DIARY FOR FEBRUARY.

1. SUN.. *Septuagesima Sunday.*
2. Mon.. Hilary Term begins.
4. Wed.. New Trial Day, Q. B.
5. Thurs. New Trial Day, C. P.
6. Fri.... Paper Day, Q.B. New Trial Day, C.P.
7. Sat.... N. T. Day, Q.B. Paper Day, C.P.

8. SUN.. *Sexagesima Sunday.*
9. Mon.. Paper Day, Q.B. N. T. Day, C.P.
10. Tues.. N. T. Day, Q.B. Paper Day, C.P. Union of U. & L. Can., 1841.
11. Wed.. P. D., Q.B. N. T. D., C.P. Last day for set. down & giv. not. of rehearing in Chy.
12. Thurs. Open D., Q.B. P.D., C.P. Last day for serving Co. Ct. York.
13. Fri.... N. T. D., Q.B. Open D., C.P. Spanish Rep. proc. 1873.
14. Sat.... *St. Valentine's.* Hil.T. ends. Last d. for ret. by Benchers under 35 V. c. 6, s. 7. Last day to give notice for call.

15. SUN.. *Quinquagesima Sunday.*
16. Mon.. Last day to move against election of Mayor, Ald., Reeve, Deputy Reeve, or Local Mun. Councillor (Mun. Act. s. 132.)
17. Tues.. *Shrove Tuesday.*
18. Wed.. *Ash Wednesday.*
19. Thurs. Rehearing term in Chancery begins.
20. Fri.... Tithes abolished in Upper Canada, 1823.

22. SUN.. *Quadragesima Sunday.*
23. Mon.. Last day to declare for County Court, York.
26. Tues.. Last d. to move ag'st elect'n of Co. Councillor (Mun. Act. s 132)
27. Fri.... Thanksgiving for the recovery of H.R.H. the Prince of Wales, 1872.
28. Sat.... Last day for ret. by Commissioner of Crown Lands to Co. Treas. under 32 Vic. c. 36, s. 108.

CONTENTS.

EDITORIALS:
- Baron Martin's Retirement 29
- Jurisdiction over Commissioners 29
- No Service, no Case 29
- Drafting Rules of Procedure under the new Judicature Act 30
- Nomination of Chief Justice of the United States 30
- Wigs and White Ties 30
- Law Society 31
- The Court of Appeals in Quebec 32
- Procedure under the Act for Quieting Titles to Real Estate 33
- New Tariff for County Courts 35
- A Legal Curiosity 36

SELECTIONS:
- The Office of Coroner 37
- Termination of Common Carrier's Responsibility as Insurer 40

CANADA REPORTS:
- Ontario:
  - Notes of Recent Decisions:
    - Common Pleas 42
    - Chancery 43
    - Common Law Chambers 46

UNITED STATES REPORTS:
- Supreme Court:
  - Michigan Central R. R. Company *v.* The Mineral Springs Manufacturing Company 46

DIGEST OF ENGLISH LAW REPORTS 50

CORRESPONDENCE:
- Administration of Justice Act, 1873, Discussed.. 55

REVIEWS:
- An Epitome of Common Law Cases 57
- An Epitome of Leading Conveyancing and Equity Cases 58

FLOTSAM AND JETSAM 58

SPRING CIRCUITS 59

LAW SOCIETY OF UPPER CANADA 60

THE
Canada Law Journal.

Toronto, February, 1874.

Baron Martin retires from the Court of Exchequer in England, after a period of service of twenty-three years. Mr. Amphlett, Q.C., it is said will be his successor.

A case is reported in the *Australian Jurist* where a rule was granted calling on an attorney to answer an affidavit. It appeared that he had acted as a commissioner in taking an affidavit verifying a bill of sale after leaving the district to which his commission was restricted. The court held that it had a summary jurisdiction over the commissioner—that he had been guilty of carelessness and remissness; but, as the applicant did not appear to desire that the court should visit the offence with great severity, it was ordered that the attorney should take down a sign over his office in which he was held out as a commissioner, and should pay the costs of the rule.

The *Solicitors' Journal* notes an interesting case which would have elicited much sympathy from Charles Dickens. It appears that a "highly respectable monthly nurse" was applied to with reference to an event expected to take place in April last, and was requested to hold herself in readiness during that month. She did so, not only during that month, but also during about half of May, but as the expected event did not "transpire," and as the nurse had another engagement of a similar kind, she told her employer that he must not longer depend upon her services. Afterwards upon suing for compensation "for holding herself in readiness," she was nonsuited on the opening address, the judge remarking that as no service was to be proved, there was no case.

Editorial Items.

Three professional gentlemen have been appointed in England by a committee of Judges to draft rules of procedure under the new Judicature Act: Mr. H. Cadman was selected for his knowledge of Chancery practice; Mr. Arthur Wilson, who holds the office of Tutor in Common Law at the Inner Temple, and Dr. Tristram, (Chancellor of the diocese of London, and of Hereford,) of great experience in the Admiralty, Probate, and Divorce Courts. The work of these gentlemen will be more difficult to accomplish than the framing of the Act itself, and upon their success depends in great measure the efficiency of the reform intended by that statute. The *Solicitors' Journal* expresses a wish that "the whole library of Acts" relating to Common Law and Equity Procedure, repealed by the Judicature Act, may be grouped in some neat repealing schedule, and that in fact the whole body of statutory procedure may in some early session be, to use the words of consolidatory statutes, "reduced into one Act."

We alluded last month to the nomination of a Chief Justice for the Supreme Court of the United States. The President has at length hit upon a man who is not sufficiently obnoxious as to be refused by the Senate. The name of Mr. Williams had to be withdrawn after a deal of abuse had been showered upon him, and apparently not without some show of reason; at least he was not such as Cæsar desired his wife might be. The President then, with a singular appreciation of the eternal fitness of things, nominated the notorious Caleb Cushing, the servile tool of the American Government at the Geneva Arbitration and the slanderer of the Chief Justice of England. Even leading papers in the interest of the present administration at Washington, denounced the nomination of this Anglophobist, saying that "a great danger would menace the nation and a lasting disgrace be attached to President Grant's second term of office." We are inclined to agree with that opinion. A third time the President tried his hand, and nominated Mr. Morrison R. Waite, of Ohio, a respectable constitutional lawer, not, it is said, altogether unfit for the position, but, as we gather from our legal exchanges, with about the same qualifications as some thousands of his brethern in that country.

We have repudiated the wig which is an inseparable ornament of justice in the mother country. Can it be that the white-tie is in danger? We are apprised of two cases in which counsel ventured on the revolutionary proceeding of addressing the court without assuming the white-tie. The court very properly intimated that, although, by the exercise of faculties it had in common with ordinary mortals, it was aware of an individual addressing remarks in its direction, in its judicial capacity it was unable to see or hear anything. The coloured tie had to all intents the same effect as those magic garments which were so conveniently common in the Arabian Nights entertainments.

One offence was aggravated by the circumstance that the learned counsel, instead of displaying the shirt-front of unsullied whiteness, fit emblem of the breast it covers, which the advocate is expected to sport, mounted the unorthodox tie upon a shirt of the material and hue affected by the Nevada fireman. We do not know if the excuse pleaded for this eccentricity was similar to that of Curran, when arraigned before the authorities of his college for wearing a dirty shirt. "I pleaded inability to wear a clean one; and I told them the story of poor Lord Avonmore, who was at that time the plain, untitled, struggling Barry Yelverton. 'I wish, mother,' said Barry, 'I had *eleven* shirts.' '*Eleven*,' Barry!—'why *eleven*?'

