*, for the defendants.

BOYD, C.] [Feb. 16.

IN RE HIBBARD.

Infant—Sale of land—Benefit of parent—R.S.O., c. 137, s. 3.

The statute R.S.O., c. 137, s. 3, cannot be used to sell an infant's estate for a parent's benefit.

Origin of the enactment.

A. C. Galt for the infant's father.

J. Hoskin, Q.C., for the infant.

STREET, J.] [Feb. 23.

CROIL *v.* RUSSELL.

Venue — Change of — Convenience — Cause of action.

Where the balance of convenience was in favor of a trial of an action at Pembroke rather than at Cornwall, where the plaintiffs laid the venue, it was changed to Pembroke.

Held, that, had the scales been more evenly balanced than they were, the fact that the cause of action arose in the County of Renfrew should decide the question in favor of Pembroke, the county town of Renfrew.

W. H. Blake for the plaintiffs.

Douglas Armour for the defendants.

BOYD, C.] [March 2.

ODELL *v.* MULHOLLAND.

Venue—Change of—Convenience—Cause of action—View of locus in quo.

In an action to establish a right of way over land in the County of Wentworth, the venue was changed from Brantford to Hamilton, it appearing that there was a slight preponderance of convenience in favor of Hamilton.

Held, that the facts that the subject matter of the litigation was situate in the County of Wentworth, and that a view by the jury might be necessary, were facts to be considered in fixing the place of trial.

S. A. Jones for the plaintiff.

W. M. Douglas for the defendants.

BOYD, C.] [March 3.

KEEN *v.* CODD.

Parties—Mortgage action—Personal representative of deceased mortgagor—Infants—Devolution of Estates Act—Rules 309, 1005.

In a mortgage action for foreclosure, although it may be that since the Devolution of Estates Act as a matter of title, the record is complete with the general administrator of the deceased owner of the equity of redemption as the sole defendant; yet, as a matter of procedure, the infant children of the deceased are proper parties, and as such should appear as original defendants, unless some good reason exists for excluding them.

Rules 309 and 1005 considered.

Hoyles, Q.C., for the plaintiff.

J. Hoskin, Q.C., for the infants.

STREET, J.] [March 6.

CONNOLLY *v.* MURRELL.

Discovery—Examination for — Husband and wife—R.S.O., c. 61, s. 8.

Sec. 8, cap. 61, R.S.O., which provides that "No husband shall be compellable to disclose any communication made by his wife during the marriage," is still in force.

It is competent for a husband who is making disclosures of what took place between his wife and himself during coverture, at any time during an examination for discovery to refuse to disclose anything further. If, upon such refusal, the solicitor for the opposite party withdraws, the examination may be proceeded with, and the evidence so taken will not be struck out.

E. R. Cameron for the plaintiff.

Talbot Macbeth for the defendant.

Appointments to Office.

REGISTRAR OF DEEDS.

County of Hastings.

Henry Wright Day, of the Town of Trenton, in the County of Hastings, Esquire, M.D., to be Registrar of Deeds in and for the said County of Hastings, in the room and stead of William H. Ponton, Esquire, deceased.

LOCAL MASTER.

County of Frontenac.

John Maule Machar, of the City of Kingston, in the County of Frontenac, one of Her Majesty's

Counsel learned in the Law, to be Local Master of the Supreme Court of Judicature for Ontario, in and for the said County of Frontenac, in the room and stead of James Alexander Henderson, Esquire, deceased.

DISTRICT ATTORNEY AND CLERK OF THE PEACE.

County of Dufferin.

Elgin Myers, of the Town of Orangeville, in the County of Dufferin, Esquire, to be Clerk of the Peace and County Attorney for the said County of Dufferin, in the room and stead of John Peter Macmillan, Esquire, resigned.

SHERIFF.

County of Renfrew.

Thomas Murray, of the Town of Pembroke, in the County of Renfrew, Esquire, to be Sheriff in and for the said County of Renfrew, in the room and stead of James Morris, Esquire, deceased.

CLERK OF THE PROCESS.

Province of Ontario.

Alexander Macdonell, of the City of Toronto, in the County of York, Esquire, to be Clerk of the Process, in the room and stead of James Strachan Cartwright, Esquire, appointed *pro tempore.*

ASSOCIATE-CORONERS.

County of Northumberland.

