DIARY FOR OCTOBER.

2. Wed. Prince Arthur visited Toronto.
7. Mon. County Court term begins.
8. Tues. Chicago destroyed by fire, 1871. Harrison, C. J., sworn in as C. J. of Q. B., 1875.
9. Wed. Moss, J., sworn in as Judge of the Court of Appeal, 1875.
11. Fri...Guy Carleton, Gov. of Canada, 1774.
12. Sat...County Court term ends.
13. Sun.. Battle of Queenston Heights—Brock killed, 1812.
24. Thur. Sir J. H. Craig, Gov.-Gen., 1807.
25. Fri...Battle of Balaclava, 1854.

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Canada Law Journal.

Toronto, October, 1878.

The Right Hon. Frederick Thesiger, Lord Chelmsford, Lord Chancellor of England, under Lord Derby's administration, died at London, on the 6th inst., at the age of eighty-four.

Mr. Justice Keogh, of the Irish Bench, whose insanity culminated recently in an attempt to take the life of his servant, has died at Bohn, whither he had been sent to a private asylum.

An esteemed correspondent calls attention to a recent case on a subject referred to last month: *i.e.*, the rate of interest that can be recovered, after maturity, on a promissory note which bears interest at a rate higher than the legal rate of six per cent. His letter, with some observations thereon, will be found in another place.

THE jurisdiction in lunacy is being extended in England after a very alarming fashion. From the report of the Commissioners in Lunacy to the Lord Chancellor, it appears that the total number of registered lunatics, idiots, and persons of unsound mind in England and Wales, on the first of January last, was 68,538. This indicates an increase of nearly two thousand on those returned for the previous year.

FROM the 1st Jan., 1877, to the 11th March, 1878, there have been 253 appeals from the decisions of the judges of the Chancery division in England, that is, from the Master of the Rolls, the three Vice Chancellors and Mr. Justice Fry. Of these appeals 106 were successful in effecting a reversal or a material alteration in the decision appealed from, and 147 were dismissed.

Henry William May, the author of the treatise on Fraudulent Conveyances, and joint editor of the last edition of Seton on Decrees, died lately at the early age of 34 years. His first and best known book was written when he was 27. A very interesting collection of facts might be made regarding valuable law-books written when their respective authors were little more than "infants." Among others present to our recollection are the following: Sander's Essay on Uses and Trusts; Sugden's treatise on Vendors and Purchasers; Preston's Essay on

Estates, and Lewis's book on Perpetuities, all of which were published before the writers had attained the age of twenty-two.

In the case of *Cartwright* v. *Cartwright*, 26 W. R. 684, the eminent counsel, Mr. Bompas, Q.C., was called as an expert to prove the validity of a marriage solemnized in Montreal. His acquaintance with Canadian law was derived from his having practised for many years before the Privy Council, the final Court of Appeal for the Dominion. But Hannen P. rejected the evidence as not admissible, being after all, knowledge acquired by study and not as an expert. A collection of cases on this subject will be found in *Third National Bank of Chicago* v. *Cosby*, 43 U. C. R. 63.

Mr. L. A. Jette, of Montreal, has been appointed one of the Judges of the Superior Court of Quebec, to fill the vacancy caused by the death of the late Mr. Justice J. P. W. Dorion. Mr. Jette was called to the Bar in February, 1857. He successfully opposed Hon. G. E. Cartier in 1872 at the election for the Eastern Division of Montreal, and after the defeat of Sir John A. Macdonald's Government in 1873, he was in 1874 elected for the same constituency by acclamation. His reputation at the Bar has been very good, and the appointment will, we believe, meet with general satisfaction in the Province of Quebec.

The lay press have been falling foul of Mr. Justice Hawkins for insisting upon Sheriffs attiring themselves in some costume appropriate to their office, such as a Court dress, military uniform, or other official costume. We quite agree with the observations of a cotemporary which appear in another place (*post* p. 261), and we also agree with Mr. Justice Hawkins that the eternal fitness of things requires some distinctive mark of the high office of Sheriff. This is not a mere matter of sentiment; those most familiar with the hidden springs of thought of the great mass of humanity, and especially of those in the humbler walks of life, know well the effect of outward display. The importance of keeping up that "pomp and circumstance" which impresses them more than anything else with the power and majesty of the law can scarcely be overestimated. Britons who "never will be slaves" are, nevertheless, more or less savages in this respect.

IS A DEBT SECURED BY PROMISSORY NOTE GARNISHABLE?

Under proceedings in foreign attachment, by the Custom of London, it was a part of the practice to attach a debt for which a bill or note was given on the ground that it was *debitum in præsenti solvendum in futuro*: Ashley p. 12[illegible].* So in *Carr* v. *Baycroft*, 4 U. C. L. J. 209, it appears that a debt, for which a promissory note had been given, was permitted to be attached, and it was thought by Mr. Justice Burns that, in an action on such note, it would be an answer to plead the attaching order. This would probably be the case so long as the judgment debtor continued to be the holder of the note, but what would be the position of the garnishee, if this note had been *bonâ fide* endorsed over? Again, in *Shanly* v. *Moore*, 9 U. C. L. J. 264, Mr. Justice Wilson refers to money due on a bill or note and engaged to be paid on a day yet to come as being garnishable.

* In case of any difficulty arising in the operation of the garnishee clauses it has been said that reference may be made to the proceedings by foreign attachment from which the Statute takes a part of its language in order to shew that the legislature did not intend to give a less effectual remedy than that given by the Custom: *Sparkes* v. *Younge*: 8 Ir. C. L. R., p. 261.

Such also is the view of Mr. Justice Crompton as given in the *Law Journal* report of *Jones* v. *Thompson* : 27 L.J.Q.B. 289, where he says: "There must be a debt, which, though not due in point of payment, is yet an absolute debt. There is a large class of cases which come under this head, such as the case between the drawer and payee of a promissory note still running, in which I have always held at Chambers, and I understand other judges also, that there is a debt." Similar language is given in the report in the *Jurist* (4 Jur. N. S. 338), but in the regular report, as found in Ell., B. & Ell. 63, all this passage is expunged.

In *Mellish* v. *Buffalo, Brantford* v. *Goderich R. Co.* 2 U. C. L. J. 230, an attaching order had been made by Burns, J., in respect of a debt due on two acceptances made by the garnishee in favour of the judgment debtor. One of these was overdue, the other not yet due. Upon the summons to pay over the garnishee objected that the judgment creditor should shew that the acceptances were still in the hands of the judgment-debtor or under his control, so that he might not have to pay twice. In this, Hagarty J. agreed, saying, that it would not be safe to make an order, as it was quite possible the acceptances might be in the hands of *bonâ fide* holders for value prior to the granting of the order to pay over (if such were made). He observed that the difficulty in carrying out the garnishee clauses, with regard to bills and notes and other floating securities for money, arose from the non-existence of any enactment in Canada, similar to Imp. Stat. 1-2 Vict. c. 110, s. 12, by which the Sheriff can seize bills and notes under a *fi. fa.*,—the effect of the service of the order to attach being the same as the effect of the delivery of the writ to the Sheriff. He preferred letting the Court dispose of the matter in term and so enlarged the summons. We have been unable to trace this case any further, but a very similar case of the same name is to be found in 2 P. R. 171. There Robinson, C. J., is reported to have questioned whether the garnishee clauses are applicable to a debt secured by negotiable bills, not yet due,—it being of so shifting a nature, dependent on the holders' endorsing them away before the attaching order was served, and even endorsing them away at any time before they were due. The remedy intended to be given to the judgment creditors in such cases would seem to be imperfect, at least without the hazard of embarrassment and injustice to others, so long as there are no means of seizing such securities under an execution. In *Turner* v. *Jones*: 1 H.&.N. 883, Bramwell, B. expressed a doubt upon the matter thus: "The garnishee was indebted to the judgment debtor in a sum of money, for which he agreed to give bills of exchange payable at certain future periods. Therefore the debt was not actually due but accruing due; and it may be that such a debt is not attachable, but upon that point I give no opinion." The next recent case is a decision of the Irish Court of Queen's Bench in *Pyne* v. *Kinna*: Ir. R. 11. C. L. 40. It was there held that a promissory note, not yet due, was not the subject of an order to attach. The weightiest reason is that assigned by Lawson, J., who said: "This being a negotiable instrument no order of ours can prevent its being endorsed over." The Chief Justice Morris gave a reason which does not strike us as very forcible. He said: "What evideace of debt is there in a promisory note? There may have been no consideration." But the Court came to the conclusion unani-

mously that there was no weight in the *dicta* we have referred to in *Jones* v. *Thompson*, and they declined to make a precedent.

There is now power to seize promissory notes under execution in this Province, given, after the *Mellish and Buffalo* case, by 20 Vict. c. 57, s. 22, which was consolidated in C.S.U.C. c. 22, s. 261. But we fail to see how this helps the matter, or how it gets rid of the difficulty indicated by Mr. Justice Lawson. Because, as pointed out by Vankoughnet, C., in *McDonell* v. *McDonell*, 1 Chy. Cham. R. 140, writs of execution only bind moneys or securities for money from the time of actual seizure by the Sheriff or of some act symbolical therewith or tantamount thereto; and he puts this case: A. holds the promissory note of B. in Toronto; an execution issues against A., and is placed in the Sheriff's hands, while he holds the note. A. subsequently discounts, with a bank at Hamilton, the promissory note of B. If that note was bound as the property of A. by the dating of the writ to the Sheriff, what property would the bank have acquired in it?" There seems to be no machinery by which a negotiable note, still current, can be bound in the hands of the judgment debtor by the mere service of the attaching order. It would be inexpedient in the interests of trade to hold that the service of such an order imposes a lien or charge on the note, subject to which any transfer must be made; and that thus an equity attaches to the note so as to affect it, in the hands of an innocent transferee. And if this be so, it seems more expedient that the judges, exercising the discretion they have under the garnishee clauses (see per Martin, B., *in Jones* v. *Turner*: 25 L. J. Ex. 319) should decline to interfere in cases of debts secured by current negotiable instruments.

SELECTIONS.

CONSTRUCTIVE MURDER.

The case of Walter Richards, which came before Mr. Hannay lately, has attracted, and is likely for some time to attract, considerable attention, inasmuch as a more thoroughly representative case on the peculiar theory of our law known as the doctrine of constructive murder could not well be imagined. The unfortunate young man, in shooting at a thief, or a supposed thief, who was retreating from the house where he resided, accidentally killed his mother who was endeavouring to detain the man at the same time. Of course before the doctrine in question can be applied to this case there is, as the magistrate observed, a preliminary point to be decided—namely, whether the firing at a retreating thief is or is not a felony or an unlawful act. On this point, for obvious reasons, we shall not enter into any discussion, nor do more than allude to the case of *Reg.* v. *Dadson,* (2 Den. 35); but we think we may be permitted to make a few general remarks on the theory of constructive murder with a view to showing its extremely dubious origin, and accounting for its existence in our books, a subject which derives additional interest from the fact that the theory will not survive the passing into law of the new Criminal Code.

The rule of our law as it at present exists, stands thus: A felonious purpose, though it be wholly unconnected with any design to occasion death, constitutes, in conjunction with an accidental killing, the crime of wilful murder. And accordingly, to quote the words of the first Report of the Criminal Law Commissioners (40, 41), "if a party shooting at a domestic fowl with intent to steal it, by some accident kill a person not known by him to be near, the felonious intent in shooting at the fowl, when coupled with the fact of a man being so killed, makes the party liable to suffer death as a murderer. In such a case (they proceed) it is very likely that the prisoner would have shrunk from the commission of the act if it had been at all probable that the

prosecution of it would have been attended with personal injury to anyone; and in this respect the case differs from that in which it was decided that a smuggler firing at a revenue officer and killing himself was guilty of suicide. It has appeared to us that in the first of such cases life is sacrificed without a corresponding benefit to society by way of example. For as the offender cannot reasonably be supposed to have contemplated the crime for which he suffers, so it is scarcely to be expected that the example of his punishment will have any sensible effect in deterring others from acts which, according to common experience, are never likely to lead to the same fatal termination." With these observations few will be inclined to disagree, but very general curiosity might be felt in the inquiry how a doctrine altogether peculiar to the jurisprudence of this country, and totally incongruous with its general principles, should have come to be recognised as a clear rule of law. The explanation which has been often given, and which we venture to think is the correct one, is that it sprung from a blunder made by Sir Edward Coke in the interpretation of a passage from Bracton. The passage is as follows: "Sed hic erit distinguendum utrum quis dederit operam rei licitæ vel illicitæ- si illicitæ, ut si lapidem projiciebat quis versus locum per quem consueverunt homines transitum facere, vel dum insequitur quis equum vel bovem et aliquis a bove vel equo percussus fuerit et hujusmodi hoc imputatur ei."—(Bracton, l. 3, c. 4.) It can be seen at a glance that all Bracton intends to convey by this is that killing in the case he mentions would be unlawful; he in no way states that it would amount to murder ("murdrum"), which term indeed had quite a special and peculiar significance at the time at which he wrote, being properly confined to crimes of the nature of secret assassinations. Bracton, in fact, was too familiar with the Roman law (in which the rule on constructive murder is the exact converse of our own, Dig. 48, 8, 7) to have made such a mistake; but Coke translates and elaborates the above passage in this way: "If," he says (Inst. Part III., ch. 8, p. 56, citing Bracton in the margin), "the act (*i.e.*, the act in the perpetration of which the killing occurs), be unlawful, it is murder. As if A., meaning to steale a deere in the Park of B., shooteth at the deer, and by the glance of the arrow killeth a boy that is hidden in a bush, this is murder, for the act was unlawfull, although A. had no intent to hurt, nor knew not of him; but if B., the owner of the park, had shot at his own deer, and, without any ill-intent had killed the boy by the glance of his arrow, this had been homicide by misadventure, and not felony. So if one shoot at any wild fowle upon a tree, and the arrow killeth any reasonable creature afar off, without any evill intent in him, this is *per infortunium*, for it was not unlawful to shoot at the wilde fowle; but if he had shot at a cock or hen, or any tame fowle of another man's, and the arrow by mischance had killed a man, this had been murder, for the act was unlawfull."