'Because, mother, I am of the opinion that a gentleman, to be comfortable, ought to have *the dozen.*' Poor Barry had but one, and I made the precedent my justification." But in the days of "dickeys" and paper shirt-fronts such a plea would be held demurrable.

Dignus vindice nodus—'the tie is worthy of a champion,' and we shall always be found boldly advocating its retention. We are glad to see the bench take so firm a stand against innovation in this respect. Once allow the white-tie to be abolished, and we dare not prophesy what will follow.

'Twill be recorded for a precedent,
And many an error, by the same example,
Will rush into the state.

This should not be the least sacred of the ties we venerate.

LAW SOCIETY.

Michaelmas Term—37 Victoria.

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

Monday, November 19th, 1873.

The several gentlemen whose names are published in the usual lists were called to the Bar, received certificates of fitness, and were admitted as Students of the Laws.

On the petitions of Messrs. Fuller and Pollard, for call to the Bar without examination under special Acts of Parliament :—Ordered, that the ordinary examinations prescribed for call to the Bar be passed in all cases when official Acts of the Legislature are obtained for such call, with clauses requiring examinations by this society.

The petition of Mr. Clendenan, for allowance of second Intermediate Examination within nine months of the first:—Ordered to stand over as premature.

Tuesday, November 18th.

The Treasurer announced the result of the Intermediate Examinations.

The abstract of balance sheet was laid on the table.

The petition of A. D. Patterson, for allowance of filing of articles *nunc pro tunc*, granted.

The Report of the Examining Committee was received and adopted.

The Rules and Orders of the Law Society, as reported by Special Committee, were finally adopted.

Mr. G. M. Evans, was apppointed Examiner for next Term.

The Committee appointed to examine Journals, reported that Messrs. S. B. Freeman, Q.C., and E. B. Wood, Q.C., had failed to attend any meeting of Convocation for three consecutive Terms:—Ordered that the Secretary do notify Messrs. Freeman and Wood that they had ceased to be Benchers, in consequence of such non-attendance.

Call of the Bench ordered, for the election of Benchers in the place of Messrs. Freeman and Wood.

Friday, November 21st, 1873.

On petition of J. C. Cooper for increase of salary : ordered that the salary of Mr. Cooper, for the future, be two hundred and fifty dollars per annum.

On the petitions of several students for the allowance of time under articles:—Ordered that such petitions be not received in any case where time of service has not expired.

A Committee was appointed to examine and consolidate the statutes relating to the Law Society.

November 27th and 28th.

The Scholarship Examinations were proceeded with.

Friday, December 5th.

A letter from Mr. Robert Campbell, of Whitby, in which he asks to be relieved from his bond as surety for James Keith

Gordon, was received and read:—Ordered that he be relieved, upon Mr. Gordon giving another surety.

A letter from Mr. Martin, suggesting the supply of the Statutes to the profession through the Law Society, was received and read:—Ordered that Mr. Martin be informed that Convocation do not consider it advisable to enter into such an engagement as would be necessary to carry out his suggestion.

Draft deed from Law Society to the Crown, of a portion of the Osgoode Hall property, considered.

Report from Library Committee received and adopted, and a grant of $800 ordered, as suggested by Committee.

Ordered that the Rules and Statutes be published as soon as they are finally examined and approved by the Treasurer.

Tuesday, December 30th.

Petition of Mr. Vidal, in relation to his Act of Parliament, granted.

Ordered that the Teasurer, and Messrs. Patterson and Vankoughnet, be a Committee to carry out the transfer of a portion of the Osgoode Hall property to the Government.

J. Hillyard Cameron,
Treasurer.

Hilary Term, 1874.

CALLS TO THE BAR.

The following gentlemen have passed the examination for call to the bar;—W. D. Hogg, Perth, (without an oral); Elihu Burritt Edwards, Peterborough; James H. Bell, Milton; W. Macdonell, Lindsay; H. A. Reesor, Markham; C. E. Barber, Simcoe; E. H. D. Hall, Peterborough; R. H. Dennistown, Peterborough; Kenneth McLean, Guelph; J. H. Metcalf, Melville; E. Meek, Hamilton, and Albert E. Richards, Toronto.

ATTORNEYS ADMITTED.

The following gentlemen have passed as Attorneys:—W. D. Hogg, H. A. Reesor, W. J. Murdock, London; J. H. Bell, E. B. Edwards, W. Macdonell, A. E. Richards, F. D. Moore, Peterborough; E. Meek, and A. McKinnon, Belleville; G. M. Roger, Peterborough; M. A. Ball, St. Catharines; John McGregor, Toronto.

INTERMEDIATE EXAMINATIONS.

The following have passed the second Intermediate Examination:—A. Ferguson, G. A. Radenhurst, J. H. Thom, E. D. Armour, Hugh O'Leary, James Pearson, D. A. O'Sullivan, C. J. Snider, Stewart Tupper and H. A. E. Kent, (without an oral.) E. T. Malone, T. S. Wade, D. Ormiston, A. R. Lewis, Francis Love, W. R. Burnham and C. S. Jones, (after oral.)

The following have passed the first Intermediate Examination:—J. W. Gordon, R. Pearson, W. M. Hall, W. C. Mahaffey and D. W. Clendenan, (without an oral.) W. R. Dougherty, Geo. Robb, Geo. A. Cook, A. C. Galt, John Crerar, G. S. Goodeave and W. C. Moscrip, (after oral.)

LAW SCHOOL.

The following gentlemen have passed, and those in the Senior Class have had their period of service shortened as below:—

Senior Class.—E. H. D. Hall, twelve months; K. McLean, twelve months; D. Watt, G. B. Gordon and J. Parks, six months.

Junior Class.—J. Bruce, R. H. Evans, J. D. Lawson and Alexander Ferguson.

THE COURT OF APPEALS IN QUEBEC.

There is no cause to despair of the future of any country so long as it possesses an upright, learned and industrious Bench of Judges, and a Bar composed of men having the same requisites, and who have, in addition, a distinct appreciation of their position as bound to assist and not mislead the Bench, and tenacious

withal of the rights of the clients they represent.

That the Bench and Bar of our sister Province of Quebec is not all that could be desired has been evident for some years past; but there are not wanting members of the Bar in that Province who not only deplore the existing state of things, but are determined if possible to apply a remedy.

We published some time ago an able article from the *Revue Critique* on this subject, written by Mr. W. H. Kerr. The dissatisfaction has now culminated in a series of resolutions which were passed by a large number of the Bar, and presented to the Court of Appeals at a recent sitting.

We desire to say but little on such a painful subject, especially as there is every reason to hope that a better state of things will shortly prevail. The burden of the charges against the Court of Appeals is, the accumulation of arrears of business, resulting in a practical denial of justice, and a want on the part of some of the Judges of attention to arguments presented by Counsel, and a general carelessness in their adjudications; and, with respect to one of their members, a suspicion that he sometimes gives undue and improper weight to the representations of some lawyers who are said to be favoured above their fellows. This, the most serious charge of all, and which is said to point to Mr. Justice Monk, demands instant investigation. We trust it may prove unfounded. It is also asserted that, in general, the Montreal Judges favour lawyers in the Montreal District, and that the Quebec Judges are partial to the Bar of the District of Quebec. Chief Justice Duval, it is alleged, is not equal to his position owing to ill health, physical weakness, and the want of other attributes essential to the success of the Chief of a Court. Judge Badgley, a most able jurist, and as a man highly respected, is afflicted with deafness to such an extent that his usefulness is much impaired. We believe that no sort of censure was intended by these resolutions to the two Judges recently appointed, Mr. Justice Taschereau and Mr. Justice Ramsay.