Richard Thorburn, of the Village of Colborne, in the County of Northumberland, Esquire, M.D., to be an Associate Coroner within and for the said County of Northumberland.

District of Thunder Bay.

Geoffrey Strange Beck, of the Town of Port Arthur, in the District of Thunder Bay, Esquire, M.D., to be an Associate Coroner in and for the said District of Thunder Bay.

County of York.

Opie Sisley, of the Village of Ellesmere, in the County of York, Esquire, M.D., to be an Associate Coroner in and for the said County of York.

DIVISION COURT CLERKS.

County of Essex.

William Mann, of the Village of Comber, in the County of Essex, Gentleman, to be Clerk of the Ninth Division Court of the said County of Essex.

County of Kent.

Archibald Samson, of the Town of Blenheim, in the County of Kent, Gentleman, to be Clerk of the Fourth Division Court of the said County of Kent, in the room and stead of Malcolm Samson, resigned.

District of Manitoulin.

James Munro Fraser, of the Village of Gore Bay, in the District of Manitoulin, Gentleman, to be Clerk of the First Division Court of the said District of Manitoulin.

Herman Currie, of the Village of Little Current, in the Temporary Judicial District of Manitoulin, Gentleman, to be Clerk of the Second Division Court of the said District of Manitoulin, in the room and stead of Samuel McLean, resigned.

William J. Tucker, of the Village of Manitowaning, in the District of Manitoulin, Gentleman, to be Clerk of the Third Division Court of the said District of Manitoulin.

County of Simcoe.

John C. McNab, of the Town of Barrie, in the County of Simcoe, Gentleman, to be Clerk of the First Division Court of the said County of Simcoe, in the room and stead of Allan J. Lloyd, left the country.

County of Waterloo.

William Dolman Watson, of the Village of Ayr, in the County of Waterloo, Gentleman, to be Clerk of the Seventh Division Court of the said County of Waterloo.

County of Wellington.

Henry Clarke, of the Village of Elora, in the County of Wellington, Gentleman, to be Clerk of the Sixth Division Court of the said County of Wellington, in the room and stead of Hugh Hamilton, deceased.

DIVISION COURT BAILIFFS.

County of Essex.

Joseph Lupien, of the town of Windsor, in the County of Essex, to be Bailiff of the Sixth Division Court of the said County of Essex, in the room and stead of William Mann, (appointed to be Clerk of the Ninth Division Court of the said County).

Raphael Marion, of the Township of Tilbury West, in the County of Essex, to be Bailiff of the Ninth Division Court of the said County of Essex.

County of Hastings.

William Henry Garratt, of the town of Trenton, in the County of Hastings, to be Bailiff of the Ninth Division Court of the said County of Hastings, in the room and stead of Lewis Cruickshank, resigned.

Benoni Haskel Sweet, of the Village of Bancroft, in the County of Hastings, to be a Bailiff of the Twelfth Division Court of the said County of Hastings.

County of Lincoln.

Richard E. Boyle, of the Village of Merritton, in the County of Lincoln, to be Bailiff of the Second Division Court of the said County of Lincoln, in the room and stead of James S. Clements, resigned.

District of Manitoulin.

Peter J. Anderson, of the Village of Gore Bay, in the District of Manitoulin, to be Bailiff of the First Division Court of the said District of Manitoulin.

Donald McKenzie, of the Village of Little Current, in the District of Manitoulin, to be Bailiff of the Second Division Court of the said District of Manitoulin.

John Gorley, of the Village of Manitowaning, in the District of Manitoulin, to be Bailiff of the Third Division Court of the said District of Manitoulin.

County of Victoria.

William Glass, of the Village of Omemee, in the County of Victoria, to be Bailiff of the Fourth Division Court of the said County of Victoria, in the room and stead of Isaiah Thornton, resigned.

County of Waterloo.

Edward Bourchier, of the Township of Blenheim, in the County of Oxford, to be Bailiff of the Seventh Division Court of the County of Waterloo.

County of Wellington.

S. B. Trask, of the Village of Drayton, in the County of Wellington, to be Bailiff of the Seventh Division Court of the said County of Wellington, in the room and stead of George Mellis, deceased.

COMMISSIONERS FOR TAKING AFFIDAVITS FOR USE IN ONTARIO

City of Montreal.

George Henry Ancrum, of the City of Montreal, in the Province of Quebec, Accountant, to be a Commissioner for taking Affidavits within and for the said City of Montreal, and not elsewhere, for use in the Courts of Ontario.