Even if Bracton had ever stated, or meant to have stated, this as part of our law in his time, his reputation was hardly sufficient, in the face of reason and common sense, to have caused its retention in our books; for, although Coke, on one occasion, describes him as "some time a famous judge of the Court of Common Pleas" (as I find in record) "and a writer of the laws," we find that in *Stowel* v. *Lord Zouch* (Plowd. 357), Chief Baron Saunders cited him "not as an author in the law, for that Bracton and Glanvil were not authorities in our law, but he cited him as an ornament to discourse where he agrees with the law;" and it appears that Chief Justice Catline was of the same opinion. The fame, however, of Coke stood upon a very different footing, and there can be no doubt that it is to that over-subtle and refined lawyer that we owe the theory of constructive murder, which has been copied from the Institutes without question or comment by such old writers as Bacon, Viner, Hawkins and Foster, and in modern times by Roscoe, Russell and Brown, whilst it has often been laid down as a law to jurers from the Bench, although, we believe, that on no single occasion has a prisoner been convicted and sentenced to death for constructive murder. In one well-known and comparatively recent case indeed (*R.* v. *Hor-*

sey, 3 F. & F. 287), where a man, by setting fire to a stack of straw, had accidentally killed another who was in an adjoining outhouse, and was indicted for murder, it is amusing to see how ingeniously Lord Justice Bramwell put the case to the jury in favour of the prisoner, who, it appeared, had been much shocked and surprised to find that any one was in the flames, and when he saw and heard the deceased endeavoured to save him. His Lordship said that "the law laid down was that when a prisoner, in the course of committing a felony caused the death of a human being, that was murder, even though he did not intend it. And though that may appear unreasonable, yet as it is laid down as law, it is our duty to act upon it. The law, however, is that a man is not answerable except for the natural and probable result of his own act; and therefore if you should not be satisfied that the deceased was in the barn or inclosure at the time the prisoner set fire to the stack, but came in afterwards, then as his own act intervened between the death and the act of the prisoner, his death could not be the natural result of the prisoner's act. And in that view he ought to be acquitted on the present charge." This reasoning, which we venture to pronounce not altogether unworthy of the author of the theory of constructive murder, though righteously employed on the side of humanity, resulted in a verdict of not guilty.

Though lawyers are proverbially conservative, we think that it is a matter of some wonder that this doctrine, condemned as antiquated and incongruous by the Criminal Law Commissioners as far back as 1834, should have been permitted to survive to the present day, and more, that it should have been in terms preserved in the Amendment of the law of Homicide Bill, submitted to Parliament by Sir J. Eardley Wilmot, in 1876. But its days are now numbered, for though in the recent Criminal Code it is enacted that "Homicide is unlawful when death is caused accidentally by an unlawful act" (Ch. 19, sec. 133 c), there is no place for constructive murder in the following two definitions:—"Murder is unlawful homicide committed with, *(a)* An intention to cause the death of or grievous bodily harm to any person whether such person is the person actually killed or not; or with *(b)* Knowledge that the act or omission to discharge a legal duty which causes death will probably cause the death of or grievous bodily harm to some person, whether such person is the person actually killed or not; although such knowledge may be accompanied by indifference whether death or grievous bodily harm is caused, or not, or by a wish that it may not be caused" (Ch. 20, sect. 134).—*Law Times.*

OFFICIAL COSTUME.

The County of Derby has been thrown into a ferment by the action of Mr. Justice Hawkins towards the High Sheriff. It seems that the High Sheriff duly met Mr. Justice Hawkins and Mr. Justice Fry at the railway station, and conducted them to their lodgings, but failed to conform to the regulation that the High Sheriff should appear in uniform or Court dress. In fact, that great functionary was attired in ordinary morning costume. Thereupon Mr. Justice Hawkins, as the Senior Judge of Assize, made a communication, through the Under-Sheriff to the High Sheriff, to the effect that the latter must appear in Court either in uniform or Court dress. The High Sheriff pleaded, first, that he was not a deputy-lieutenant, and so was not entitled to wear a costume very familiar to all circuit-goers; second, that it was not the custom in Derbyshire for the High Sheriff to appear in uniform—in fact, that plain clothes were almost invariably worn. This latter right, which has, we believe, been more than once advanced in Leicestershire, resembles somewhat the claim of Baron Kingsale to wear his hat in the presence of the Sovereign; although even in the case of his lordship's claim King William III. expressed a hope that the privilege would not be exercised in the Queen's presence. However, Mr. Justice Hawkins displayed no sort of inclination to give way either to the plea of 'no uniform' or immemorial custom, and informed the Under-Sheriff that a fine of 500*l.* would certainly be inflicted on the High Sheriff in the event of that gentleman ap-

pearing the next day in Court in plain clothes. In the meantime his lordship declined to recognise the High Sheriff, just as the Court fails to 'see' counsel when not robed. At length the High Sheriff conceded the point at issue, and made his appearance in Court in the uniform of a Captain of Volunteers.

Of course this action on the part of Mr. Justice Hawkins has excited, and will excite, ridicule in certain quarters; but the learned Judge was quite right. The Judges represent the Sovereign at the Assizes, and the High Sheriff is bound to attire himself as though he were in the royal presence. This compliment or duty is not paid to the Judges personally, but to Her Majesty, as represented by her commissioners. But, apart from rule, there can be no question that the state and pomp wherewith Judges are received at Assizes impress the popular mind with the sanctity of justice, and the respect due to the law and the administrators of the law. The antiquity of our law, its unbroken tradition, its permanent power, strike upon the imagination, when the pomp and circumstance of eight centuries are year by year presented to the eye. The splendour of a Norfolk reception is preferable to Derbyshire simplicity in the opinion of all who believe in effects produced upon the popular mind by the outward majesty of the law.

In *Tommpert's Ex'rs* v. *Tommpert*, 13 Bush (Ky.), 326, it is held that a marriage procured by fraud is voidable only at the election of the party defrauded. The party who commits the fraud is bound, and remains so until the party deceived has made his or her election, and will thereafter be bound or not, according to the election made. It is laid down by the text writers, that all marriages procured by force or fraud are void, for the element of mutual consent is wanting, which is essential to every contract. Schouler's Domestic Relations, 35; 2 Kent's Com. 76. But Bishop (1 Bish. Marr. & Div., § 214) says: "We may presume that the party guilty of the wrong would not be permitted, so far to take advantage of it, as to maintain a suit of nullity on that ground. The other party may, if he choose, waive his objection and thereby render the marriage good." This is the doctrine of the principal case. See, also, *State* v. *Murphy*, 6 Ala. 765. Bishop, however, says that the authorities are clear to the general conclusion that fraud, error or duress, may render the marriage void. See *Harford* v. *Morris*, 2 Hag. Con. 423; *Portsmouth* v. *Portsmouth*, 1 Hag. Ecc. 355; *Jolly* v. *McGregor*, 3 Wils. & S. 85, *Burtis* v. *Burtis*, Hopkins, 557; *Scott* v. *Shufeldt*, 5 Paige, 43; *Perry* v. *Perry*, 2 id. 501; *Clark* v. *Field*, 13 Vt. 460; *Hull* v. *Hull*, 15 Jur. 710; *Robertson* v. *Cole*, 12 Tex. 356. It is said, however, that a voluntary cohabitation after knowledge of the fraud or error will cure the defect. *Hampstead* v. *Plaistow*, 49 N. H. 84. These marriages, therefore, in a certain respect, are rather to be considered as voidable than void, and in some works they are treated under the head of voidable. See Rogers' Eccl. Law, 2d ed., 643. But the great weight of authority is that until the innocent party has consented, the transaction is incomplete and the ceremony is to be regarded as a mere nullity. 1 Bish. Marr. & Div., § 215; *Respublica* v. *Hevice*, 3 Wheeler's Cr. 505; *Tarry* v. *Browne*, 1 Sid. 64; *Fulwood's Case*, Cro. Car. 482.

In *Pollock's Administrator* v. *Louisville*, 13 Bush (Ky.), 221, it is held that for wilful negligence of policemen appointed by a city in making arrests upon charges of felony, the city is not liable. And in *Greenwood* v. *Louisville*, at page 226 of the same volume, the city is declared not to be liable for injuries caused by the negligence of firemen appointed and paid by it under a law requiring it to maintain a fire department, while in the discharge of their duty. The general rule is that policemen appointed by a city are not its agents, but the agents of the State, while engaged in those duties which relate to the public safety and the preservation of public order. For that reason, it has been held that a city is not liable for assault and battery committed by its policemen, though done in an attempt to enforce an ordinance of the city; nor for an arrest made by them which was illegal for want of a warrant; nor for their unlawful acts of violence

whereby, in the exercise of their duty of suppressing an unlawful assemblage of slaves, the plaintiff's slave was killed. Dill. on Mun. Corp., § 773; *Butterick* v. *Sewell*, 1 Allen, 172; *Kimball* v. *Boston*, id. 417; *Pesterfield* v. *Vickers*, 3 Coldw. 205; *Ready* v. *Mayor, etc.*, 6 Ala. 327; *Dorgan* v. *Mobile*, 31 Ala. 469; *Richmond* v. *Lang's Adm'r.*, 17 Gratt. 375. The rule as to the liability of cities for the acts of members of their fire department is stated in *Fisher* v. *Boston*, 104 Mass. 87; 6 Am. Rep. 196. "In the absence of express statute therefor, municipal corporations are no more liable to actions for injuries occasioned by reason of negligence in using or keeping in repair the fire engines owned by them, than in the case of a town house or public way." See, also, *Hafford* v. *New Bedford*, 16 Gray, 297; *Eastman* v. *Meredith*, 36 N. H. 284; *Bigelow* v. *Randolph*, 14 Gray, 541; *Wheeler* v. *Cincinnati*, 19 Ohio St, 19; 2 Am. Rep. 368; *Jewett* v. *New Haven*, 38 Conn. 368; 9 Am. Rep. 382; *Torbush* v. *Norwich*, 38 Conn. 225; 9 Am. Rep. 395; *Ogg* v. *Lansing*, 35 Iowa, 495; 14 Am. Rep. 499; *Hayes* v. *Oshkosh*, 33 Wis. 314; 14 Am. Rep. 760; *Elliott* v. *Philadelphia*, 75 Penn. St. 342; 15 Am. Rep. 591. For a careful discussion of the principle involved in these cases see *Maximilian* v. *Mayor*, 62 N. Y. 160; 20 Am. Rep. 468.

The doctrine of constructive assault received an important illustration in the case of *Hegarty* v. *Shine*, 12 Ir. L. T. Rep. 100, decided by the Queen's Bench Division of the Irish High Court of Justice on the 18th of June last. The action was brought by a young woman against her paramour, for breach of promise of marriage and assault. The alleged assault consisted in this: The plaintiff permitted defendant to have illicit intercourse with her, supposing him to be in sound health, but he was at the time suffering from contagious venereal diseases, which fact he concealed from plaintiff, and through the illicit intercourse infected her therewith. This was claimed to be a constructive assault, but a majority of the court held otherwise on the ground that the injury complained of was directly consequent on a wilful act of immorality on the part of plaintiff, and no cause of action arising *ex turpi causa* can be maintained. The principal English case on this subject is *Regina* v. *Bennett*, 4 F. & F. 1005, where the prisoner, who had slept with his niece with her consent, and communicated to her a syphilitic disorder, was held guilty of an assault. In *Regina* v. *Sinclair*, 13 Cox's C. C., the defendant, knowing that he had a venereal disease, induced a girl to have connexion with him without informing her of the fact, and communicated the disease to her. It was held that an indictment for inflicting actual bodily harm could be sustained by those facts. The court in the principal case disagrees with both of the decisions cited, but by a divided bench. The cases are, however, distinguishable from that class where a woman consents to intercourse under the impression that she is receiveing medical treatment, such as *Reg* v. *Flattery*, 13 Cox's C. C. 385; *Reg* v. *Case*, 4 id.; *Don Moran* v. *People*, 25 Mich. 356; 12 Am. Rep. 183; or where one gives to another a food containing substance injurious to health, such as *Commonwealth* v. *Stratton*, 114 Mass. 303; 19 Am. Rep. 350, and *Commonwealth* v. *Burke*, 105 Mass. 376; 7 Am. Rep. 531. The distinction is that in those instances last cited the female consented to one thing and the prisoner did another, while in the principal case the woman was consenting partly to the immoral act.—*Albany Law Journal.*

We are afraid our excellent contemporary, the *Chicago Legal News*, has "put its foot in it." The *Solicitors' Journal* having innocently said something about its being difficult for the "popular mind to grasp the idea of the majesty of the law as personified, for instance, in the American courts, which, according to the description of a recent writer, consists of 'an elderly gentleman, sitting on a cane bottom chair and expectorating thoughfully,'" the *Legal News* reads "our learned and respected contemporary" a lecture, and informs it among other things that, "There is no country in the world where the judges of inferior courts of record preside with more dignity and indulge in less wrangles with attorneys, and are more respected by the bar and people, than in America." This is all well

enough, if it be true, and it ought to be; but we doubt if it will have its due weight on the minds of "our learned and respected contemporary," for in the very next article in the *Legal News*, we are given an account of "professional etiquette on the frontier," wherein is stated the cause of the great unpopularity of Judge Beck, "Judge of Wyoming." We quote:

"He even carried his whim of professional propriety so far as to prohibit swearing in court, and is said to have fined a lawyer who swore at a witness during his cross-examination. Another peculiarity of this judge is a dislike of seeing attorneys, when arguing a case before him, pass around a bottle of whiskey, and he is said to be violently opposed to lawyers treating the jury to "drinks" while a trial is in progress. Judge Beck is said to have violated common decency by refusing to proceed with a case until the attorneys engaged in it should put out their pipes; and a community once rose in indignation when he ordered a lawyer to remove his feet from the judge's desk."