The whole matter will doubtless receive the attention of the Government of the Dominion at an early day, and the less said about it in the meantime the better.

The resolutions are as follows:

Resolved,—That the administration of justice in the Court of Queen's Bench has been, for some time past, inefficient, unsatisfactory, and destructive of the confidence which should be reposed in the highest Court of the Province; and that, in the interests of justice, an immediate inquiry by Royal Commission into the causes of such a lamentable state of affairs is imperatively required.

Resolved,—That in view of the foregoing resolution, the Bar of this section abstain from pleading before the Court of Queen's Bench during the present term, and that the Chairman of this meeting do communicate this and the foregoing resolution to the said honourable Court.

PROCEDURE UNDER THE ACT FOR QUIETING TITLES TO REAL ESTATE.

Under the general orders of the Court of Chancery, the task of investigating titles under the Quieting Titles Act has been committed to several of the Local Masters in Chancery, but all titles so investigated have also to be further inspected by the Referee in Chambers, as Inspector of Titles, before being finally submitted to a judge. We believe that in the past there has been considerable diversity of practice amongst the local Masters, and that in many cases unexpected delays have been occasioned by reason of the Inspector rejecting titles which have been passed by the local Masters, in consequence of the existence of formal defects and objections to the proof which might have been supplied in the first instance had the practice under the Act been well

settled and understood. We have, with a view to securing uniformity of procedure under the Act, been at some pains to ascertain the practice followed in the office of the Inspector in Toronto, and have embodied the result of our labours in the following notes, which we believe will be found useful to the profession:—

1. The forms of petition, affidavits and certificates given in the last edition of Taylor on Titles, must be followed in all cases, as nearly as may be. (Paragraph 10, however, of petitioner's Affidavit seems no longer necessary: see 36 Vict. c. 44 s. 69, Ont.)

2. All material facts necessary to be proved to make out a petitioner's title should, where possible, be proved or corroborated by the oath of witnesses independent of the petitioner.

3. Wherever the title sought to be quieted is subject to a mortgage, the mortgage or certified copy must be produced, and the mortgagee must be notified under the Act, unless his consent to the granting of the certificate to the petitioner, subject to the mortgage, be filed. So also, where the title is subject to a contract for sale, the contract or a certified copy must be produced, and the vendee notified, or his consent filed.

4. Where the petitioner's title is acquired by possession, as a general rule the person entitled under the paper title should be served with notice under the Act.

5. A petitioner claiming by possession should be prepared to show the state of the land at the time his possession commenced: (*e.g.*, whether it was in a state of nature, or under cultivation;) also, that his possession has been continuous; also, that it has extended over the whole of the land claimed in the petition. He should also negative, as far as possible, the existence of any facts which under the statute of limitations would preserve the paper title, notwithstanding the possession: (*e.g.*, he should show that the person entitled under the paper title was *sui juris* and under no disability at the time the possession under which the petitioner claims commenced; and that no acknowledgment of title has been given, etc.)

6. The Sheriff's certificate should include the names of all persons who in 1863 or subsequently thereto owned the lands in question; (see *Neilson* v. *Jarvis* 13 C.P. 176; 27 Vict. cap. 13, sec. 2; and *Miller* v. *Beaver Mutual &c.*, 14 C.P. 399) and where any of the owners have died, the names of their executors or administrators should also be included in the certificate.

7. Where the petitioner claims under a deed which has been lost, the grantor in the lost deed or his representative must in general be served with notice under the Act.

8. The Registrar must certify that he has extracted *all registrations* affecting the lands in question, unless some special reason can be shown for a departure from this rule.

9. Whenever an adverse claim is filed, the Referee to whom the petition is referred should make a report and order thereon, allowing or disallowing it, as the case may be, and awarding the costs occasioned by the claim as he may think proper. (The practice of the Master's office as to settling and signing reports should be followed.) This report and order must be filed in the office of the Clerk of Records and Writs, and be confirmed before any final adjudication can be made in the matter of the petition.

10. Petitions under the Act will not be entertained where the petitioner is not in the actual possession of the land by himself, or his tenants. And where he claims to be in possession by his tenant, the lease, if any, under which such tenant holds, must be produced, and the consent of the tenant to the granting of a certificate must be filed, or he must be notified under the Act.

11. In all cases it is necessary to prove who is in the *actual occupation* of the lands in question.

12. Whenever a notice is required to be served on any person appearing to have any adverse interest, it is advisable that the reason of the notice being served should be stated: (*e.g.*, where the notice is required to be served on a person appearing to have a claim for dower, the notice should state "this notice is served upon you because it appears from the evidence adduced before me that you may have some claim or right to dower in the said premises, and because the petitioner claims to be entitled thereto free from any such claim or right.")

NEW TARIFF FOR COUNTY COURTS.

We are happy to be able to inform the profession that a new tariff in County Court cases has been framed by the Judges of the Superior Courts of Common Law, at Toronto, and his Honor Judge Gowan, associated with them under the Act in that behalf. By the new tariff the fees allowed to counsel and attorneys will be somewhat more commensurate to the work done than were the fees under the old table of costs. The work in a County Court case is very frequently as troublesome and difficult as in contested cases in the Superior Courts, and it has long been felt that the fees allowed under the existing tariff were quite inadequate to the work and labor often necessary in such cases. An examination of the new tariff would seem to show that whilst the fees mentioned therein are certainly not more than the labor calls for, they will in contested cases be considerably increased; in ordinary suits there will be an increase, but not much.

The new tariff will come into force from and after the first day of March next (1874).

In order that the profession may have some idea of the nature of the proposed change, and of the increase likely to be made by the new tariff, we will mention a few of the fees, comparing them with the fees allowed under the existing table of costs.

The first item of a suit, namely, instructions to sue or defend, has been doubled—$2 under new tariff, only $1 under the old. This item, of course, occurs in every suit, whether contested or not, but only once. Common declaration under the new tariff is $1, and each copy 75c., and both attendance to file and serve is allowed—under the old tariff $1.25 was allowed for declaration, but only one copy was allowed and only one attendance, either to file or serve, so that there is an increase here of 75c. An important item occurring in every contested suit, and not allowed by the existing tariff, is given by the new tariff, namely, Instructions for pleading, $1. For several attendances that are in a measure special, the fees are doubled, such as attendance at Judge's Chambers, 50c.; Attorney attending Court, $1; attending Clerk to ascertain amount due by a British subject under order of a Judge, $1; taxation of costs on postea fee doubled, $1. Several very necessary fees are also allowed to counsel by the new tariff, which have not been taxable hitherto, such as revising pleas, not more than $2; advising on evidence, not more than $3. In the matter of counsel fees at trial, the power of the Judge and Clerk has very properly been extended. Cases in the County Court not unfrequently last two or three days, and the fees hitherto have been very inadequate. We think the power of the Judge might have been extended even further than by the new tariff; under it, however, the Clerk may tax up to $10, and by order of the Judge up to $20. It will be seen that the increase does not touch the ordinary small matters in a suit; for example, the present absurdly

low fee of 25c. for each letter and ordinary attendence is not increased, so that, as we have stated, there will be only a slight addition to the fees in uncontested cases.

We are bound to confess that although the increase in the three tariffs (Superior Courts of law, Chancery and County Court,) has been a step in the right direction, they are not at all commensurate with the decreased purchasing value of money since these tariffs were first framed. The same remarks are also applicable to the salaries of the Judges. We have frequently urged an increase to the latter, though with professional modesty saying but little as to the former. We are, however, inclined to think that an increase of salaries to the Judges would be a natural sequence of largely increased fees to the profession. The latter matter is in the hands of the Judges, and they may possibly hesitate to give that to the profession which would have the effect, indirectly, of increasing their own emoluments.