Rienzi Athel Mainwaring, of the City of Montreal, in the Province of Quebec, Esquire, to be a Commissioner for taking Affidavits within and for the City of Montreal, and not elsewhere, for use in the Courts of Ontario.

County of London (England).

Alexander James Murray, of No. 1 Clements' Inn, in the City of London, in that part of the United Kingdom of Great Britain and Ireland, called England, Gentleman, Solicitor, to be a Commissioner for taking Affidavits within and for the County of London, and not elsewhere, for use in the Courts of Ontario.

City of Chicago.

William Alexander Stolts, of the City of Chicago, in the State of Illinois, one of the United States of America, Gentleman, Attorney-at-Law, to be a Commissioner for taking Affidavits within and for the said City of Chicago, and not elsewhere, for use in the Courts of Ontario.

Flotsam and Jetsam.

GOVERNOR FERRY, as we learn from the San Francisco *Law Librarian*, recently wrote the following to an applicant for an appointment as notary: "In response to a written request of twenty of the magnates of Seattle, you have been appointed to the exalted, honorable, and lucrative position of notary public. I ask you, however, to bear in mind one responsibility that may devolve upon you. In the event that there should be an invasion of the state by a foreign foe, I shall probably call out the notaries public of the state, instead of the militia, as the former outnumber the latter by several hundred." Probably those troops would "swear" terribly and "protest" loudly.—*Albany Law Journal.*

A LEARNED judge of French extraction lately pronounced the following remarkable sentence on a man accused of stealing a horse:

"Prisoner, de evidence is conflicting, but I find you guilty and sentence you to dree months in de guard-room. De evidence, as I say, is very conflicting, but if I was sure, if I was *quite* sure, dat you stole dat horse, I would give you two years in de Manitoba penitentiary!"—*Central Law Journal.*

WHEN practising at the Bar, the late Baron Dowse had to deal with a case in which certain pigs had been injured in a fire on board a steamer. "Gentlemen of the jury," he said, "it was a rash act on the part of the owners (of the steamer) to allow these pigs to be lost, but to allow them to be roasted was a rasher."—*Irish Law Times.*

H. L. STROHM says that the most expressive will he ever saw was one filed in southwestern Kansas. It is as follows: "I declare this to be my last will and testament. I claim to be perfectly sound in body, but I do not presume to assert that I am sound in mind. I would not stultify myself by setting up such a pretension. I have about $10,000 of invested funds. What an immense amount of hypocrisy, fraud, and dishonesty I could buy with that amount. I thought first of bequeathing it to a charity. But what's the use? The greatest benefactors of humanity are war and cholera. Besides, I owe a debt of gratitude to my wife, who lives I don't know where. She rendered me the greatest service in her power— she abandoned me one fine day and I never heard of her since. In remembrance of this kind act I shall make her my sole legatee; however, on the express condition that she shall remarry at once. In this way I shall know that my death was regretted by one human being at least."—*Albany Law Journal.*

"LOOK ON THIS PICTURE, AND ON THAT."—Can two entirely different opinions (asks the *Law Gazette*) be entertained upon the same subject, and both be correct? The other day a correspondent came across the following poetic effusion, which expressed the opinion of a gentleman who had been asked whether a lawyer's life was worth living, or not:

"He lives for those that trust him,
For those that know him true,
For the work that lies about him,
Ready for him to do;
For the cause that needs assistance,
For the wrongs that need resistance,
For the future in the distance,
For the good that he can do."

Having read this, our Sunderland representative turned to his *Hudibras*, and found the following passage. The quiet but stinging sarcasm of the one is so different from the laudatory sentiment of the other, that the comparison is at least amusing:

"Lawyers have more sober sense
Than t' argue at their own expense,
But make their best advantages
Of others' quarrels, like the Swiss;
And out of foreign controversies,
By aiding both sides, fill their purses;
But have no interest in the cause
For which th' engage, and wage the laws.
Nor further prospect than their pay,
Whether they lose or win the day."

—*Irish Law Times.*

Law Society of Upper Canada.

THE LAW SCHOOL, 1891.

LEGAL EDUCATION COMMITTEE.