This was all, no doubt, very difficult for the "popular mind" to submit to, but when Judge Beck instructed the grand jury "to indict every man who indulged in gambling, or sold liquor without a license, the outraged public demanded his removal." As is usual under like circumstances in this country, the Legislature was "seen," and the result was that a "redistricting act" was passed, and Judge Beck was assigned to a district without "a town or a court house, and entirely uninhabited, except by military garrisons, Indians and wild beasts." The "popular mind" was thereby satisfied. Of course, Judge Beck was not a "politician" —a "machine politician"—or he never would have so run counter to the "sense of the people"—and this suggests the wonder, how, not being a "politician," he got his appointment—but however that may be, the *Legal News* should have remembered that the degenerate foreigner is not up in these matters, and should have kept its lecture and Judge Beck's case apart. By the way, we believe that women are voters and "lawyers" in Wyoming. —*Albany Law Journal.*

NOTES OF CASES.

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

COURT OF APPEAL.

Adams v. Woodland.

Insolvent Act of 1875—Debt barred by discharge—Promise to pay.

C. C. York.] [Sept. 3.

Held, reversing the judgment of the County Court, that a promise to pay a debt from which a discharge under the Insolvent Act of 1875 has been obtained, is founded on a consideration which will support an action.

Jones v. *Phelps*, 20 W. R. 92, and *Heather* v. *Webb*, L. R. 2 C. P. D. 1. distinguished.

J. E. Rose, for the appellant.

Akers, for the respondent.

Appeal allowed.

COMMON PLEAS.

IN BANCO.

Mason v. Borroughes et al.

Agreement—Costs.

Under a written agreement between the parties, two actions between them, at the suit of the parties respectively, were settled in consideration of the payment by the defendants of a named sum and all costs of the two suits. In an action for the costs.

Held, Hagarty, C. J., dissenting, that the true agreement was, that the defendants should pay to the plaintiff his costs of both actions except the counsel fees, such costs to be as settled by the master, for which the plaintiff was to have a verdict.

Richards, Q.C., for the plaintiff.

M. C. Cameron, Q.C., for the defendant.

CHANCERY.

Chancellor.] [Sept. 4.

Wilson v. Owens.

Fraudulent conveyance—Parol evidence—Resulting trust.

A suit for alimony having been instituted against the plaintiff, he, for the purpose of protecting his lands from process therein, conveyed the same to his solicitors for a money consideration, and the solicitors afterwards made a conveyance of the same lands to the sister of the plaintiff, the consideration money being paid by the plaintiff. The Court held there was a resulting trust in favour of the plaintiff, and decreed

relief accordingly; but under the circumstances without costs.

Chancellor.] [Sept. 16.

DYNES V. BALES.

Cloud on title.

A person having no title to the lands in question, made a conveyance thereof to another, and took back a mortgage for the alleged price, both of which instruments were duly registered. *Held*, that the fact of registration, notwithstanding the decision in *Hurd* v. *Billington*, 6 Gr. 145, entitled the owner of the lands to a decree in this Court for the cancellation of such registration as a cloud upon his title.

Chancellor.] Sept. 16

SMITH V. ELLIOTT.

Insolvency—Mortgages.

Where an insolvent mortgagor obtained his discharge in insolvency, and afterwards procured from the assignee a transfer of the equity of redemption, the Court, in a foreclosure suit, refused to give any personal remedy by *fi. fa.*, against the goods of the mortgagor, although it might be that the mortgagee was entitled to obtain from the insolvent a release of his interest.

Full Court.] [Sept. 17

MCDONALD V. NOTMAN.

Insolvency—Express promise to pay.

Although a debt which has been extinguished by the discharge of the debtor in Insolvency is a sufficient consideration for an express promise to pay the claim, it is not sufficient to raise an implied promise, by a voluntary payment, subsequently to such discharge, of part of the claim.

CANADA REPORTS.

QUEBEC.

JOHN KERRY et al. (plaintiffs in the Court below), Appellants; and LES SŒURS DE L'ASILE DE LA PROVIDENCE (defendants in the Court below), Respondents.

Trade mark, name of a substance cannot constitute—Charitable Corporation's right to trade.

The term "Syrup of Red Spruce Gum," being only the name of a substance, does not properly constitute a trade mark, and the sale of another preparation, differing essentially in external appearance and composition, under the name "Syrup of Spruce Gum," is no violation of such mark.

This was an appeal from the judgment dismissing the suit brought by Messrs. Kerry & Co. against the Nuns for infringement of their trade marks by selling an imitation of Gray's Syrup of Spruce Gum. The Judge of the Superior Court held that there had been no violation of plaintiff's trade mark, and that the words, "Syrup of Spruce Gum," could not properly constitute a trade mark, involving, as they do, only the name of a substance, and plaintiffs had no monopoly of such words. The Judge held that the Nuns had been competing improperly in the market with the plaintiffs, but it was for the Crown alone to prosecute corporations for exceeding their powers, and added that the plaintiffs themselves proved no license or privilege possessed by them to trade. The defendants had brought an incidental demand for damages against the plaintiffs for interference with their sale of Spruce Gum. This was also dismissed, on the ground that although the interference was held to be proved, yet the defendants had drawn the trouble upon themselves by trading in excess of their charter rights.

DORION, C. J., said he found that his firm had formerly acted as counsel for the Nuns in connection with this matter, and he could not take part in the judgment; but as the other four judges were unanimous, the judgment would be rendered.

RAMSAY, J., said the action substantially was brought for the violation of a trade mark—that was the principal object. The plaintiff in the court below brought his action against the Nuns for having used a trade mark, and he sought to obtain damages, and also asked for an account from the Nuns, and that they be restrained from further selling goods marked with this mark. The first question the court had to examine was whether there was a trade mark in the possession of the appellants, and then whether that trade mark was violated or not. With regard to the question whether there was a trade mark validly in the possession of the appellants, the question did not come up so much in this court as it did in the court below, because in the court below there was a cross demand by the Nuns against the appellants for having violated their trade mark. The cross demand was rejected, and there was no appeal taken from that dismissal. The ground on which the incidental demand was dismissed was, that the Nuns were not a trading corporation, and had no right to have a trade mark. The question now was whether Kerry & Co.'s trade mark was violated by the action of the Nuns in selling a particular kind of spruce gum. What was violation of a trade mark? It was taking the trade mark of another and using it. There was another kind of violation; you might take something that was similar, and present it in such a shape that it would deceive the public, and thus defeat the object of the trade mark. That was precisely what the appellants pretended the respondents had done in this case. They said: You have taken not exactly our trade mark; but you have gone and made another

thing like our syrup of spruce gum, and make people buy it instead of ours. The question whether the things were exactly the same did not arise here. If it appeared that the Nuns had made a bottle for the same object, with a sufficient resemblance to deceive the public, they would have been within the law. In this instance, the things were of convenient size, and they had been produced to speak for themselves. [Here the learned Judge held up two bottles, one of each of the syrups, which differed greatly in colour and external appearance.] The Court was asked, as reasonable human beings, to say that these bottles could be mistaken for one another. The external appearance was different, and the internal contents were different. That disposed of the most important branch of the case, that is, the special wrong which Messrs. Kerry & Co. had alleged against these ladies. His Honour continued, that unless his attention had been particularly drawn to the declaration, he would not readily have observed that there was another branch of damages alleged here of a very peculiar character. The allegation was to this effect: these ladies being a charitable corporation, and having been incorporated for purposes of charity, could not be subjected to any taxes, and yet carried on the business of apothecaries, and did so to the injury of plaintiffs, and that the plaintiffs had a direct action against the ladies to compel them to pay damages for having thus carried on business. Taking it for granted for a moment that damages had been established, did such an action lie. The code says an action may be brought where injury has been caused by another's fault. His Honour could not see that the respondents had done the appellants any harm by the selling of this Spruce Gum. It was a remedial preparation, and charitable corporations had never been precluded from making such things. Governments in France interfered when such things came to be an abuse. But the Court was asked here to say to what extent these people were to use their privileges. His Honour did not feel disposed to enter upon this ground at all. He could not conceive that these ladies had at all violated their charter. There was a difference in the things. It was well known there was two trees—one *épinette blanche*, and the other *épinette rouge*. Messrs. Kerry & Co. called their's, syrup of red spruce gum. There was little gum in the red spruce, while the *épinette blanche* was full of gum. Mr. Justice Cross had made some historical researches, and found that this was a very ancient remedy, and Jacques Cartier, in his first voyage, spoke of having cured the scurvy by an extract of *épinette*—a remedy which had been learned from the Indians. Perhaps it was in allusion to this that Mr. Gray had a wild Indian, half clad, sitting on a stone, in his trade-mark. The judgment appealed from was a good one, and must be confirmed.

Cross, J., cited from Canadian history to show that the remedy sold by the Nuns was well known formerly. He remarked that in his individual opinion the question whether these ladies had the right to trade was sufficiently raised in the case, and as the Court below had decided against them on this point the plaintiffs ought to be allowed the costs on the incidental demand. But this was only his own opinion. Judgment confirmed.—*Montreal Legal News.*

ENGLISH REPORTS.

DIGEST OF THE ENGLISH LAW REPORTS FOR FEBRUARY, MARCH, AND APRIL, 1878.

(From the American Law Review.)

Acceptor.—See Bills and Notes, 1, 3, 5.

Ademption.—See Bequest.

Adjacent Support.—See Easement.

Advocate.—See Attorney and Client, 1.

Agent.—See Principal and Agent.

Agreement.—See Contract.

Ambiguity.—See Will, 1.

Ancient Lights.

In an action for obstruction of ancient lights, it appeared that plaintiff was entitled to access of light by prescription, and that defendant had diminished the light by erecting a high building opposite, but that there was still light enough for the business carried on in plaintiff's premises. Cockburn, C. J., instructed the jury that they should bring in substantial damages, if they found that the light had been sensibly diminished, so as to affect the value of the premises, either for the purposes for which they had been previously used, or for any purpose for which they were likely to be used in the future. Defendants contended that the damages should be nominal, unless it apeared that the premises were injured for the purposes for which they had always been, and were still, used. *Held*, that the instruction of the judge was correct.—*Martin* v. *Goble* (1 Camp. 320) questioned. *Moore* v. *Hall*, 3 Q. B. D. 178.

Animus Manendi.—See Domicile.

Annuity.

A testator gave an annuity to his son, with cesser and a gift over "if he shall do or permit any act, deed, matter, or thing whatsoever, whereby the same shall be aliened, charged, or incumbered." The annuitant committed an act of bankruptcy by failing to answer to a debtor's summons. *Held*, that the annuity thereupon ceased.—*Ex parte Eyston. In re, Throckmorton*, 7 Ch. D. 145.

Anticipation.

A married woman, entitled under a will to £400 a year for her separate use, without power of anticipation, joined with her husband in mortgaging her interest under the will, by perpetrating a gross fraud upon the mortgagee as to the restraint upon anticipation. The mort-

gagee got judgment against them, and an order to charge the wife's income as it came due. *Held*, that the restraint on anticipation could in no case be evaded or set aside, even in case of such gross fraud.—*Stanley* v. *Stanley*, 7 Ch. D. 589.

Appointment.

A testator gave real and personal property, in trust for his widow for life, and at her death for his children, as she should by deed or will appoint, and in default of appointment, to them equally. A son covenanted by his antenuptial settlement that if he received anything under his father's will, by virtue of any power of appointment, or in default of appointment, he would settle the same on the settlement trusts. The testator's widow subsequently, by deed containing power to revoke, appointed property to the son absolutely. The son then went through bankruptcy; and finally the widow died, without having revoked her appointment. *Held*, that the son had an interest under the will in the property before the widow appointed it to him, and therefore the trustee in bankruptcy was not entitled to it as against the trusts of the marriage settlement, under sect. 91 of the Bankruptcy Act.—*In re Andrews' Trusts*, 7 Ch. D. 635.

See Power.

Assignment.

B. proved against the estate of I., a bankrupt, for a certain sum; and then, for consideration, agreed to "undertake to pay over" to C. all the dividends coming to him in respect of the claim. B. subsequently went into bankruptcy. *Held*, that the above transaction was a valid assignment of a *chose in action*.—*In re Irving. Ex parte Brett*, 7 Ch. D. 419.

See Covenant, 3.

Attorney and Client.

1. Defendant, a Scotch advocate, was legal adviser and agent for two ladies, as trustees for their father's estate. Under his direction, two houses belonging to the estate were sold, nominally to defendant's brother, but in reality defendant himself was the purchaser, though without the knowledge of his clients. *Held*, that the purchase could not be enforced.—*McPherson* v. *Watt*, 3 App. Cas. 254.

2. During the progress of a suit, the plaintiffs mortgaged their interest in the estate concerned in the suit to the defendants therein. The plaintiffs' solicitor sanctioned the mortgage, and subsequently got his costs in the said suit charged on the plaintiffs' interest in the estate. *Held*, that under the circumstances the mortgage must be postponed to the costs, as the defendants must be held to have known of his lien when they took the mortgage.—*Faithful* v. *Ewen*, 7 Ch. D. 495.

Bank.—See Bills and Notes, 4.

Bankruptcy.—See Annuity; Appointment; Assignment; Composition; Fixtures, Lease.

Bequest.