The most important changes are in the fees allowed to the officials of the court. The Clerk is now to receive about one-third more than the old fees for most of the services performed by him; entering the writ now being 40c., entering appearance 15c., and filings 10c., with the other charges in proportion. The Sheriff, too, will rejoice over increased fees, while even the Crier is not neglected. We may add that an additional 25c. per day is allowed to ordinary witnesses, which seems only reasonable.

One unpleasant result of the new tariff will be, that whilst suitors will complain of increased bills, the profession will not in the majority of cases be much the richer thereby.

Now that the Judges are reforming the tariffs, it is to be hoped they will take in hand that of the Surrogate Courts, which sadly needs it. A more absurd one could not well be conceived. One result of it is, that much of the work which properly belongs to the profession is thrown into the hands of the Clerks, whose fees are already sufficiently large. Another is, that from want of a tariff worthy the name, it is given the go-by altogether, and often exhorbitant charges are made. The tariff for the Clerks, moreover, is so loosely drawn that they often charge fees which under no reasonable reading are they entitled to.

A LEGAL CURIOSITY.

THE MS. OF SIR FRANCIS MOORE'S REPORTS IN CANADA.

The publication of "The Reporters and Text writers" in our columns has brought out the fact that in Canada we have a most interesting relique of legal antiquity.

Sir Francis Moore's reports are described in "The Reporters and Text writers" as "a collection of law cases, printed in 1663 from the original in French, then in the hands of Sir Geoffrey Palmer, Attorney-General to Charles the Second, &c."

Mr. Wallace in his work on the Reporters says, "Sir Francis Moore was one of the most eminent lawyers of his time, and his reports being from a genuine MS. have always enjoyed a reputation for accuracy." Sir Geoffrey Palmer, who first printed them, was the son-in-law of Sir Francis Moore. The reports were printed with the recorded assent of Sir Matthew Hale, who married a grand-daughter of Sir Francis.

The original MS. in French is now in a private library in Toronto.

On a fly page of it is the following venerable memo:—"This Booke was given mee by Mr. Garton, a Barrester of the Temple, 3rd January, 1635. Jo. Finch." We know nothing of Mr. Garton. So far as we are informed, history has failed to embalm his memory. But Sir John Finch was in 1635 Chief Justice of the Com-

mon Pleas, and in 1640 was made Lord Keeper with a Peerage.

This remarkable volume is described by the author of "The Reporters and Text writers" as *lately* in the library of Arthur E., of Anglesey, (Athenæ Oxonienses, vol. ii. p. 305). It may now be described as at present in the library of "R. A. Harrison, Q.C., of Toronto, Canada."

We are informed Mr. Harrison will be only too happy to show the volume to any gentleman sufficiently interested in legal antiquity to make application for an inspection of it. He secured the volume through a correspondent in London, and has had it for several years. It is bound in vellum and well preserved.

SELECTIONS.

THE OFFICE OF CORONER.

"The laws of God and man both give the party an opportunity to make his defence if he has any," saith Fortescue, J.; whereupon, "the good old judge"—as Wynne calls him in his Eunomus—quaintly adds, "I remember to have heard it observed by a very learned man that, even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam,' says God, 'where art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldest not eat?' And the same question was put to Eve also." And Lord Coke gravely deprecates the non-observance of this fundamental principle by the learned person who, presiding in the nether tribunal, apparently finds "natural justice a term as difficult of application as even that of the Ulster tenant-right custom" (*per* Morris, J., *Friel* v. *Earl of Leitrim*, 7 Ir. L. T. R. 6); for "the poet (Virgil: Æneid, vi. 566), in describing the iniquity of Radamanthus, that cruell judge of Hell, saith,

'Castigatque, auditque dolos, subigitque fateri.'

First, he punished before he heard; and, when he had heard his denial, he compelled the party accused, by torture, to confess it. But far otherwise doth Almighty God proceed, postquam reus diffamatus est,—1. Vocat, 2. Interrogat, 3. Judicat." Nor are modern dicta wanting. "The maxim 'Audi alteram partem' is not a mere technical rule of English law," observes Pigot, C.B.; "its foundation is laid in the general principles of all jurisprudence that deserves the name." And Erle, C.J.: "I find the master minds of every century are consentaneous in holding it to be an indispensable requirement of justice, that the party who has to decide shall hear both sides, giving each an opportunity of hearing what is urged against him"—except, adds the irate reporter, *in notis*, in the case of a Coroner's inquest, "a barbarism which the enlightenment of the 19th century has hitherto failed to put to shame."

The office of Coroner is certainly of very ancient origin. In 3 Bulst. 176, Doddridge, J., says the commencement of it is not well known. We believe it may be traced to the time of Alfred. And, perhaps, it may have been still suited for the state of society three centuries ago. But to-day, mediæval institutions must show cause; it suffices not to say that they survive—we must see the necessity. It suffices not, now-a-days, to say—

> "The laws for thy great grandsire made
> Are laws to thee—must be obeyed—
> Must be obeyed, and why? Because,
> Bad though they be, they are the laws."
>
> —Goethe.

And, if "of the rights by nature taught, and born with man, they take no thought," their tenure of existence is not likely to be very prolonged. We, therefore, regard as a matter of vital consequence affecting the very existence in time to come of the office of Coroner, an order now issued, as it appears, by the Executive, that, in future, prisoners arrested for murder or manslaughter are not to be brought before the Coroner at the inquest; for, if the accused is no longer to be afforded an opportunity of hearing the evidence against him, and of offering evidence in his favour, the "Crowner's 'quest" must fail in the first principles of justice, and lose the last vestige of excuse for the continued exercise of an immemorial function. For that it is the function of the Coroner to inquire, "who were and in what manner culpable," is so perfectly assured that we shall simply take it for granted, without entering into any disquisition on the statute of Edward the Fourth, which

merely copied the exposition of Bracton as to the Coroner's jurisdiction, and declares the law as it is also stated in Britton (cap. 1, ss. 5, 13), &c., and as it has been ever accepted in practice—and, we may add that, in the words of Wightman, J., when discussing the extent of the Coroner's authority, "The best guide to the discovery of the duties of an ancient office is custom." It is quite another matter whether the Coroner's office, in other respects of the highest utility, may not in this particular respect require some degree of reconsideration; but, if so, there is a constitutional mode of dealing with the question, and of abrogating the impeached function altogether. If a function is no longer of public utility, it surely does not mend matters to permit the function still to be exercised, but to render its exercise so obnoxious and the consequences of its exercise so invidious that, in the course of time, it may come to be abated as a common nuisance. It may be that, as the constable permits a delinquent to proceed until he commits himself beyond yea or nay, so, the Coroner is to be allowed to indulge in the exercise of his duties under watchful police supervision, until the time comes for direct intervention in order to supersede the office of Coroner altogether. But, if the office is to be superseded (we trust that it will not), is this, too, only to be accomplished by waging a long conflict of authority with officers who are endeavouring to perform, to the best of their ability, an onerous, delicate, and ill-paid public service? Already, the feud has made some progress; and, while Coroners are still to be guided by instructions laid down for them, that the depositions in writing are to be taken in the presence of the accused, the magistrates refuse to give orders (according to the practice heretofore prevailing in this country) to bring the prisoners before the Coroners—guided herein by the law officers of the Crown, and disregarding a hint to be found by referring to the index of the "Land-owners' Guide" (De Moleyns), 6th ed., under the heading "Adviser, Law—advice to magistrates to avoid him."