CHARLES MOSS, Q.C., *Chairman.*

C. ROBINSON, Q.C. Z. A. LASH, Q.C.
JOHN HOSKIN, Q.C. J. H. MORRIS, Q.C.
F. MACKELCAN, Q.C. J. H. FERGUSON, Q.C.
W. R. MEREDITH, Q.C. N. KINGSMILL, Q.C.

This notice is designed to afford necessary information to Students-at-Law and Articled Clerks, and those intending to become such, in regard to their course of study and examinations. They are, however, also recommended to read carefully in connection herewith the Rules of the Law Society which came into force June 25th, 1889, and September 21st, 1889, respectively, copies of which may be obtained from the Secretary of the Society, or from the Principal of the Law School.

Those Students-at-Law and Articled Clerks, who, under the Rules, are required to attend the Law School during all the three terms of the School Course, will pass all their examinations in the School, and are governed by the School Curriculum only. Those who are entirely exempt from attendance in the School will pass all their examinations under the existing Curriculum of The Law Society Examinations as heretofore. Those who are required to attend the School during one term or two terms only will pass the School Examination for such term or terms, and their other Examination or Examinations at the usual Law Society Examinations under the existing Curriculum.

Provision will be made for Law Society Examinations under the existing Curriculum as formerly for those students and clerks who are wholly or partially exempt from attendance in the Law School.

Each Curriculum is therefore published herein accompanied by those directions which appear to be most necessary for the guidance of the student.

CURRICULUM OF THE LAW SCHOOL, OSGOODE HALL, TORONTO.

Principal, W. A. REEVE, Q.C.

Lecturers: E. D. ARMOUR, Q.C.
A. H. MARSH, B.A., LL.B., Q.C.
R. E. KINGSFORD, M.A., LL.B.
P. H. DRAYTON.

The School is established by the Law Society of Upper Canada, under the provisions of rules passed by the Society with the assent of the Visitors.

Its purpose is to promote legal education by affording instruction in law and legal subjects to all Students entering the Law Society.

The course in the School is a three years' course. The term commences on the fourth Monday in September and closes on the first Monday in May; with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's Day.

Students before entering the School must have been admitted upon the books of the Law Society as Students-at-Law or Articled Clerks. The steps required to procure such admission are provided for by the rules of the Society, numbers 126 to 141 inclusive.

The School term, if duly attended by a Student-at-Law or Articled Clerk is allowed as part of the term of attendance in a Barrister's chambers or service under articles.

The Law School examinations at the close of the School term, which include the work of the first and second years of the School course respectively, constitute the First and Second Intermediate Examinations respectively, which by the rules of the Law Society, each student and articled clerk is required to pass during his course; and the School examination which includes the work of the third year of the School course, constitutes the examination for Call to the Bar, and admission as a Solicitor.

Honors, Scholarships, and Medals are awarded in connection with these examinations. Three Scholarships, one of $100, one of $60, and one of $40, are offered for competition in connection with each of the first and second year's examinations, and one gold medal, one silver medal, and one bronze medal in connection with the third year's examination, as provided by rules 196 to 205, both inclusive.

The following Students-at-Law and Articled Clerks are exempt from attendance at the School.

1. All Students-at-Law and Articled Clerks attending in a Barrister's chambers or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889.

2. All graduates who on the 25th day of June, 1889, had entered upon the *second* year of their course as Students-at-Law or Articled Clerks.

3. All non-graduates who at that date had entered upon the *fourth* year of their course as Students-at-Law or Articled Clerks.

In regard to all other Students-at-Law and Articled Clerks, attendance at the School for one or more terms is compulsory as provided by the Rules numbers 155 to 166 inclusive.

Any Student-at-Law or Articled Clerk may attend any term in the School upon payment of the prescribed fees.

Students and clerks who are exempt, either in whole or in part, from attendance at The Law School, may elect to attend the School, and to pass the School examinations, in lieu of those under the existing Law Society Curriculum. Such election shall be in writing, and, after making it, the Student or Clerk will be bound to attend the lectures, and pass the School examination as if originally required by the rules to do so.

A Student or Clerk who is required to attend the School during one term only, will attend during that term which ends in the last year of his period of attendance in a Barrister's Chambers or Service under Articles, and will be entitled to present himself for his final examination at the close of such term in May, although his period of attendance in Chambers or Service under Articles may not have expired. In like manner those who are required to attend during two terms, or three terms, will attend during those terms which end in the last two, or the last three years respectively of their period of attendance, or Service, as the case may be.