J. bequeathed "£1,000 D stock of the L railway . . . now standing in the books of the company in the names of . . . the trustees of my marriage settlement . . . which stock it is my intention to have transferred into my name . . . unto G., C., and A., in trust for G." Shortly after the date of the will the L. railway paid off the stock; and just before his death testator had the amount received for it invested in the stock of the Y. railway, in the names of the trustees of his marriage settlement. *Held*, that there was ademption of the specific legacy, and the Y. railway stock belonged to the residuary legatees. *Le Grice* v. *Finch* (3 Mer. 50) and *Clark* v. *Browne* (2 Sm. & Giff. 524) criticised.—*Harrison* v. *Jackson*, 7 Ch. D. 339.

Bill of Lading.

A bill of lading for a cargo of wheat, shipped at New York for Glasgow, contained an exemption from liability for loss from perils of the sea, or loss due to the negligence of the officers or crew of the ship. The cargo was injured by sea-water admitted into the hold, as the jury found, five days after sailing, through a port-hole negligently left unfastened by the crew; but the jury did not find whether the port-hole was left unfastened before the sailing or subsequently. *Held*, that the case must be remanded for a finding on this point, the question of liability depending upon whether the implied warranty of seaworthiness at the commencement of the voyage had been complied with.—*Steel et al.* v. *The State Line Steamship Co.*, 3 App. Cas. 72.

Bills and Notes.

1. The plaintiff, a merchant in London, procured a loan of £15,000 of the defendant bank, on the security of a cargo of goods in transit to Monte Video, and of six bills of exchange drawn by him on S., the consignee of the goods in Monte Video, and accepted by the latter. Two of these bills having been paid and two dishonoured, the defendant bank, through its branch in Monte Video, proposed to sell the goods at once, when the plaintiff wrote the defendant not to sell, and sent his check for £2,500, as additional security, adding, that when the bills were paid "you will of course refund us the £2,500." The defendant drew the check; and, the other two bills having been dishonoured, the defendant took proceedings against S., as a result of which the goods were, with plaintiff's consent, sold, and the bills, without plaintiff's knowledge, delivered up to S. cancelled. The proceeds of the goods were insufficient, even with the £2,500, to satisfy the claim. *Held*, that the plaintiff could not recover the £2,500 from the defendant.—*Yglesias* v. *The Mercantile Bank of the River Plate*, 3 C. P. D. 60.

2. A bill of exchange drawn by a firm in one country upon the same firm in another country, and accepted in the latter place, is perhaps strictly a promissory note; but the holder may treat it either as a promissory note or as a bill of exchange; and where it appears to have been the intention that it should be negotiable in the market as a bill of exchange, it should be treated as such.—*Willans et al.* v. *Ayers et al.*, 3 App. Cas. 133.

3. By 19 & 20 Vict. c. 97, § 6, "no acceptance of a bill of exchange, inland or foreign, shall be sufficient to bind or charge any person, unless the same be in writing on such bill, and signed by the acceptor, or some person duly authorized by him." *Held*, that the word "accepted," written across the face of the bill, and unsigned, did not satisfy the statute.—*Hindhaugh* v. *Blakey*, 3 C. P. D. 136.

4. The plaintiffs, holders of a promissory note payable at the M. branch of the defendant bank, and drawn by parties having an account at the Y. branch of the said bank, deposited it with the S. branch of said bank, to be sent to the M. branch for collection. The M.

branch, in the course of business, stamped the note as "paid," cancelled the signatures, and sent the S. branch a draft therefor in favour of the plaintiffs. The same day, the Y. branch, in its books, credited the drawers of the note with the amount thereof, but no notice of the credit was sent the drawers or holders. Two days later, the drawers becoming irresponsible, the M. branch wrote the S. branch to cancel the draft, and returned the note dishonoured, with the endorsement, "cancelled in error." There was no evidence as to the state of the drawers' account at the Y. branch. *Held*, that the effect of marking the note "paid," and cancelling the signatures, was rendered null by writing on it "cancelled in error," before returning it to the holders; and that the entries in the accounts between the branches of the bank as to payment of the note not having been communicated to the holders of the note, were not effectual to charge the bank with receipt of the money.—*Prince* v. *Oriental Bank Corporation*, 3 App. Cas. 325.

5. An acceptor of a foreign bill of exchange, subsequently dishonoured, is liable by way of a charge for re-exchange for all the necessary expense incurred by the drawer in consequence of its having been dishonoured by the acceptor. —*In re General South American Co.*, 7 Ch. D. 637.

BONDS.—See MORTGAGE.

BOVILL'S ACT.—See PARTNERSHIP.

BROKER.—See FACTOR.

CARRIER.—See COMMON CARRIER.

CAVEAT EMPTOR.—See SALE.

CHILDREN.—See DEVISE, 2; WILL, 4.

CHOSE IN ACTION.—See ASSIGNMENT.

CLASS.—See DEVISE, 2; PERPETUITY; WILL, 2.

CLIENT.—See ATTORNEY AND CLIENT.

COMITY.—See MORTGAGE.

COMMON CARRIER.

Plaintiff signed a contract with the defendant company, by which the latter was to carry some cheeses for plaintiff at "owner's risk;" that is, the company was to be responsible only for injury resulting from the "wilful misconduct" of its servants. In consideration of this limitation of liability, a lower rate was charged. The contract further stated that the company would carry goods at a higher rate, assuming all the usual liabilities of common carriers. The plaintiff had knowledge of all the foregoing facts. The Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), § 7, permits railway companies to make such special contracts for carriage of goods as shall be adjudged "just and reasonable" by the court. The cheeses were so negligently packed by the company's servants that they were damaged; but the packers did not know that damage would result. *Held*, that the plaintiff could not recover. *Lewis* v. *The Great Western Railway Co.*, 3 Q. B. D. 195.

See RAILWAY.

COMPOSITION.

A purchaser from a debtor, who, at the time of the purchase had filed a petition in bankruptcy, and whose creditors had accepted a composition, *held* not bound to inquire whether the instalments provided for in the composition had all been paid, as the debtor has complete control of his property from the time of the composition until the creditors again take action under sect. 26 of the Bankrupt Act, and have him adjudged bankrupt. —*In re Kearley & Clayton's Contract*, 7 Ch. D. 615.

CONDITION.—See COMMON CARRIER; DEVISE, 4; POWER; SPECIFIC PERFORMANCE, 1.

CONSIDERATION.—See GUARANTY.

CONSTRUCTION.

1. Oct. 21, at 12.40 p.m., the excise officer discovered a dog belonging to the respondent, and without a license. At 1.10 p.m., the same day, the owner took out a license, which ran "from the date hereof," &c. The dog law (30 Vict. c. 5) provides that "every license shall commence on the day" on which it is granted. *Held*, that the respondent had violated the act.—*Campbell* v. *Strangeways*, 3 C. P. D. 105.

2. The word "paintings," used in a statute in the phrase "paintings, engravings, pictures," *held*, not to include coloured working models, and designs for carpets and rugs, though painted by hand and by skilled persons, and each worth as much as £30 as models, but valueless as works of art.—*Woodward* v. *The London & North Western Railway Co.*, 3 Ex. D. 121.

See COVENANT, 1, 5; DEVISE, 2, 3, 4; GUARANTY; MORTMAIN; WILL, 4, 5.

CONTINGENT REMAINDER.—See DEVISE, 1.

CONTRACT.

Plaintiff sued to recover £5 and a week's wages. Defendants set up a contract under which the plaintiff agreed to be conductor on defendant's tramway, and to deposit £5 as security for the performance of his duties; and, in case of his discharge for breach of the rules of the company, the £5 and his wages for the current week were to be retained as liquidated damages. The manager of the company was to be "sole judge between the company and the conductor" as to whether the same should be retained, and his certificate was to be binding and conclusive evidence in the courts as to the amount to be retained, and "should bar the conductor of all right to recover." Plaintiff was discharged for violating a rule of the company. *Held*, that the agreement was good, and the certificate of the manager that the forfeiture had been incurred was conclusive.—*The London Tramway Co., Limited*, v. *Bailey*, 3 Q. B. D. 217.

See COMPANY, 3; INFANT; SPECIFIC PERFORMANCE, 1, 2.

CONTRIBUTORY.—See COMPANY, 2, 4.

CONVEYANCE.—See VENDOR AND PURCHASER.

COPYHOLD.—See DEVISE, 3.

COPYRIGHT.

O., a Frenchman, composed an opera, and had it performed for the first time, March 10, 1869, in Paris. An arrangement of the score for the piano, and also one for the piano with voices, were made by S., a Frenchman, with O.'s consent, and published in Paris, March 28, 1869. In June, 1869, O. assigned the opera and copyright, with the right of publicly playing and performing the music in England, to the plaintiff, and delivered to him the score. June 9, 1869, a copy of the piano arrangement was given to the registration officers, and the opera was registered under the Copyright Act (5 & 6 Vict. c. 45) and the International Copyright Act (7 Vict. c. 12), as follows. Title of the opera; name of the au

thor. O.; name of proprietor of the copyright,- O. (given as "proprietor of the copyright in the music, and of the right of publicly performing such music"). Time of first publication, "March 28, 1869" (the time of publication of the piano arrangement by S.); and time of first representation, "March 10, 1869" (the time the opera itself was first played in Paris). The title of the copy of the piano arrangement deposited consisted of the title of the opera, with the addition of a statement as to the piano arrangement by S. No other mention of S. appeared in the registration. In August following, some separate instrumental parts of the opera were published, and no copy thereof delivered to the registration officers; but the rest remained unpublished. Subsequently, the defendant announced an opera in English, with the same name, music by O., and brought it out in London. The music as played was substantially as given in the arrangement by S. *Held*, reversing the decision of Bacon, V.C., that the registration as made protected the opera, and the defendant was guilty of an infringement.—*Boosey* v; *Fairlie*, 7 Ch. D. 301.

Costs.—See Trust, 2.

Covenant.

1. laintiff and another sold the defendant a lot of land, and in the deed defendant covenanted that no building to be erected upon the land should at any time "be used or occupied otherwise than as and for a private residence only, and not for the purposes of trade." The lot was one of several contiguous lots, all sold under deeds containing a like covenant; and on one lot the plaintiff himself had built a private residence. The defendant proposed to erect on his lot a building for the accommodation of one hundred girls, belonging to a charitable institution for missionaries' daughters, and supported by contributions. There was evidence that the plaintiff had permitted a small school to be kept in one of the other houses. *Held*, reversing the decision of Bacon, V.C., that the defendant had violated the covenant, and that the permission for the school in the other house did not amount to a waiver by the plaintiff of the covenant in the defendant's case. Injunction granted.—*German* v. *Chapman*, 7 Ch. D. 271.

2. *Held*, that a covenant in a lease of a dwelling-house in London, not to assign without the consent of the lessor, was not a "usual covenant.—*Haines* v. *Burnett* (27 Beav. 500) considered overruled.—*Hampshire* v. *Wickens*, 7 Ch. D. 555.

3. The assignee of a lease had notice of a restrictive covenant on the property binding upon his assignor. *Held*, that the covenant was binding on him in equity.—*Keppell* v. *Bailey* (2 My. & K. 517) considered overruled — *Luker* v. *Dennis*, 7 Ch. 227.

4. The assignee of land on which there is a covenant is in exactly the same position as if he were a party to the covenant, in case he had notice of it.—*Richards* v. *Revitt*, 7 Ch. D. 224.

5. By an agreement for the purchase of a public house, the plaintiff agreed to assume the lease thereof at a rent named, "subject . . . to the performance of the covenants" therein, "such covenants being common and usual in leases of public-houses." The said lease contained the clause: "Provided always, and these presents are upon this express condition, that all underleases and deeds," made during the term, "shall be left with the solicitor . . . of the ground landlord . . for the purpose of registration by him, and a fee of one guinea paid to him" therefor. Then followed a provision for re-entry for breach or non-performance of any of the "covenants or other stipulations." The jury found this clause was not a "common and usual covenant."—*Held*, that the purchaser was not bound to specific performance, though the said clause might not be, in strictness a "covenant."—*Brooks* v. *Drysdale*, 3 C. P. D. 52.

See Lease.

Coverture.—See Curtesy.

Curtesy.

By a will, freehold property was given to C's wife, as equitable tenant in tail, to her separate use, with restraint on alienation or anticipation of the rents and profits. C. was discharged in bankruptcy in 1865; and in 1875 the wife executed a disentailing deed, C. joining, and limited the estate to her separate use in fee. In 1876 she died, having devised her estates by will to her children. The assignee of C. applied for the rents, on the ground that C. had a life-interest as tenant by the curtesy, which had passed to the assignee.—*Held*, that C. had no curtesy, as his wife had disposed of the estate by will.—*Cooper* v. *Macdonald*, 7 Ch. D. 288.

Damages.—See Ancient Lights.

Date of Will.—See Will, 3.

Debt.—See Will, 3.

Deed.—See Covenant, 1; Shelley's Case.

Delivery.—See Vendor's Lien.

Devise.

1. A testator devised his real estate to trustees, their heirs and assigns, to hold to them for the use of B. for life, and afterwards to the use of such children of B. as should attain the age of twenty-one years. B. was directed to keep the premises in repair during his life. The trustees were empowered to apply the income of the portion of any infant devisee for his or her benefit during minority, or to pay the income over to such devisee's guardian, without responsibility for its application; and they were empowered to use the principal for the advancement of such infant before his attaining twenty-one, if they thought best. B. died leaving four children, one an infant. *Held*, that the trustees took a legal estate in the property; and, whether B.'s life-estate was legal or equitable, B.'s children took equitable estates, and, consequently, the infant's estate did not cease on B.'s death during his minority.—*Berry* v. *Berry*, 7 Ch. D. 657.