The question involved arose in Ireland in the case of the murder of head-constable Talbot, in which case the Coroner's verdict was found in the absence of the prisoner; in the case of the Hollywood murder, in which a writ of *habeas corpus* had to be issued, before the prisoners Charlotte and Mary Rea were produced at the Coroner's inquest; and it has now, again, arisen in two cases, one of them in Cork, in which a man named Connell has been charged with causing the death of a child named Julia Leary, and the other case in Dublin, in which a man named Reardon has been charged with causing the death of the girl Kate Pyne, and in which a *habeas corpus* has also been issued. In England, the question arose many years ago, in a case which occurred in London, in which it may be remembered the late Coroner Wakley took a prominent part. Subsequently, in 1868, a similar conflict arose between the Coroner for central Middlesex, Dr. Lankester, and the Secretary of State, who then wrote as follows:—"It appears that in cases of this kind the Coroner makes an application to the Secretary of State, to authorize the person charged to be brought before the inquest (which is always fixed for the day on which the prisoner is to be taken before the police magistrate for further examination), on his way to or from the Police Court. Seeing, however, that the Secretary of State has no legal authority to give any such orders, and that he, therefore, in every such case, steps beyond the law, he is of opinion that the practice in question, which exists only in the metropolitan police district, cannot properly be continued." And again, on the occasion of the Clerkenwell outrage, when the jury at the inquest (Dr. Lankester, Coroner) required that the accused should be present, the Home Secretary refused, thinking that there would be danger of a rescue. But, we may add that, in England there is a special reason why prisoners should not be sent to trial upon a Coroner's warrant without investigation before the magistrates, as, in such case, the provisions of 30 & 31 Vict., c. 35, ss. 3, 5, do not apply, enabling the expenses of witnesses for the defence in criminal prosecutions to be paid—a statute the beneficial operation of which ought certainly to be extended to Ireland, and also to the case of witnesses for prisoners committed on Coroner's warrants.

To us it appears that, in all cases, the person implicated or accused at a Coroner's inquest ought to be present, so

long as the inquiry is permitted to embrace, not merely the question of the cause of death, but the question of the guilt or innocence of the person causing death; while, on the other hand, we are inclined to think that the Coroner's jurisdiction needs reform, and that the question upon every inquest should merely be, Whether the death was occasioned by violence or by natural causes? The present state of the law is certainly anomalous and unsatisfactory, whether the jurisdiction to be exercised be the limited one suggested, or the more enlarged one actually existing; and, in any case, therefore, we hold that a reform is needed. An inquest may proceed for a considerable time without its appearing directly that any person is implicated; then a person appears to be implicated, but there is no specific charge—it may be murder, it may be manslaughter, it may be what you please or nothing at all. If the person implicated appears, he has, nevertheless, no legal right to insist on being heard by counsel or solicitor—he does not appear as a defendant, for there is no defendant at an inquest, nor as a witness, for that would be to compel him to convict himself—he has no legal right to be heard in self-defence, for he is not legally charged with crime, nor has he a legal right to copies of the depositions made. If he does not appear, and a finding be taken that he fled for the offence —*fugam fecit*, as it is called—it seems that the finding is conclusive against him, and not traversable, "quia c'est un auntient positive ley del corone." Whether he appears or not, it is the duty of the Coroner to bind over only those witnesses who prove any material fact against him, and not those who are called for the purpose of exculpating him; and, unlike the depositions of witnesses before the Grand Jury, the depositions at the Coroner's inquest of witnesses, who may die before the trial of the indictment, may be read against him. Upon this preliminary inquiry, which may or may not lead to an accusation—upon the evidence of witnesses who are not subjected to the rules of legal testimony—upon the verdict of a jury, or of the majority of a jury who, unlike the grand jury, although the inquiry be ex-parte, are not sworn to secrecy—and, upon the charge of a judge who is commonly not a lawyer, nor gifted with the "judicial mind" which, unless in rare instances, only a lengthened legal training and experience develope—the person inculpated by the finding of the "Crowner's 'quest" may be committed for trial, and convicted, or he may be outlawed and his goods forfeited. Nor do we think that the Court of Queen's Bench ever took upon itself to quash such an inquisition for the improper reception of evidence, or as being against evidence, nor would it be any reason for quashing it that the law had been improperly laid down. It really adds but little to these anomalies that the Coroner may, in his discretion, hold the inquiry in private, or exclude the person chiefly interested from Court, or that, as we now find, his presence may be directly impeded by the law officers of the Crown. And what, after all, is gained by this process? Even if there be an acquittal on the inquest, the accused, when committed by the magistrates, will not be released. A conviction for murder or manslaughter on a coroner's inquisition, without an indictment found by the grand jury, "the Grand Inquest," although there may have been a rare instance to the contrary, is virtually unknown in practice; if the magistrates have refused to send the case for trial, or the grand jury throws out the bill, an acquittal is almost invariably taken upon the inquisition, and, if the magistrate commits for trial, the trial is always upon the magistrate's committal, and not on the coroner's inquisition. Time and money are wasted, continual conflicts of jurisdiction are occasioned, and the interests of justice are in no way promoted. We must not be unreasonably attached to old institutions merely because they are old; the wisdom of our ancestors, too, thought fit to restrict the functions of the Coroner's office, for by Magna Charta it is declared that "no sheriff, constable, escheator, coroner, nor any other of our bailiffs, shall hold pleas of our Crown." And, even as they have been inhibited, of old, from holding pleas in which there is both accusation and answer by the accused, so now, it may well be that to those whose special duty it is to inquire into charges of violence, the exercise of this duty should be limited, based as it ever should be upon a distinct and specific charge, within a prescribed jurisdiction, and associated with all the formalities of

strict law and the full powers of defence. By reforming the office of Coroner, and abridging its functions so that the inquest may be merely as to the identity of the deceased, and as to the cause of death,—a proceeding more strictly for information and not for accusation—much of that unseemliness and coarseness of demeanour which has so greatly tended to bring the "Crowner's 'quest" into disrepute, will be avoided, by the removal of the occasion of factious and personal disquietude; and the appointment of medical men to the office will be better justified, when medical and physiological questions alone have to be determined, taking the dead body and the symptoms it exhibits as a main part of the evidence, to be commented upon (as we hold that it should) by the Coroner from his own observation. There would no longer, then, be a reason for insistance on the presence of the person who may have caused the death, and the proceeding would be properly ex-parte to all intents and purposes. One effect of this would be, that the publication of such ex-parte proceedings, if affecting another whose conduct would remain to be considered by another tribunal, would be properly considered, in the words of Bayley, J., "a matter of great criminality." And, indeed, an enforced reticence in such cases, as well as the absence of the incriminated person himself, might often be productive of the best results; for, in the words of Lord Tenterden, "it may be requisite that a suspected person should not, in so early a stage, be informed of the suspicion against him, and of the evidence on which it is founded, lest he should elude justice by flight, tampering with witnesses, or otherwise."—*Irish Law Times.*

TERMINATION OF COMMON CARRIER'S RESPONSIBILITY AS INSURER.

It is a general principle that the liability of a common carrier of goods continues as insurer until a *reasonable time* after the arrival of the vehicle of transportation at its destination. And this principle is applicable without regard to the nature of the goods or the character of the vehicle, and whether the carriage be by water or by land. But in determining this *reasonable* time during which the responsibility as carrier continues there has been much difficulty and disagreement. The question has usually been reserved by the court as purely one of law, or submitted to the jury under the strictest directions.