Every Student-at-Law and Articled Clerk before being allowed to attend the School, must present to the Principal a certificate of the Secretary of the Law Society shewing that he has been duly admitted upon the books of the Society, and that he has paid the prescribed fee for the term.

The Course during each term embraces lectures, recitations, discussions, and other oral

methods of instruction, and the holding of moot courts under the supervision of the Principal and Lecturers.

During his attendance in the School, the Student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance. As far as practicable, Students will be provided with room and the use of books for this purpose.

The subjects and text-books for lectures and examinations are those set forth in the following Curriculum :

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

Common Law.

Broom's Common Law.
Kerr's Student's Blackstone, books 1 and 3.

Equity.

Snell's Principles of Equity.

Statute Law.

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.

Criminal Law.

Kerr's Student's Blackstone, Book 4.
Harris's Principles of Criminal Law.

Real Property.

Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Deane's Principles of Conveyancing.

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.
Bigelow on Torts—English Edition.

Equity.

H. A. Smith's Principles of Equity.

Evidence.

Powell on Evidence.

Canadian Constitutional History and Law.

Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

Dart on Vendors and Purchasers.
Hawkins on Wills.
Armour on Titles.

Criminal Law.

Harris's Principles of Criminal Law.
Criminal Statutes of Canada.

Equity.

Lewin on Trusts.

Torts.

Pollock on Torts.
Smith on Negligence, 2nd edition.

Evidence.

Best on Evidence.

Commercial Law.

Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.

Private International Law.

Westlake's Private International Law.

Construction and Operation of Statutes.

Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law.

British North America Act and cases thereunder.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

During the School term of 1890-91, the hours of lectures will be 9 a.m., 3.30 p.m., and 4.30 p. m., each lecture occupying one hour, and two lectures being delivered at each of the above hours.

Friday of each week will be devoted exclusively to Moot Courts. Two of these Courts will be held every Friday at 3.30 p.m., one for the Second year Students, and the other for the Third year Students. The First year Students will be required to attend, and may be allowed to take part in one or other of these Moot Courts.

Printed programmes showing the dates and hours of all the lectures throughout the term, will be furnished to the Students at the commencement of the term.

GENERAL PROVISIONS.

The term lecture where used alone is intended to include discussions, recitations by, and oral examinations of, students from day to day, which exercises are designed to be prominent features of the mode of instruction.

The statutes prescribed will be included in and dealt with by the lectures on those subjects which they affect respectively.

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court, if not given at the close of the argument.

At each lecture and Moot Court the roll will be called and the attendance of students noted, of which a record will be faithfully kept.

At the close of each term the Principal will certify to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student will be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series during the term, and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal will make a special report upon the matter to the Legal Education Committee. For the purpose of this provision the word "lectures" shall be taken to include Moot Courts.

Examinations will be held immediately after the close of the term upon the subjects and text books embraced in the Curriculum for that term.

The percentage of marks which must be obtained in order to pass any of such examinations is 55 per cent. of the aggregate number of marks obtainable, and 29 per cent. of the marks obtainable on each paper.

Examinations will also take place in the week commencing with the first Monday in September for students who were not entitled to present themselves for the earlier examination, or who having presented themselves thereat, failed in whole or in part.

Students whose attendance at lectures has been allowed as sufficient, and who have failed at the May examinations, may present themselves at the September examinations at their own option, either in all the subjects, or in those subjects only in which they failed to obtain 55 per cent. of the marks obtainable in such subjects. Students desiring to present themselves at the September examinations must give notice in writing to the Secretary of the Law Society, at least two weeks prior to the time fixed for such examinations, of their intention to present themselves, stating whether they intend to present themselves in all the subjects, or in those only in which they failed to obtain 55 per cent. of the marks obtainable, mentioning the names of such subjects.

Students are required to complete the course and pass the examination in the first term in which they are required to attend before being permitted to enter upon the course of the next term.

Upon passing all the examinations required of him in the School, a Student-at-Law or Articled Clerk having observed the requirements of the Society's Rules in other respects, becomes entitled to be called to the Bar or admitted to practise as a Solicitor without any further examination.

The fee for attendance for each Term of the Course is the sum of $10, payable in advance to the Secretary.

Further information can be obtained either personally or by mail from the Principal, whose office is at Osgoode Hall, Toronto, Ontario.