2. Devise to trustees, to the use of testator's son W. for life, and upon W.'s death without issue male to sell and pay the proceeds unto such one or more of testator's "children as might be living at the decease of his said son W., without male issue as aforesaid, and the issue of such of his said children as might be then dead, leaving issue," such issue to take *per stirpes* and not *per capita*. The testator died in 1840, and left W. and two other children living at his death. W. died in 1876 without issue. One of the other children died in 1872, having had two children, one of whom died in 1861, and the other is still living. On the question whether the child dying in 1861 before her parent took under the will, *held*, that the trust was an original gift, and said deceased child took according to the rule that

"the issue of children take without regard to the question whether they (the issue) do or do not survive the parent, if any issue survive the parent." *Dictum* of Kindersley, V. C., in *Lanphier* v. *Buck* (2 Dr. & Sm. 499), disallowed. *In re Smith's Trusts*, 7 Ch. D. 665.

3. A testator devised copyholds held of the manors of Y., U., and I., to trustees, to the use of A. for life, remainder to the trustees to preserve contingent remainders, remainder to the use of A.'s children and their or his heirs, remainder to testator's grandson S. for life, remainder to the trustees to preserve contingent remainders, remainder to S.'s children, the plaintiffs. By a custom of the manors of Y., U., and I., the tenant can hold for life only, with power to nominate, by will or by deed, his successor or successors; and, if he nominates more than one, the survivor may nominate his successor. In a codicil, the testator, after stating that it had been found that his said copyhold estates were within the manors of U. and I., directed that the trustees should hold his said estates situated in those manors for the trusts of the will, so far as the customs of said manors would permit. But if the said customs forbade the "entails" made in the will, then the said A. and his nominees or successors should hold the said copyholds according to said customs. A. was admitted tenant of the copyhold of Y., and died without issue, having nominated the defendant B. his successor. The trustees were never admitted as tenants; one of them survived, and was made a defendant in the suit. *Held*, that under the will, the trustees, and not A., ought to have been admitted as tenants of the copyholds held of Y.; that the limitations in the will were equitable interests, and were valid; and that A., having been admitted as tenant, held only as *quasi* trustee for the parties beneficially interested, and that the defendant B. was accountable to the plaintiffs for the rents and profits of the copyhold of Y. since her admission thereto.—*Allen* v. *Bewsey*, 7 Ch. D. 453.

4. Devise of thirteen houses, a garden, and a pew in a church to testator's four sons, in equal shares, "to have and to hold subject to the following conditions: It is my will and desire" that the houses be not disposed of or divided without the consent of the four sons, their heirs or assigns; that the garden be sold, if necessary, to meet contingent expenses; that, "until the before-mentioned distribution is made," the income shall come into one fund, and be divided among the sons; that, if there should be no "lawful distribution" during the life of the sons, the property should go to their issue, and if any of the sons died without issue, such son's widow should have the income during widowhood, and afterwards "it" should "devolve" to the survivors of the other sons, *i.e.* to testator's grandchildren, their heirs and assigns, share and share alike. The four sons were made residuary legatees, absolutely. *Held*, that the sons took absolutely as tenants in common in fee, and the executory devise to the children was void.—*Shaw* v. *Ford*, 7 Ch. D. 669.

Discretion.—See Power.

Distribution.—See Perpetuity; Will, 2.

Domicile.

J. M., born in Scotland in 1820, went to New South Wales in 1837, and carried on the business of sheep farmer. In 1851, he bought land in Queensland, and lived there regularly till four months after his marriage, in 1855. After a three years' visit to England, he lived three months on his land in Queensland, then three months at a hotel at Sydney, New South Wales; then in a house there, which he leased on a five years' lease. Then he built an expensive mansion-house at Sydney, in which his family resided till his death in 1866. He lived there, except when away in Queensland on business or political duties. He died suddenly in Queensland, and at his request was buried there. *Held*, that he had lost his Scotch domicile, and his domicile in Queensland, and at his death had his domicile in New South Wales.—*Platt* v. *Attorney-General of New South Wales*, 3 App. Cas. 336.

See Marriage.

Dormant Partner.—See Partnership.

Easement.

Two houses, belonging respectively to plaintiff and defendant, had stood adjoining each other, but without a party-wall, for a hundred years. More than twenty years ago, the plaintiffs turned their house into a coach factory, by taking out the inside, and erecting a brick smoke-stack on the line of their land next the defendants, and into which they inserted iron girders for the support of the upper stories of the factory. In excavating for a new building on the site of the old one, which the defendants had removed, they left an insufficient support for the smoke-stack, and it toppled over, carrying the factory with it. The defendants were not guilty of negligence in excavating. *Held* (Lush, J., diss.), that the defendants were not liable.—*Angus* v. *Dalton*, 3 Q. B. D. 85.

See Ancient Lights.

Equitable Estate.—See Devise, 1, 3.

Estate Tail.—See Courtesy.

Evidence.—See Contract; Negligence; Will, 1.

Exchange, Bill of.—See Bills and Notes.

Executory Devise.—See Devise, 1, 4.

Fire Insurance.—See Insurance, 1.

Fixtures.

A trustee in bankruptcy executed a disclaimer of a lease vested in the bankrupt. *Held*, that he was not entitled, months after the adjudication, to remove the tenant's fixtures, although he was in possession of the premises. —*Ex parte Stephens. In re Lavies*, 7 Ch. D. 127.

Foreign Exchange...See Bills and Notes, 5.

Fraud.—See Anticipation; Trust, 2.

Freight.—See Railway.

Guaranty.

The wife of C., a retail trader, possessed of property in her own right, gave the plaintiff, with whom C. dealt, the following guaranty; "In consideration of your having, at my request, agreed to supply and furnish goods to C., I do hereby guarantee to you the sum of £500. This guaranty is to continue in force for the period of six years and no longer. *Held*, reversing the decision of Fry, J., that the guaranty did not cover sums due for goods supplied before its date, but was limited to goods sold after its date to the value of £500. *Morrell* v. *Cowan*, 7 Ch. D. 151; s. c. 6 Ch. D. 166; 12 Am. Law Rev. 501

Digest of English Law Reports.

Husband and Wife.—See Courtesy; Guaranty; Marriage.

Implied Warranty.—See Bill of Lading.

Infant.

Agreement between the appellants and the respondent, an infant, was to work for appellants for five years, at certain weekly wages. There was a proviso, that if the appellants ceased to carry on their business, or found it necessary to reduce it, from their being unable to get materials, or from accident, or strikes, or combination of workmen, or from any cause out of their control, they could terminate the contract on fourteen days' notice. In an action on this agreement by appellants for loss of service, under the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), *held*, that the agreement was not in itself inequitable, but its character depended upon whether its provisions were common in such labour contracts at that time, upon the condition of trade, and upon whether the wages were a fair compensation for the infant's services,—all which circumstances were necessary to the construing of the contract.—*Leslie* v. *Fitzpatrick*, 3 Q. B. D. 229.

Injunction.—See Covenant, 1.

Insurance.

1. Plaintiff insured his house, worth £1,500, for £1,600. The Board of Works subsequently took the property under statutory power; the price had been agreed, and the abstract of title furnished and accepted, when a fire destroyed the house. *Held*, that the dealings between the Board and the plaintiff did not affect the contract, and the defendants must pay £1,500, the value of the house.—*Collingridge* v. *The Royal Exchange Assurance Corporation*, 3 Q. B. D. 173.

2. Two ships belonging to the same owner collided, and one of them sank and became a total loss. The owner paid into court the amount of tonnage liability in respect of the ship in fault, under the provisions of the Merchant Shipping Acts. The underwriters on the ship lost claim to be entitled to a portion of this, as they would have been had the ships belonged to different parties. *Held*, that their right in such case existed only through the owner of the ship insured, and not independently, and as he could not sue himself, they could not recover.—*Simpson* v. *Thompson*, 3 App. Cas. 259

Intention.—See Domicile.

Issue.—See Devise.

Jurisdiction.—See Mortgage.

Jury.—See Bill of Lading; Negligence.

Landlord and Tenant.—See Fixtures.

Lapse.—See Bequest.

Lease.

Plaintiff became the owner of a lease of two farms, at a rent of £310 per annum. The lease contained, *inter alia*, a covenant on the part of the lessee not to mow meadow-land more than once a year, and not to underlet any part of the premises without the consent in writing of the lessor; but such consent was not to be withheld if the proposed sub-lessee was a respectable and responsible person. It was provided, that, if the lessee should wilfully fail to perform the covenants, or if he should become bankrupt, or make a composition with his creditors, or if execution should issue against him, the lessor might re-enter. Eight years before the expiration of the lease, plaintiff entered into negotiations with the defendant, a respectable and responsible person, for an underlease of one of the farms, on the terms under which he himself held it; and he stated that he paid £220 rent for it. An arrangement was made, accordingly, by which defendant was to have possession June 24. Before that time, defendant's solicitors had objected to the above provisions in the original lease, and had noted the same on the margin of a draft lease sent them by plaintiff's solicitors, in pursuance of the arrangement between plaintiff and defendant. They suggested a modification of the original lease. They did not object that plaintiff held no separate lease for the farm at the rent which he stated he paid. While the negotiations were pending, defendant, on June 24, took possession. Subsequently, the modifications not being procured, defendant refused the lease; and, in an action for specific performance, or for damages, it was *held* that taking possession was only evidence of a waiver of objection to the title, and could be rebutted; that, by not noting objection to the plaintiff's holding no separate lease at £220 rent, defendant had waived that; that if the sub-lessee was a respectable and responsible person, the written consent of the lessor to the sub-lessee was unnecessary; that the covenant against mowing meadow-land more than once a year was not an unusual covenant; but that the provision for re-entry on bankruptcy, &c., of the lessee was unusual, and the defendant was not bound to specific performance, nor liable in damages.—*Hyde* v. *Warden*, 3 Ex. D. 72.

See Covenant, 2, 3; Specific Performance, 1, 2.

Legacy.—See Bequest.

Lien.—See Attorney and Client, 2; Vendor's Lien.

Life-Estate.—See Devise, 4.

Limitation of Liability.—See Common Carrier.

Loan.—See Partnership.

Marine Insurance.—See Insurance, 2.

Market.—See Sale.

Marriage.

B. and S., Portuguese subjects and first cousins, went through the form of marriage in 1864 in London, in accordance with the requirements of English law. Subsequently they both returned to Portugal, and have never lived together. By the law of Portugal, marriages between first cousins are null and void; but the Pope may grant a special dispensation which legalizes such a marriage. *Held*, reversing the decision of Sir R. Philimore, that a petition for nullity of the marriage ought to be granted.—*Sottomayor* v. *De Barros*, 3 P. D. 1; s. c. 2 P. D. 81; 12 Am. Law Rev. 99.

Married Women;—See Anticipation; Courtesy.

Measure of Damages.—See Ancient Lights.

Misrepresentation.—See Vendor and Purchaser.

Mistake.—See Specific Performance.

Mortgage.

A company, with power to issue "debenture bonds" and "mortgage bonds," having an office in London, and owning land in Florence, issued "obligations," binding themselves, their successors, and all their estate and property, to pay the bearer the sum stated on their face, with interest, in eight years; but reserving the right to call in a certain number of them each year by lot. The company afterwards duly mortgaged its property in Florence, in the Italian form, to a London bank, with notice of the issue of the "obligations." On breach of this mortgage, the mortgagees began proceedings at Florence, and got an order to sell. The plaintiff, holder of some of the "obligations," applied for an injunction to restrain the sale. *Held*, that it was contrary to comity for the court to interfere while proceedings were going on in Florence; also, that the "obligations" were not mortgages, but only bonds, and constituted no claim on the land in Florence as against the mortgagee.—*Norton* v. *Florence Land & Public Works Co.*, 7 Ch. D. 332.

See Attorney and Client, 2.

Mortmain.

A testator bequeathed the sum of £3,000 to the corporation of T., directing £1,000 to be laid out "in the erection of a dispensary building, which is so urgently needed there," and the remaining £2,000 to be held "as an endowment fund for the said dispensary." The corporation already held lands in mortmain, upon which it could legally build a dispensary. *Held*, that the bequest was void under 9 Geo. II. c. 36, as not expressly prohibiting the purchase of land for the dispensary.—*In re Cox. Cox* v. *Davie*, 7 Ch. 204.

Negligence.

Respondent was a third-class passenger on appellant's underground railway, and at the G. station three persons got in and stood up, the seats in the compartment being already full. The respondent objected to their getting in; but there was no evidence that appellant's servants were aware of it, and there was evidence tending to show that there was no guard or porter present at the G. station. At the next station, the door was opened and shut, but there was no evidence by whom. Just as the train was starting, there was a rush by persons trying to get in; the door was thrown open; the respondent partly rose to keep the people out; the train started, and he was pitched forward, and caught with his hand by the door-hinges to save himself; a porter pushed the people away just as the train was entering the tunnel, and slammed the door to, and thereby respondent's thumb was caught and injured. *Held*, reversing the decision of the Common Pleas and of the Court of Appeal, that there was no evidence that the injury was occasioned by the negligence of the appellant sufficient to go to the jury. It is a question of law for the court to say whether there is any evidence of negligence occasioning the injury to go to the jury. It is a question of fact for the jury to say what weight shall be given to the evidence submitted to them. *Brydges* v. *The North London Railway Co.* (L. R. 7 H. L. 213) construed.—*The Metropolitan Railway Co.* v. *Jackson*, 3 App. Cas 193; s. c. L. R. 10 C. P. 49; 2 C. P. D. 125; 9 Am. Law. Rev. 713; 12 id. 100.

See Shipping and Admiralty.

Next of Kin.—See Will, 2.

Notice.—See Bills and Notes, 4; Covenant, 3, 4.

Nullity.—See Marriage.

Official.—See Patent.

Original Gift.—See Devise, 2.

Parol Evidence.—See Will, 1.

Partnership.