One class of cases confines the period of responsibility as carrier, after arrival of vehicle, to the narrowest limits, and holds that a removal of the goods from the vessel or the car upon a wharf or platform, or into a freight-house, discharges the carrier from all responsibility as such, and transforms the liability into that of warehouseman: *Norway Plains Co.* v. *Boston & Maine R. R., Co.* 1 Gray, 263; *Sessions* v. *Western R. R. Co.*, 16 id. 132; *Rice* v. *Boston & Worcester R. R. Co.*, 98 Mass. 212; *Shepherd* v. *Bristol & Exeter R. R.*, Law Rep., 3 Exch. 189. These cases are decided solely with reference to the carrier's convenience, and while reducing the time after arrival to a *minimum*, and the specific acts of the carrier to the least possible, before the liability as carrier ceases, they do not take into account the convenience or reasonable expectations of the consignee. That able jurist Chief Justice Shaw, of the Supreme Court of Massachusetts, in *Norway Plains Co.* v. *Railroad Co.*, *supra*, thus presented this view of the subject: "This view of the law applicable to railroad companies as common carriers of merchandise, affords a plain, precise, and practical rule of duty, of easy application, well adapted to the security of all persons interested; it determines that they are responsible as common carriers until the goods are removed from the cars and placed upon the platform; that if on account of their arrival in the night, or at any other time when, by the usage and course of business, the doors of the merchandise depot or warehouse are closed, or for any other cause, they cannot be delivered, or if, for any reason, the consignee is not there ready to receive them, it is the duty of the company to store them and preserve them safely, under the charge of competent and careful servants, ready to be delivered and actually deliver them when duly called for by parties authorized and entitled to receive them; and for the performance of these duties after the goods are delivered from the cars, the company are liable as warehousemen or keepers of goods for hire."

There is another class of cases which deems the liability of the carrier, as such, to continue until the consignee has notice and reasonable time for removal, whether the goods remain in the vehicle of transportation or have been stored in a warehouse: *Moses* v. *Boston & Maine Railway Co.*, 22 N. H. 523; *Shenk* v. *Philadelphia Steam Propeller*, 60 Pa. St. 109; *Redmond* v. *Liverpool, New York & Philadelphia Steamboat Co.*, 46 N. Y. 578 (to appear in 7 Am. Rep.); *Blumenthal* v. *Brainerd*, 38 Vt. 402; *Winslow* v. *Vermont & Massachusetts R. R. Co.*, 42 id. 900 (1 Am. Rep. 365); *Hill Manufacturing Co.* v. *R. R. Co.*, 6 Am. Rep. 202 (104 Mass. 122); *Graves* v. *Hartford and New York Steamboat Co.*, 12 Am. Law Reg. N. S. 23 (to appear in 39 Conn. Rep.). This flexible rule seems to be that most generally adopted in this country, according to the later cases. In *Graves* v. *Steamboat Co.*, *supra*, Seymour, J., makes the following pertinent suggestions in support of this rule: "Whatever reasons there are for imposing a strict rule of responsibility during the transit, exist and continue in full force until the consignee has reasonable time to take the goods into his own care and custody. The rule adopted in Massachusetts has the merit of being definite and of easy application, and may in many cases avoid a painful controversy as to what, under the circumstances, is a reasonable time within which the consignee must appear and take the goods. But, on the other hand, that rule puts an end to the carrier's responsibility as such, just where that responsibility is of the highest value to the shipper. Between the deposit of the goods on the platform and their delivery to the consignee, they are exposed to theft, depredation and injury by strangers, and by the carrier's employees. In making delivery care is needed to avoid mistakes, and attention required to see if the goods are uninjured. During the whole process of delivery, until fully completed, the goods should remain in the care of the carrier upon the full responsibility pertaining to him as such, and he ought not to be allowed to lay aside that responsibility until the owner of the goods has had a fair and reasonable time and opportunity to receive them." Notwithstanding the fact that the rule of liability as insurer, which attaches to the capacity of a carrier, originated in a period and in a state of society very different from our own, and notwithstanding the evident disposition of the courts to effect a modification of a liability exceedingly strict for modern times and modern commercial institutions, the rule as laid down by Judge Seymour is far preferable, on principle, to that laid down by Chief Justice Shaw. If the liability of the carrier continues at all, after the arrival of the vehicle containing the transported goods, it must continue for a *reasonable* time after such arrival. None of the cases go so far as to hold that at the moment the vessel or car arrives at its destination the liability as carrier ceases. Goods must at least be taken out of the vessel or car, or delivery must be accepted by the consignee while on board such vessel or car, in order to terminate the liability as carrier, according to the strictest of the cases. And it seems a most arbitrary rule that a removal of the goods from the vehicle of transportation to a platform, wharf, or warehouse should, *per se*, be sufficient to terminate the responsibility as carrier.

A distinction has been suggested between land-borne and water-borne goods, but this seems to be not well founded, and was repudiated in *Graves* v. *Steamboat Co.*, *supra*, and in *Redmond* v. *Steamboat Co.*, *supra*. See, also, *Richardson* v. *Goddard*, 23 How. (U. S.) 28. The effect of custom has, however, been recognized. In *McMaster* v. *Pennsylvania R. R. Co.*, 28 Phil. 397 (69 Pa. St.), it was held that upon proof of a custom on the part of a railway company to deliver goods at a way station on their platform, without warehousing or giving notice of their arrival to the consignee, such delivery was sufficient, and an exoneration of the carrier from liability for their subsequent loss. See, also, *Farmers' and Mechanics' Bank* v. *The Champlain Transportation Co.*, 23 Vt. 186. So, also, the positive acts of the consignee may be considered in determining the period when the liability as carrier ceases. In *Fenner* v. *The Buffalo and State Line R. R. Co.*, 4 Am. Rep. 709 (44 N. Y. 505), it was held that where a common carrier, a railroad company by agreement with the consignee and for mutual convenience, stores goods which have arrived at their destination, in its freight-house for the

night, and they are destroyed by fire without its fault, the company is not liable.

The liability of the carrier for delivery of through freight to the succeeding carrier has been discussed in several recent cases. In *Lawrence* v. *Winona and St. Peter R. R. Co.*, 2 Am. Rep. 130 (15 Minn. 390), it was held that while in the absence of a special agreement a carrier is only liable to the extent of his route, and for safe storage and delivery to the next carrier, yet, if he stores the goods in his own warehouse, at the end of his line, without delivery or notice, or attempt to deliver to the next carrier, his liability as carrier continues. In *Mills et al.* v. *The Michigan Central R. R. Co.*, 6 Am. Rep. 152 (45 N. Y. 622), it was held that where defendant, a carrier of goods destined to a point beyond its line, had transported them to the end of its route, and given the usual notice to the succeeding carrier, a line of vessels, and the goods were destroyed on the evening following their arrival, and while in defendant's possession, although defendant was ready to deliver the goods to the succeeding carrier, yet it was liable, as common carrier, for a reasonable time until, according to the usual course of business, a vessel of the succeeding carrier could arrive to take the goods.

Travellers have a reasonable time to claim and remove their baggage; and what is such reasonable time depends upon the circumstances of each case. After such reasonable time has elapsed the liability as carrier ceases, and that of warehouseman begins: *Mote* v. *Chicago & Northwestern R. R. Co.*, 1 Am. Rep. 212 (27 Iowa, 22); *Burnell* v. *N. Y. Central R. R. Co.*, 6. Am. Rep. 61 (48 N. Y. 154). But the baggage must be placed in a secure warehouse to exonerate the company from liability as carrier. *Bartholomew* v. *St. Louis and E. R. R. Co.*, 5 Am. Rep. 45 (53 Ill. 227); *Chicago & C. R. R. Co.* v. *Fairclough*, 52 Ill. 106. In *Burnell* v. *R. R. Co.*, *supra*, plaintiff called for his baggage on the second day after its arrival, and the New York court of appeals held that the liability of the company as carriers had ceased, and the liability of warehouseman had begun. Express companies are held to a stricter liability, in respect to delivery, than carriers by vessel or by railway cars. The *rule* of liability is essentially the same, but in its application a longer time is allowed before the responsibility as insurer ceases; and as express companies are bound to make distribution and delivery at the consignee's place of business or residence, reasonable diligence must be exercised in finding the consignee before the liability as insurer ceases. *Whitbeck* v. *Holland*, 6 Am. Rep. 23 (45 N. Y. 13). After such diligence in finding the consignee the liability as warehouseman attaches, and that of carrier ceases. *Weed* v. *Barney*, 6 Am. Rep. 96 (45 N. Y. 344.)—*Albany Law Journal.*

CANADA REPORTS.

ONTARIO.

NOTES OF RECENT DECISIONS.

COMMON PLEAS.

FALLE v. THE CORPORATION OF THE TOWN OF TILSONBURG.

Streets in Town—Jurisdiction over to close up—Mun. Act, sec. 320—Construction of.

The Corporation of the Town of Tilsonburg passed a By-law to close up 250 feet of a street within its limits, called Cranberry street, substituting therefor New street; the street forming part of a road running through different townships in the county into the Town.

Held, that the county had not sole jurisdiction over the whole road; but that the Town had jurisdiction over the part within its limits, and therefore had power to close it up.

Held, also, that sec. 320 of the Mun. Act does not apply to persons whose lands do not abut on the portion of the road closed up, although they may have lands on another part of it.

PUERTELL v. BOILAN.

Ejectment—Former recovery—Estoppel.

In ejectment plaintiff claimed under a mortgage made by defendant, and defendant under a deed from the plaintiff—the mortgage having been given to secure part of the purchase money. Defendant proved a judgment in an action of covenant brought by the plaintiff against defendant on this mortgage to recover

the money secured thereby, in which defendant pleaded that the mortgage had been obtained by fraud, and judgment was given in his favor on that issue.

Held, that the defendant could not set up the judgment as a defence in this action, not having placed the plaintiff in *statu quo* by restoring to him possession of the premises.

Semble, that the plaintiff's notice of claim was sufficient, and that, if necessary, an amendment of it could have been allowed.

Williams v. McColl.

Tax sale—29, 30 Vict. c. 53—Certificate—Description of land.

A certificate given for the portion of a lot sold for taxes on the 12th of Nov., 1867, under 29, 30 Vict. c. 53, stated it to be the 1-27th part, without further describing it. The deed given on the 19th April, 1871 described the land by metes and bounds.

Held, that the deed was void.

Scott v. The Great Western Railway Company.

G. W. R. W. Co.—31 Vict. c. 68, sec. 20, sub-sec. 4, D.—as amended by 34 Vict. c. 43, secs. 5, 7, D.—Whether applicable to.

Held, that sec. 20, sub-sec. 4 of The Railway Act, 1868, 31 Vict. c. 68, D., as amended by 34 Vict. c. 43, sec. 5, D., is not, by virtue of sec. 7 of the latter Act, made applicable to the G. W. R. W. Co.; and, therefore, that they were not deprived of the protection afforded by one of their special conditions, which stated that fruit was to be carried only at the risk of the owners and that they would not be liable for injury occasioned by frost, although the jury found that the goods became frozen owing to their negligence.

Cluxton v. Gilbert.

Covenant—Liability on.

On December 1st, 1864, defendant, being seized in fee of certain land in trust for his son, at the request of the son, mortgaged it to B. & V. for $400, the son receiving the money and agreeing to pay it off; and on September 21, 1866, the defendant conveyed to his son, the operative word being "grant" only, and the consideration stated being $400, but in reality it was a gift or release of the father's estate; the deed also, by inadvertance or mistake, and without any agreement to that effect, contained a covenant for the right to convey, notwitstanding defendant's acts, and also that he had done no act to encumber the land. On the 21st October, 1866, the son mortgaged the land to the plaintiff as collateral security for a then existing debt, for goods supplied to the son, who kept a store, and for any future advances to be made by the plaintiff to him. This mortgage not having been redeemed, was on the 27th April, 1870, foreclosed. At this time there was due on the mortgage to B. & V., for principal and interest, $606, which the plaintiff, on defendant's refusal to do so, was obliged to pay. It did not appear that the plaintiff had any knowledge of the trust between father and son, or of the arrangements between them as to the mortgage to B. & V., nor had he any knowledge of its existence until after the foreclosure. It appeared, however, that it, together with the other conveyancing, had been duly registered, and that the land was worth both the mortgages.

The plaintiff having brought an action against the defendant, on the defendant's covenant contained in the deed from him to the son, to recover the amount paid to B. & V.,

Held, that the plaintiff was not entitled to recover.

The Canada Permanent Building and Saving Society v. Agnew.

Sale of land for taxes—Separation of counties—29, 30 Vict. c. 51, sec. 51—32 Vict. c. 36, sec. 132—32 Vict c. 36, sec. 155—Construction of.

Where taxes had accrued due on certain lands in the County of Bruce, before the separation of that County from Huron, which took place on the 1st of January, 1867,

Held, that the Treasurer of the County of Huron, before the 32 Vict. c. 36, sec. 132, O., could not sell such lands for these taxes.

Held, also, that the sale was not made valid by 32 Vict. c. 36, sec. 155, O., as it only applies to deeds given by the Sheriff or Treasurer having authority.

COURT OF CHANCERY.

Green v. Carly.

Will—Construction.

A testator by his will devised the real estate of which he should die possessed to his wife "to hold the same for ever, and to dispose of it in

any manner she may think proper," and further, "the residue of my estate, both real and personal, I give to my beloved wife to have and to hold the same for her sole use and benefit during the term of her natural life, and that she may dispose of the whole or any part of the said personal estate as she may think proper, and at her death, the said residue of my real estate or personal estate, if any," he gave to other parties.

Held, that the widow took an estate for life in the residue of the personal estate, with an absolute power of disposition; but that the deposit in a bank to her own credit of the proceeds of notes and mortgages which the widow had collected, was not such a disposition thereof as to withdraw them from the residue of the estate and give her an absolute title thereto; but that the same remained to be administered as part of the testator's estate.

Hughson v. Cook.

Crown lands—Sale of pine timber—Injunction.

The locatee of Crown lands, located under the authority of the Act of 1868, has no power to sell or dispose of the pine timber growing thereon.

One S. was locatee of two lots of land, one a free grant, the other a purchase, which he transferred to the plaintiff. The agent of the plaintiff swore that some pine timber had been taken off these "lots in 1870-71, by some persons getting out square timber," and further that the defendant was the only person getting out square timber that season. After two years, the Court considered this evidence too indefinite as to the locality of cutting, and as to quantity cut; and the act too old in date to warrant the Court in granting an injunction to restrain further cutting.

Township of West Gwillimbury v. County of Simcoe.

Railway Bonus—Petition—By-law.

By the statute incorporating a railway company, it was enacted that if fifty persons, at least, of the qualified ratepayers within the portion of any County affected by the railway, should petition for the passage of a by-law granting aid to the undertaking, the Council should pass such Act, subject to the vote of the qualified ratepayers of such portion of the County.

Held, that it was not necessary that the petition should be signed by a portion of the fifty persons from each locality in the portion of the County affected.

In giving notice submitting a by-law, granting aid to a railway company for the approval of the ratepayers, the officers, in giving such notice, had not posted up the clauses of the Municipal Act in reference to bribery, in the manner required by the Act.

Held, that this formed no ground for quashing the by-law.

A petition to a Municipal Council, prayed for the passage of a by-law, granting aid to a railway company, to be charged on a specified section of the County. In the section so specified were situated two villages, both of which were incorporated, but they were not named in the petition or in the by-law.