Partnership articles were entered into by M. and S., reciting that, under section 1 of Bovill's Act (28 & 29 Vict. c. 86), D. had agreed to lend them £10,000, to be invested in the business, subject to the following provisions, *inter alia*, agreed to by all the parties: The capital of the firm is to consist of said £10,000, and such other sums as shall be advanced by any of the parties,—all to bear interest at 5 per cent; said £10,000 is advanced as a loan by D. under said section of Bovill's Act, and does not, and shall not, render D. a partner; M. or S. only shall sign the firm name; D. shall receive an account-current at the end of each year, and be at liberty to examine the books at any time; an inventory shall be taken yearly, and the net profit or loss divided, in the proportion of 25 per cent. to D., and 37½ per cent. each to M. and S. In case of the death of either M. or S., the business may continue, and the share of profits of the deceased partner shall be divided *pro rata* between D. and the other; D. may dissolve the partnership in case his original capital of £10,000 be reduced more than one-half by losses, or on the death of a partner, and D. may demand for himself liquidation of the business. On the death of D., his representatives shall not withdraw any of his capital until the termination of the present contract; D. may substitute any other person into his rights; and M. and S. have the same option with D., "by reimbursing him his capital and interest." Under this agreement, D. advanced at different times about £6,000 more. On the bankruptcy of the firm, *held*, that D. was a partner, and could not prove as a general creditor. *Ex parte Delhasse. In re Megevand.* 7 Ch. D. 511.

Patent.

Three referees were appointed, under an Act of Parliament, to inquire into the impurities of the London gas, with the right to require the gas companies to afford them facilities for their investigations. As a result of their examination, the plaintiff, one of the referees, thought he had discovered a method of securing greater purity in the gas. The requisite change in the process of manufacture was suggested to the defendant company by the referees, and the company tried it, with success. The referees made their report, incorporating these suggestions and experiments; but the report was withheld from publication for a few days, in order to enable the plaintiff to get out a patent for his discovery. *Held*, that when the knowledge acquired by the plaintiff in the course of his official investigation was communicated to the other members of the official board, it became public property at once, and the other members of the board had no power to consider the information confidential — *Patterson* v. *The Gas Light & Coke Co.*, 3 App. Cas. 239; s. c. 2 Ch. D. 812.

Period to Ascertain Class.—See Perpetuity; Will, 2.

Perpetuity.

Bequest of two hundred and forty shares railway stock and four-sevenths of the residue of testatrix' property to trustees, in trust to accumulate the income until twelve months after the death of B., and then for such of B.'s four children as should be living at the expiration of said twelve months, "and the issue then living, and who shall attain the age of twenty-one years or marry, of any of the said children who shall have died," absolutely. *Held*, that the bequests were void, as contrary to the rule against perpetuities. The gift was to a class the members of which might not be ascertained within twenty-one years from the death of B.—*Bentinck* v. *Duke of Portland*, 7 Ch. D. 693.

Pleading and Practice.—See Negligence.

Power.

Power given to trustees under a will to appoint to the husband of testator's daughter, in case she should marry with their approbation, the income of the daughter's property after her death, during his life, or such part as the trustees should think proper. The daughter married before the testator's death, and with his consent. The trustees had, at the daughter's death made no formal approval of the marriage, and made no appointment. *Held*, that the husband was entitled to a life-interest in the property.—*Tweedale* v. *Tweedale*, 7 Ch. 633.

See Appointment.

Precatory Trust.—See Trust, 1.

Principal and Agent.

It was the custom of the defendant, through his agent S., in the usual course of business, to make certain advances on goods shipped by third parties, and to draw on the plaintiff for the amount so advanced. In course of business, S., as agent, rendered a final account to the plaintiff, and in it charged plaintiff with certain advances, which it turned out afterwards had never been made. He then drew on the plaintiff for the amount, received the money, and appropriated the amount falsely charged, to his own use. *Held*, that the plaintiff could recover the amount from the defendant.—*Swire et al* v. *Francis*, 3 App. Cas. 106.

See Factor.

Priority.—See Attorney and Client, 2.

Profits and Losses.—See Partnersnip.

Promissory Note.—See Bills and Notes, 2, 4.

Protest.—See Bills and Notes, 5.

Publication.—See Patent.

Railway.

By the Railway and Canal Traffic Act (17 & 18 Vict. c. 31, § 2), railway companies are forbidden to "give any undue or unreasonable preference or advantage to or in favour of any particular person or company," in the matter of carrying and forwarding freight. Plaintiff had a brewery at B., where there were three other breweries. The latter were connected with the M. railway; plaintiff's was not. In order to get some of the freight from the three breweries away from the M. Railway, the defendant railway carried their goods from the breweries to their freight depot free of charge, and still made a profit on the whole transportation. They made a charge to the plaintiff for the same service. *Held*, that this was an "undue preference" within the Act, and the plaintiff could recover an amount equal to the cost of carting his goods to defendant's depot.—*Evershed* v. *The London & North-Western Railway Co.*, 3 Q. B. D. 134; s. c. 2 Q. B. D. 254.

See Negligence.

Re-exchange.—See Bills and Notes, 5.

Sale.

A man brought into market pigs from his infected herd, out of which many had died, and had them sold, stating that they were to be taken with all faults. *Held*, that he was not liable in damages to the buyer on whose hands the pigs died.—*Ward* v. *Hobbs*, 3 Q. B. D. 150; s. c. 2 Q. B. D. 331; 12 Am. Law Rev. 104.

See Vendor and Purchaser; Vendor's Lien.

Seaworthiness.—See Bill of Lading.

Separate Use.—See Anticipation; Curtesy; Trust, 1.

Settlement.—See Appointment.

Shelley's Case.

The rule in Shelley's Case applies as well to wills as to deeds.—*In re White & Hindle's Contract*, 7 Ch. D. 201.

Shipping.

L. duly registered as "managing owner" of a sloop, trading with her for some time, employing E. as captain, and paying him regular wages. A verbal agreement was then made between them that E. should take the ship where he chose, engage the men, and render accounts from time to time to L.; and L. was to have one-third of the net profits. While this agreement was in force, and while the sloop was discharging a cargo under a charter-party, expressed to be between the charterers and E., "master, for and on behalf of the owners" of the sloop, she, through the negligence of E., caused damage to the plaintiff's ship. *Held*, that L. was responsible, as well as E., for the negligence of E.—*Steel* v. *Lester & Lilee*, 3 C. P. D. 121.

See Bill of Lading.

Solicitor.—See Attorney and Client.

Specific Bequest.—See Bequest.

Specific Performance.

1. Defendant agreed to purchase the lease of a house, "subject to the approval of the title" by his solicitor. *Held*, that disapproval of the title, on reasonable grounds and in good faith, by the purchaser's solicitor, released the purchaser from the obligation to specific performance. The stipulation is different from that employed in a usual contract to purchase, that the vendor shall make a good title.—*Hudson* v. *Buck*; 7 Ch. D. 683.

2. Plaintiff made a tender for the lease of a farm at £500 rental, mentioning the farm by name, and two different lots, which he meant to include in it, which amounted in all to about 250 acres. Defendant's agent did not look to see what lots were specified in the plaintiff's offer, but took it for granted that they were the same as those specified in another offer from one A., which he had just before opened, that being an offer for said farm, excluding one of said lots, and thus containing

about 235 acres. The agent also said that he intended to let the said farm as containing 214 acres only, that being the quantity it contained, excluding the two additional lots; and he offered to grant a lease of 214 acres at £500 rent, the other two lots having been already let to other parties. *Held*, that a lease for 214 acres should be granted at a rent reduced from £500, in the proportion of 214 to 235.—*McKenzie* v. *Hesketh*, 7 Ch. D. 675.

See COVENANT, 5; LEASE.

STATUTE.—See CONSTRUCTION, 1, 2.

SUB-LEASE.—See LEASE.

TRAMWAY.—See CONTRACT.

TRUST.

1. A testatrix left her property to her sister, and attached to it a precatory trust that the latter should leave it to K.'s "children, John, Sophia, and Mary Ann." *Held*, that in executing the trust, the sister could limit the shares of the daughters to their separate use. —*Willis* v. *Kymer*, 7 Ch. D. 181.

2. A sale and adjustment of a testator's property was made by trustees, under a decree of court, and years afterwards some of the residuary legatees, being minors, brought a bill by their next friend to have the sale set aside, on the ground that the adjustment was improper, and brought about by the fraud of one of the trustees. The bill was dismissed on its merits. *Held*, that as the minors' next friend could not respond in costs, the trustee charged with fraud, who appeared and defended, was entitled to costs out of the estate, as he had defended that, as well as his own character.—*Walters* v. *Woodbridge*, 7 Ch. D. 504.

3. Two trustees advanced money to A., a builder, on security of land purchased by A. of B., the defendant and one of the trustees, and which A. had built upon. The money was used partly to pay for the land, and partly to repay other sums which A. owed B. The plaintiff, the other trustee, knew that A. and B. had had business relations. A. went into bankruptcy; and the plaintiff filed a bill against B., his co-trustee, alleging that the security was insufficient, and asking that the property be sold, and that the defendant be held to make up the deficiency. Refused.—*Butler* v. *Butler*, 7 Ch. D. 116; s. c. 5 Ch. 554.

See DEVISE, 1, 3; POWER.

UNDERWRITER.—See INSURANCE, 2.

VENDOR AND PURCHASER.

The plaintiff purchased a piece of property, had the title examined by his solicitor, was advised that it was good, and completed the purchase. He subsequently discovered that certain parties were entitled to the flow of water through an underground culvert, the existence of which he was not informed of, and had not discovered in examining the title. *Held*, that after the execution of the conveyance, and completion of the purchase, he could not obtain compensation for such defect. — *Manson* v. *Thacker*, 7 Ch. D, 620.

See COMPOSITION; COVENANT, 5; SPECIFIC PERFORMANCE, 1.

VENDOR'S LIEN.

The respondents purchased of the appellants, at various times between Feb. 13 and June 1, 1876, parcels of tea imported by the latter, and lying in a bonded warehouse kept by them. At each transaction, a warehouse warrant, endorsed in blank, was given the purchasers by the appellants, stating that the tea had been warehoused by the appellants Jan. 1, 1876. Subsequently the appellants added to the blank endorsements the name of the respondents, thus making the goods deliverable to the respondents' order alone. Warehouse rent was charged by the appellants from Jan. 1, 1876, to the delivery of each lot, and paid by the respondents. The latter having become bankrupt before their notes given for the tea were paid, the appellants claimed a vendor's lien on the tea sold to the respondents and remaining in their warehouse. *Held*, that there had been no delivery, and the lien was good. —*Grice* v. *Richardson*, 3 App. Cas. 319.

VESTED INTEREST.—See WILL, 5.

WAIVER.—See COVENANT, 1. LEASE.

WAREHOUSEMAN.—See VENDOR'S LIEN.

WARRANTY.- See BILL OF LADING.

WILL.

1. A testator left £600 to the children of his daughter by any other husband than "Mr. Thomas Fisher of Bridge Street, Bath.." At the date of the will there was a Thomas Fisher living in Bridge street, Bath, who was married and had a son, Henry Tom Fisher, who sometimes lived with his father, and who had paid his addresses to the daughter, and, after the testator's death, married her. On the question whether their child was entitled to the £600, *held*, that evidence of the above facts was admissible to show who was meant by the testator.—*In re Wolverton Mortgaged Estates*, 7 Ch. D. 197.

2. C., by will, gave £12,000 in trust for his four daughters; as to £3,000 thereof to his daughter S. for life, and at her death to her children then living. If she left no child, the income was to be paid to the other daughters then living, and to the survivor or survivors; and, after the decease of the last surviving daughter, the £3,000 to be paid to the child or children of such last surviving daughter, and if there were no such children, the same was to "be paid to such persons as will then be entitled to receive the same as my next of kin," under the Statute of Distributions. A similar provision was made as to the share of each of the other daughters. S. died leaving issue. The other three daughters subsequently died without issue. On the application of the personal representative of the last survivor, *held*, reversing decision of BACON, V. C., that the time to ascertain the class of next of kin was the death of the testator, not the death of the last surviving daughter.—*Mortimer* v. *Slater*, 7 Ch. D. 322.

A testator recited that his son had become indebted to himself in various amounts, describing them, and bequeathed to the son said amounts, and released him from payment thereof, and of "all other moneys due from him to" the testator. By a codicil, he released to the son another sum, which the son had misappropriated after the date of the will. At the testator's death the son was indebted to him in other sums incurred after the date of the codicil. *Hedl*, reversing the decision of MALINS, V. C., that the will must speak from the testator's death, and the release applied to all debts incurred before that time. *Everett* v.

Everett, 7 Ch. D. 428; s. c. 6 Ch. D. 122; 12 Am. Law Rev. 513.

4. Testator left his property in trust for his children, the shares of the sons to be paid them at the age of twenty-five, those of the daughters to be settled to their separate use for life, remainder in trust for their issue. Then followed this clause: "And in case of the death of my said daughters or of any of my sons before they shall attain their respective ages of twenty-five years, or of such of them as shall not have received his or their share or respective shares of and in my estate, for the reasons aforesaid, without lawful issue, or having such, and they shall happen to die, being a son or sons, before he or they shall have attained the age of twenty-five years, or being a daughter or daughters, before the age of twenty-one years or marriage, then and in such case I do hereby will and direct that the share or shares of him, her, or them so dying shall go and be divided equally between my surviving children, and be paid to them or applied to their uses in such manner as his or their original shares are hereby directed to be paid and applied, . . . according to the true intent and meaning of my will." The testator left three sons who attained the age of twenty-five, and three daughters, who all married and attained to the age of twenty-five. Two daughters died, leaving issue still living. One son died unmarried, and one leaving issue still living; then the third daughter died without issue, and finally the third brother died. On a petition for the payment of the share of the third daughter to the persons entitled, *held*, reversing the decision of the Master of the Rolls, that "surviving children" meant "other children," and that the share in question was to be divided into fifths, and paid, one-fifth each, to the issue or personal representatives of the two sisters and three brothers of the deceased.—*Lucena* v. *Lucena*, 7 Ch. D. 255.

5. A testator directed his trustees to hold a fund in trust "for my child (if only one), or for all my children (if more than one), in equal shares, and so that the interest of a son or sons shall be absolutely vested at the age of twenty-one years, and of the daughter or daughters at that age or marriage." *Held*, that these interests were at the testator's death vested, though subject to be divested in certain events.—*Armytage* v. *Wilkinson*, 3 App. Cas. 355.

See Appointment; Bequest; Devise, 1, 2, 3, 4; Mortmain; Perpetuity; Power; Shelley's Case; Trust, 1.

Words.

"*Do, Permit, Suffer.*"—See Ancient Lights.

"*Just and Reasonable.*"—See Common Carrier.

"*Leaving Issue.*"—See Devise, 2.

"*Obligations.*"—See Mortgage.

"*On, At and From.*"—See Construction, 1.

"*Paintings.*"—See Construction, 2.

"*Private Residence.*"—See Covenant, 1.

"*Surviving Children.*"—See Will, 4.

"*Undue Preference.*"—See Railway.

"*Vested.*"—See Will, 5.

LAW STUDENTS' DEPARTMENT.

EXAMINATION QUESTIONS.

Intermediate Examinations: Trinity Term, 1878.

First Intermediate.

Smith's Common Law—Con. Stats. U. C. Caps. 42 & 44, and Amendments.

1. Define "Mayhem." When is it excusable?

2. In how far is the utterer of a mere repetition of a slander liable, when he is not the author of the scandal? Would such repetition make any difference in the liability of the original utterer, and if so, under what circumstances?

3. What is the meaning of the technical term "parol contract"?

4. Under what circumstances can a distress for rent be made upon land in respect of which the rent is not payable and not included in the demise?

5. Sketch shortly, as laid down by Mr. Smith, the duties and liabilities of a Solicitor to his client?

6. What is necessary to constitute a binding acceptance of a bill of exchange? Give reasons for your answer.

7. Under what circumstances will a person making a representation as to the credit of another be liable on such representation? Give reasons for your answer.

Williams on Real Property.

1. A testator, by his will, devises real estate to the unborn son of A.B., and after the decease of such unborn son to *his* sons in tail. What estate does the unborn son take? What rule is infringed by the devise, and what doctrine applies to the case?

2. What do you understand by the term, "words of limitation," as applied to certain words in a conveyance?

3. Explain the nature and extent of an estate in dower.

4. A testator, by his will, declared his intention to be that his son should not sell or dispose of his estate for longer time than his life, and to that intent he devised the same to his son for life, and after his decease to the heirs of the body of the said son. Give the effect of this devise, with your reasons.

5. What covenants are usually given in a conveyance from vendor to purchaser?

6 What do you understand by the proposition that there cannot be a use upon a use?

7. What do you understand by "restraint upon anticipation" in a conveyance to the separate use of a married woman.

Second Intermediate.

Leith's Blackstone—Greenwood on Conveyancing.

1. What is the technical meaning of the term "purchaser?" A. makes a gift of lands to B. Is the latter a purchaser? Explain.

2. Upon what principal does land escheat?

3. What do you understand by the *operative* words in a conveyance? Exemplify your meaning by reference to a conveyance in fee.

4. A. grants land to B., giving certain covenants for title. Afterwards, by agreement, the deed is destroyed and the bargain cancelled. What effect has this upon the legal estate in the lands and the covenants in the deed?

5. What are sufficient acts of part performance to take an agreement for a lease out of the operation of the Statute of Frauds?

6. Has the word *demise* any, and if so, what implied signification?

7. What is the practice between conveyancers in carrying out a contract for the sale and purchase of lands?

Certificate of Fitness.

Smith on Contracts—The Statute Law.

1. Give the classes into which contracts are divided by the Common Law of England, with an example of each class.

2. State fully the peculiarities of a contract by deed noticed by Mr. Smith.

3. What are the two great differences between written contracts not under seal and verbal contracts? Illustrate your answer by examples.

4. A. agrees verbally with B. that if B. will take possession of a house upon its being properly furnished, A. will furnish it properly. Can this agreement be enforced? Give reasons for your answer.

5. What difference is there as to capability of being enforced betweeen (*a*) a verbal lease for a year, and (*b*) an agreement for such lease? and what are the grounds of the distinction?

6. In what cases of contract will the law imply a request?

7. A. agrees with B. to pay him $100 for assisting him, A., with a robbery, and pays over the money. B. refuses to assist him. Can A. recover the money back again! What is the general rule of which this case is an example, and what are the exceptions to such rule?

8. Will a verbal agreement for the sale of shares in a joint stock company which is seized of land as part of its assets be binding, and why?

9. What is the effect on a power of attorney of the death of the person granting the power? Can this effect be avoided in any way, and if so, how? State the provisions of any statutory enactment relating to the subject.

10. State fully, giving the grounds for your answer, the extent to which the laws of England affect the laws of property in the Province of Ontario.

Smith's Mercantile Law, the Statute Law, Common Law Pleading and Practice.

1. State the exceptions, given by Mr. Smith, to the general rule that one partner cannot sue another at law.

2. A., a member of a co-partnership borrows from B. $1000 on his own credit, and the money the proceeds of the loan is applied to the use of A.'s firm. What remedy, if any, will B. have for the recovery of his loan, (*a*) against A., (*b*) against A.'s firm? Explain fully your answer.

3. Where a partner fraudulently gives the bill of the firm for his own debt; what remedy, if any, has the firm for the recovery back of the bill from the party fraudulently receiving it? Give reasons for your answer.

4. What is an *inland* and what a *foreign* bill? What is the necessity or use of protest in regard to each?

5. What is meant by *abandonment* in connection with maritime insurance? What is the effect of it? and what necessity is there for notice in regard to it? Explain your answer.

6. How is the authority of the master to hypothecate the ship in furtherance of the voyage in which he is engaged, limited?

7. "Where a surety has entered into a bond for payment in default of the principal debtor, and by parol agreement time has been given to the principal debtor, the surety is compelled to resort to a Court of Equity." On what reasons is the above assertion of Mr. Smith founded? Is the

assertion now true according to the law of Ontario? Give reasons for your answer.

8. State the manner in which the right of stoppage *in transitu* is exercised.

9. Give a short account of the manner in which the remedy by way of interpleader is pursued in Common Law courts and the various circumstances in relation to which the remedy is applicable.

10. Give a short sketch of the proceedings in a case under the Overholding Tenants' Act indicating the way of proceeding to have the judgment of the Court of first instance in such cases reviewed.

Call to the Bar.

Byles on Bills—Stephen on Pleading—Common Law Pleading and Practice.

1. What are "*letters of credit*" and *circular notes*," and what is the legal effect of the issue of such?

2. State accurately the circumstances under which the vitiation by fraud of the consideration for a bill will be a defence to an action on a bill.

3. A bill is endorsed conditionally so as to impose on the drawee, who afterwards accepts, a liability to pay the bill to the endorsee or his transferees in a particular event only. The bill is passed through several hands between endorsement and acceptance and is finally paid by the acceptor before the condition is satisfied. How will this affect the liability of the acceptor to the payee?

4. What is the effect of a material alteration of a bill by an endorsee (*a*) on his rights against prior parties on the bill, (*b*) on his rights against his endorsor, (*c*) on the rights of a subsequent *boná fide* transferee for value?

5. Sketch briefly the history of the *action of ejectment* tracing it from its origin to its present form.

6. In cases tried at *Nisi Prius*, with a jury, where the Judge either does not wish, or is not required by the parties, to give his opinion on points of law raised at the trial, what are the different courses referred to by Mr. Stephen which may be pursued for determining such questions of law? Give any recent statutory enactments tending to facilitate such cases.

7. How should an estoppel be set up (*a*) when it appears on the face of the adverse pleading, (*b*) when it does not so appear? Answer fully.

8. "It is not necessary to state matter of which the Court takes notice *ex officio*." Explain and illustrate this rule.

9. What right of peremptory challenge of jurors have parties in a civil action? Give authority for your answer.

10. State briefly the practice in relation to the examination of parties to Common Law actions before trial. What provision is there as to the use in evidence of depositions so taken?

CORRESPONDENCE.

Interest on notes after maturity.

To the Editor of Canada Law Journal.

Sir,—In the reference made by you in the September number of the Law Journal to the recent decision of the Supreme Court of Maine, holding that interest is not recoverable after maturity on a note at the rate (more than the legal rate) specified in it, when nothing is said as to the rate after maturity, you have not mentioned the case of *Dalby* v. *Humphrey*, 37 U. C. R. 514. This is a more recent decision than any of the cases in the Common Pleas and holds in opposition to them, and in accordance with *Cook* v. *Fowler*, L. R. 7 H. L. 29, that, where a day is named for payment of a note with interest at a rate specified, the claim for interest after that day is a claim for damages for breach of the contract, not as upon an implied contract, and is in the discretion of the Court or Jury; and in that case the Court only allowed six per cent. per annum, although the note was payable with interest at the rate of two per cent. per month.

If it is law that there is no implied contract to pay (after maturity of the note) the rate of interest specified in it, it is difficult to see upon what principle any other rate than that established by law—viz., six per cent., can be allowed.

If this is not admitted, but it has to be decided by a Judge or Jury in each case how much shall be allowed, upon what principle is the Clerk of the Court to compute interest when signing judg-

ment for want of appearance to a specially endorsed writ, where such a note is the claim sued for. It has been the custom to compute the interest at the rate specified in the note. This is clearly opposed to *Dalby* v. *Humphrey*—and what principle is left for the Clerk to act upon except to compute at the legal rate —viz., six per cent. ?

Of course, if it must be left to a Judge or Jury to decide in each case, the claim would be (in part at least) an unliquidated one, and no judgment by default could be signed upon it.

Yours, &c.,
County Judge.

[We are inclined to quote the proverb, "Hard cases make bad law." *Cook* v. *Fowler* must, we suppose, be accepted as final. *Dalby* v. *Humphrey* follows it without even referring to the cases in our Court of Common Pleas, which, we must confess, seem to us more in accordance with sound principles. In both cases there was an evident desire to help the defendants out of what the Courts thought were unconscionable bargains. They, therefore, made new bargains not contemplated by either party. The argument in *Cook* v. *Fowler* was that while it might be reasonable under some circumstances, and the debtor might be very willing to pay five per cent. per month for a short time, it would not follow that he would be willing to pay at the same rate if he should not be able to pay until some time after he had promised. Very probably not, but we venture to assert that there never was a case, apart from the usury laws, where the debtor promised to pay the high rate of interest but what both he and the creditor entered into the arrangement under the full belief that the same rate would be recoverable until payment should be made ;—in fact, they would very reasonably suppose that there was a contract to pay the rate mentioned in the note until it should in some way be settled. Doubtless the money would not have been lent, or the note would not have been taken, if the promisee had thought otherwise. One inconvenience of the rule as it now stands appears in the case suggested by our correspondent. We are not prepared at present to express any opinion as to what course Clerks should adopt under the circumstances referred to. Much might depend upon the way of stating the claim for interest on the special endorsement.—Eds. L. J.]

FLOTSAM AND JETSAM.

The practice of our judges in putting on a black cap when they condemn a criminal to death will be found, on consideration, to have a deep and sad significance. Covering the head was, in ancient days, a sign of mourning. "Haman hasted to his house, mourning, having his head covered." (Esth. vi., 12). In like manner, Demosthenes, when insulted by the populace, went home with his head covered. "And David . . wept as he went up, and had his head covered : . . . and all the people that was with him, covered every man his head, and they went up, weeping as they went up" (2 Sam. xv. 30). Darius, too, covered his on learning the death of his Queen.

But, among ourselves, we find traces of similar mode of expressing grief, at funerals. The mourners had a hood "drawn over the head" (Fostbroke, Encyc. of Antiq., p. 951). Indeed the hood drawn forward thus over the head is still part of the mourning habiliment of females, when they follow the corpse. And with this it should be borne in mind that, as far back as the time of Chaucer, the usual colour of mourning was black. Atropos, also, who held the fatal scissors which cut short the life of man, was clothed in black.

When, therefore, the Judge puts on the black cap, it is a very significant as well as solemn procedure. He puts on mourning. for he is to pronounce the forfeit of a life, And, accordingly, the act itself, the putting on of the black cap, is generally understood to be significant. It intimates that the Judge is about to pronounce no merely registered suppositious sentence ; in the very formula of condemnation he has put himself in mourning for the convicted cul-

prit, as for a dead man. The criminal is then left for execution, and unless mercy exerts its sovereign prerogative, suffers the sentence of this law. The mourning cap expressly indicates his doom.—*Notes and Queries.*

The observations made by Lord Justice James, in the case of *Dean* v. *M'Dowell* (38 L. T. Rp. N. S. 864) are a sad reflection upon the average quality and utility of legal text-books. Counsel engaged in the case were labouring to show that if profits have been made by a partner in violation of his covenant not to engage in any other business, the profits will be decreed to belong to the partnership. In support of this proposition a case decided by Lord Eldon was first quoted. Then came a quotation from Story's Equity Jurisprudence fully supporting the affirmative; then a quotation from Collyer on partnerships to the same effect, and the learned counsel was about to make a further reference to Bissett on Partnership, when the Lord Justice interrupted by remarking, "It is of no use to quote the text writers. They all copy from one another, and give as their only authorities that case which is really no authority for the principle they lay down." However severely these remarks may seem to reflect upon the legal text writers generally, no person who is conversant with law books can doubt that too great justification for the stricture of the learned judge does undoubtedly exist. Fortunately, however, there is observable an improvement in the character of our text-books, and text writers are showing a greater freedom from the trammels of previous writers than was previously the case, and it may be safely said that the number of legal works which indicate both originality and ability is on the increase. Two learned judges now on the bench, to say nothing of other writers, have themselves shown by their treatment, the one of the Law of Partnership, the other by his work on the Contract of Sale, what a legal text-book ought to be.—*Law Times.*

The opinion of the Supreme Judicial Court of Massachusetts has just been filed in the case of *Locke* v. *Lewis*, which presents an interesting phase of the law of partnership. It was an action of replevin for three carriages. It appeared by the evidence that, in September, 1870, a copartnership previously existing between the plaintiff and I. R. and D. R. in the business of manufacturing carriages at Nashua, in the State of New Hampshire, was dissolved, the plaintiff left the firm, and I. R. and D. R. gave him their promissory note for the balance of his unpaid interest therein, and formed a new firm under the style of I. R. & Son, and continued the business at the same place. In October, 1870, I. R. and D. R. formed a limited partnership, under the laws of New Hampshire, under the name of I. R. & Co., with C. P. and G., in which I. R. and D. R. were general partners, and the other three were special partners. In February, 1871, I. R. and D. R. sold the carriages in question to the plaintiff in payment of their note to him, and he gave up the note to them. The plaintiff testified to the effect that he bought the carriages in good faith; that he thought two of them were the same that the old firm had on hand when he sold out to I. R. and D. R., and that he did not know that the limited partnership existed, or was carrying on business, or that any one but I. R. and D. R. had any interest in the carriages sold to him. The defendant, a deputy sheriff, afterwards attached the carriages on *mesne* process against all the partners in the limited partnership. The report assumes that the carriages were part of the stock in trade of this partnership; and the single question reserved for the decision of the court was the correctness of the ruling under which a verdict was ordered for the defendant, and which was, in substance, that the sale by the two general partners, in payment of their own debts, of goods which were in fact goods of the partnership, but were not known to the *creditor* to be such, was void as against the partnership and its creditors.—*Central Law Journal.*

A Scene in Court.—During the Herne Bay Waterworks petition in the Court of Chancery, London, on Wednesday, a scene occurred between Vice-Chancellor Malins and Mr. Glasse, Q.C., the leading counsel of the court. The Vice-Chancellor having stated that the case had better stand over till the November sittings, Mr. Glasse remarked on the inadequacy of the court to deal with the business. The Vice-Chancellor: That is a very improper remark for you, as the leading counsel of the court, to make. —Mr. Glasse: The public will judge.— The Vice-Chancellor: Your remarks are of an infamous description. I wonder you have the audacity to make them.—Mr. Glasse (who spoke with suppressed excitement): I, standing here, will not condescend to tell your lordship what I think of you.

We suppose that Punch's epigram on "*Heads in Chancery*" is *apropos* of this:

Says Malins to Glasse,
"I think you're an ass!"
Says Glasse back to Malins,
"I pity your failings!"

Flotsam and Jetsam.

A Somnambulist Convict.—According to the Scotch papers, a prisoner was recently convicted at Edinburgh of having, while in a state of somnambulism, murdered his child, and has since been set at liberty. Cases of this kind are very rare, but, assuming the somnambulism to be clearly proved, there can be little question of the correctness of the course adopted. Dornbluth, the German psychologist, tells of a young woman who, in consequence of a fright occasioned by an attack of robbers, was seized with epilepsy, and became subject to somnambulism. While in that condition she was in the habit of stealing articles, and was charged with theft, but on the advice of Dornbluth was released and eventually cured. Steltzer (cited in Wharton and Stillé) gives an account of a somnambulist who clambered out of a garret window, descended into the next house, and killed a young girl who was asleep there. And the same learned writers quote from Savarin an account of a somnambulist monk (related to Savarin by the prior of the convent where the incident happened): "The somnambulist entered the chamber of the prior, his eyes were open but fixed, the light of two lamps made no impression upon him, his features were contracted, and he carried in his hand a large knife. Going straight to the bed, he had first the appearance of examining if the prior was there. He then struck three blows, which pierced the coverings, and even a mat which served the purpose of a mattress. In returning, his countenance was unbent, and was marked by an air of satisfaction. The next day the prior asked the somnambulist what he had dreamed of the preceding night, and he answered that he had dreamed that his mother had been killed by the prior, and that her ghost had appeared to him demanding vengeance; that at this sight he was so transported by rage that he had immediately run to stab the assassin of his mother." Savarin adds that if the prior had been killed the monk could not possibly, under these circumstances, have been punished.—*Legal News.*

Titles.—The English Court of Appeal, according to the *Solicitor's Journal*, appears to be somewhat of the opinion of Sir Thomas Smith, who saith: "As for gentlemen, they be made good cheap in this kingdom; for whosoever studieth the laws of this realm * * * he shall be called master, and shall be taken for a gentleman." In the course of the hearing of a petition in lunacy for the appointment of new trustees on the 7th ult., one of the persons proposed as a new trustee was described as an "esquire," and one of the persons who made an affidavit of fitness was described as a "gentleman." It was stated that the "esquire" was, in fact, a justice of the peace, and that the "gentleman" was a solicitor. Lord Justice Cotton said that though the legal description of a solicitor was "gentleman," that term was very indefinite, and ought not to be used. In such an affidavit a solicitor ought to be described as a "solicitor," in order that the court might know his real position in life. And the term "esquire" was even worse than that of "gentleman," for it conveyed no information whatever to the court. A man who was a justice of the peace should be described by that title.

Actions for breach of promise of marriage.—In charging the jury, in the breach of promise case of *Harwood* v. *Grace*, on the 15th inst., Dowse, B., said:—"The positions of a man and of a woman in relation to marriage were very different. As a poet and judge of human nature had said—

> 'Man's love is of man's life a thing apart,
> 'Tis woman's whole existence.'

He had lately read in a leading literary journal an article in favour of a bill now before Parliament. The writer said that actions for breach of promise of marriage only forced men to marry women they did not wish to marry. They did nothing of the kind. Men were at perfect liberty not to marry if they liked, even where they had made a promise, but they must pay for the operation of breaking their promises. He hoped he would never see the time when these actions would be abolished. They were the only protection young women had against the wiles of a sex that often took advantage of their weakness."—*Irish Law Times.*

The legal profession in a County Town North of Toronto, should petition to have the advertiser below called to the Bar at once. He would be a fit companion for, and give some new ideas to, the advertising portion of our profession. He thus advertises his "lines":—

"A Card.—I notice that outside of my own legitimate conveyancing practice, a great many persons go to Barry, or Toronto, to get certain lines of conveyancing done, such as letters of administration, guardianship, etc., done. Tbis extra expense is intirely unnecessary. I am constantly employed in every branch that appertains to the conveyancing practing; and in any particular case that the neighbouring practitioner does not see his way clearly into, let the party come to me and I will guarantee satisfaction."

Advocate to witness: "Did you come on your subpœna?" "No; I walked."

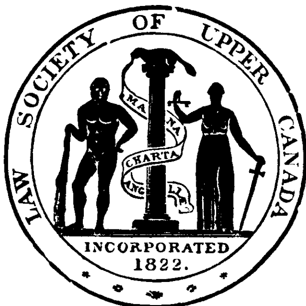
Method is essential, and enables a larger amount of work to be got through with satisfaction. "Method," said Cecil (afterwards Lord Burleigh), "is like packing things in a box ; a good packer will get in half as much again as a bad one." Cecil's despatch of business was extraordinary, his maxim being, "The shortest way to do many things is to do only one thing at once."

The rights of women is a pet theory in the United States ; it will be gratifying, perhaps, to those unhappy bachelors who dread being crowded out by the female sex, to know that there has recently been published in Philadelphia a work called, "*Husband's* Law of Married Women," unless, indeed, this is henpecked husband.

Henri de Tourville, the Englishman, who was convicted by an Austrian tribunal and sentenced to death for wife murder, and whose sentence was afterwards commuted to one of twenty years' penal servitude, has been disbarred, and his name removed from the list of members of the Honourable Society of the Middle Temple.

The attorney for a cabman who had been knocked off his box and injured, said : "The particulars speak with mute eloquence; and I may say for my client, with Mark Antony, his scars shall plead his cause." Counsel : "After this Roman eloquence, I beg to object that the particulars are insufficient."

DRACONIAN (Scene—Police Court, North Highlands).—Accused—"Put, Pailie, it's na provit !" Bailie—"Hoots toots, Tonal, and hear me speak ! Aw'll only fine ye ha'f-a-croon the day, because et's no varra well provit. But if ever ye come before me again, ye'll no get aff under five shillin's whether et's provit or no !"—*Punch.*



Law Society of Upper Canada.

OSGOODE HALL,

TRINITY TERM, 42ND VICTORIA.

During this Term, the following gentlemen were called to the Bar; namely :—

HENRY PIGOTT SHEPPARD.
ISAAC CAMPBELL.
A. BRISTOL AYLSWORTH.
RICHARD DULMAGE.
HARRY RATCHER BECK.
MATTHEW WILSON.
WILLIAM HENRY FERGUSON.
WILLIAM E. HIGGINS.
JAMES CARRUTHERS HEGLER.
FREDERICK WILLIAM PATTERSON.
EUGENE LEWIS CHAMBERLAIN.
MACFIELD SHEPPARD.
NEIL A. RAY.

And the following gentlemen were admitted as Students of the Law and Articled Clerks, namely :—

Graduates.

WILLIAM RIDDELL.
DAVID PHILIP CLAPP.
ADAM JOHNSTON.
GEORGE GORDON MILLS.
GEORGE WILLIAM BEYNON.
JOHN HENRY MAYNE CAMPBELL.
CHARLES MILLAR.
THOMAS ALFRED O'ROURKE.
EDWARD ROBERT CHAMBERLAIN PROCTOR.
CONRAD BITZER.
JOHN RUSSELL.
JOHN WILLIAM RUSSELL.

Matriculants.

W. J. TAYLOR.
HARRY THORPE CANNIFF.
THOMAS PARKER.
A. DOUGLAS [illegible]ONTON.
ALBERT EDWARD DIXON.

And as an Articled Clerk—

EUDO SAUNDERS.

Junior Class.

J. L. MURPHY.
A. G. CLARKE.
W. B. DICKSON.
W. G. WALLACE.
T. K. PORTEOUS.
O. H. TENNENT.
M. S. MCCRANEY
J. TELFORD.
C. H. CLEMENTI.
W. HAWKE.
J. B. PATTERSON.
J. W. HANNA.
C. H. CLINE.
G. W. DANKS.
C. A. HESSIN.
R. E. HARDING.
C. HENDERSON.
J. CAMPBELL.
J. G. CHEYNE.
F. E. BERTRAND.
T MOFFAT.
S O. RICHARDS.

Articled Clerks.

A F. GODFREY and
HUGH MCMILLAN, as of Easter Term.

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

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

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

Classics.

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

Mathematics.

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

English.

A paper on English Grammar; Composition; an examination upon "The Lady of the Lake," with special reference to Cantos V. and VI.

History and Geography.

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

Optional Subjects instead of Greek:

French.

A Paper on Grammar. Translation of Simple Sentences into French Prose. Corneille, Horace, Acts I. and II.

Or German.

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

Candidates for Admission as Articled Clerks (except Graduates of Universities and Students-at-Law), are required to pass a satisfactory Examination in the following subjects:—

Ovid, Fasti, B. I., vv. 1-300; or,

Virgil, Æneid, B. II., vv. 1-317.

Arithmetic.

Euclid, Bb. I., II., and III.

English Grammar and Composition.

English History—Queen Anne to George III.

Modern Geography — North America and Europe.

Elements of Book-keeping.

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

All examinations of students-at-law or articled clerks shall be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

After Hilary Term, 1879, the Matriculation Examination will be as follows:—

SUBJECTS OF EXAMINATION.

Junior Matriculation.

Classics.

1879 { Xenophon, Anabasis, B. II.
Homer, Iliad, B. VI.

1879 { Cæsar, Bellum Britannicum.
Cicero, Pro Archia.
Virgil, Eclog. I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1880 { Xenophon, Anabasis. B. II.
Homer, Iliad, B. IV.

1880 { Cicero, in Catilinam, II., III., and IV.
Virgil, Eclog., I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1881 { Xenophon, Anabasis, B. V.
Homer, Iliad, B. IV.

1881 { Cicero, in Catilinam, II., III., and IV.
Ovid, Fasti, B. I., vv. 1-300.
Virgil, Æneid, B. I., vv. 1-304.

Translation from English into Latin Prose.

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

Mathematics.

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

English.

A paper on English Grammar.
Composition.

Critical analysis of a selected poem :—

1879.—Paradise Lost, Bb. I. and II.

1880.—Elegy in a Country Churchyard and The Traveller.

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

History and Geography.

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

Optional Subjects.

French.

A Paper on Grammar.

Translation from English into French Prose—

1878 and 1880 } Souvestre, Un philosophe sous les toits.

1879 and 1881 } Emile de Bonnechose, Lazare Hoche.

German.

A Paper on Grammar.

Musaeus, Stumme Liebe.

1878 and 1880 } Schiller, Die Bürgschaft, der Taucher.

1879 and 1881 } Schiller { Der Gang nach dem Eisenhammer. Die Kraniche des Ibycus.

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination shall be :—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C. S. U. C. c. 12), C. S. U. C. caps. 42 and 44, and Amending Acts.

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

FINAL EXAMINATIONS.

For Call.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Smith on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Stephen on Pleading, Lewis's Equity Pleading, Dart on Vendors and Purchasers, Best on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

For Call, with Honours.

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

For Certificate of Fitness.

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

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

SCHOLARSHIPS.

1st Year. — Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Hayne's Outline of Equity, C. S. U. C. c. 12, C. S. U. C. c. 42, and Amending Acts.

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

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

4th Year. --Smith's Real and Personal Property, Harris's Criminal Law, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis's Equity Pleading, Equity Pleading and Practice in this Province.