Held, no objection to the by-law.

Meyers v. Meyers.

Judgment Creditors—Registration of judgments.

While the law respecting the registration of judgments was in force, two judgment creditors having registered their judgments, the second one in point of time proceeded with his suit; the other did not, although his bill was filed in time, and he proved his claim in the Master's office in the other suit.

Held, that he had not lost his priority; and that it was unnecessary to revive his suit, which had abated meanwhile by reason of the death of some of the parties.

Brown v. McNab.

Municipal Corporations—Mortmain—Rectifying deed—Acquiescence.

Municipal Corporations are within the Statutes of Mortmain. Where a mortgage on land was executed to a Municipal Corporation for the purpose of securing a debt due to the Corporation by its treasurer, and by the mistake of both parties, the mortgage did not cover a part of the land which it was intended to mortgage, it was *held*, that the Corporation was not entitled to a decree rectifying the mortgage, though a private person under the circumstances would have been so entitled.

Where the owner of property had executed a mortgage and re-lease thereof, to a Municipal Corporation, and the Corporation afterwards sold the property with the knowledge of such owner, and without objection by him until, as was alleged, (though as to this, the affidavits were contradictory), the purchaser had had seven years quiet possession; during which time he had improved the property. The case was held a proper one for granting an injunction to the

hearing; restraining an action of ejectment against the purchaser.

Cline v. The Mountain View Cheese Factory.

Demurrer—Injunction—Parties—Pleading.

A bill was filed against a Joint Stock Company (limited), to restrain the infringement of a patent, to which certain officers of the company were made parties, and the bill alleged that "the defendants" were committing the acts complained of, and prayed relief against "the defendants." A demurrer on the ground that the officers were improperly made parties, was overruled with costs, these officers being personally charged with committing the acts complained of, and relief being prayed against them.

Cotton v. Vansittart.

Fraudulent Assignment—Life policy.

A person in embarrassed circumstances, proposed to assign a policy on his life, in trust, first to secure certain advances, and then for the benefit of his wife. The advances were made, and the assignment executed, but no trust in favor of the wife was declared, or was required by the lender as a condition of the loan. Subsequently the trustee made further advances to the settlor, and in his evidence stated that the settlor might have absorbed the whole amount, if he (the trustee) had seen fit to advance it. After the death of the settlor, all the advances were paid, and the residue of the insurance moneys invested for the benefit of the widow.

Held, that so far as the interest of the widow was concerned, the settlement was void, as against creditors.

Ross v. Ross.

Will—Construction of—Revocation in Equity.

A testator devised his real estate and personal property to two persons; after making his will, testator contracted to sell the real estate, but the contract was never carried out; and after his decease in October, 1862, the parties interested under the contract agreed to rescind the same, which was done accordingly.

Held, that the contract operated in equity as a revocation of the will, as regarded the beneficial interest in the real estate; that the interest in the contract passed to the legatees under the residuary clause; that the devisees being also legatees of the personal estate were entitled to the land, and that it did not go to the heirs-at-law.

Hamilton & P. D. R. Co. v. Gore Bank.

Corporation—Corporate Seal—Sheriff's Poundage.

A bank having executions against a railway company in the hands of the Sheriff, the secretary of the company, in order to avert a seizure of a quantity of railroad iron, signed a letter, agreeing that the bank, out of moneys coming to their hands from certain garnishee proceedings, taken by the bank against debtors of the company, might retain "a sufficient amount fully to cover all your solicitor's costs, charges and expenses against you, or against you and us; as between attorney and client, or otherwise; as well as the costs, charges, and expenses of your bank, of what nature or kind soever, and after the payment of such, in the second place to hold the surplus, if any, to apply on your executions against us." This letter was signed without any authority from the board of directors of the company, although two members of the board were aware of it, and one of them—the Vice-President of the company—authorised it.

Held, that this was not such an act as the officers of the company were authorised in the discharge of their duties to perform; and that, although the bank granted the time asked for, they could not enforce payment of the amounts stipulated for.

A Sheriff is only entitled to poundage on the moneys actually passing through his hands. Where, therefore, the parties to a suit arranged outside the Sheriff's office for the payment of $3,000 on account of an execution in his hands, and the plaintiffs in the cause paid his poundage on that amount, as well as the moneys actually paid to the Sheriff, the Court refused to allow them to charge the amount against the defendants.

Rice v. George.

Tenants in common—Rents—Improvements.

A tenant in common being in actual occupation of the joint estate, forms no ground for charging him with rent; it would be otherwise, however, if he had been in the actual receipt of rent from third parties.

One of several tenants in common, or joint tenants, making improvements on the joint estate, is not entitled to be paid therefor, unless on the other hand he consents to be charged with occupation rent.

Semble That one tenant in common selling timber off the joint property is not chargeable with sums realized therefrom.

COMMON LAW CHAMBERS.

Oakley v. Toronto, Grey, and Bruce Railway Company.

Administration of Justice Act 1873—*Meaning of the word "officer" in section* 24.

[January 12, 1874—Mr. Dalton.]

This was an application for an order to examine the Chief Engineer of the defendants.

Held, that the Chief Engineer was an officer of the Company within the meaning of section 24 of the Administration of Justice Act for 1873.

Lloyd v. Henderson.

Administration of Justice Act, 1873—*Affidavit required by section* 29.

[January 14, 1874—Mr. Dalton.]

The affidavit in support of a motion under section 29 of the Administration of Justice Act, 1873, for an order for the examination of the defendant, was made by the partner of the plaintiff's attorney.

Held, sufficient to satisfy the requirements of the section.

In the case of *Hamilton* v. *Great Western Railway Company* the affidavit in support of a similar application was made by the managing clerk, and Mr. Dalton held it to be sufficient.

UNITED STATES REPORTS.

SUPREME COURT.

Michigan Central R. R. Co. v. The Mineral Springs Manufacturing Company.

A. delivered to plaintiff goods to be carried to a point beyond its line. Plaintiff carried them to the terminus of its road, but the carrier that should have completed the transit not being ready—and that it would not be plaintiff knew at the receipt of the goods—they were stored in the plaintiff's warehouse. They remained there six days, when they were accidentally destroyed by fire. Plaintiff, by its charter, was to be "liable for goods on deposit in any of its depots awaiting delivery, as warehousemen." On the back of the receipt given the shipper was a general notice, that all goods, etc., while in the plaintiff's warehouse, should be at the risk of the owner, except as to the negligence of its servants. Held:

1. While property is in process of transportation it is the duty of the carrier, in the absence of any special contract, to carry safely to the end of his line, and to deliver to the next carrier in the route beyond.
2. If there be necessity for storage, it will generally be considered a mere necessity to the transportation, and not as changing the nature of the bailment.
3. It may be that circumstances may arise justifying the carrier in warehousing goods, but if he had reasonable grounds to anticipate such adverse circumstances when he received the goods, and did not notify the shipper, he cannot by storing them change his liability.
4. The exception in plaintiff's charter referred only to goods that had reached their final destination.
5. A carrier cannot restrict his liability by a general notice printed on the back of his receipt for goods.
6. A carrier has no right to assume, in discharge of his obligation, that an offer to deliver will be met with a refusal to receive.

Opinion by Mr. Justice Davis.

If the plaintiffs in error are to be considered as warehousemen at the time the wool in question was burned, they are not liable in this action, because the fire which caused its destruction was not the result of any negligence on their part. If, on the contrary, their duty as carriers had not ceased at the time of the accident, and there are no circumstances connected with the transaction which lessen the rule applicable to that employment, they are responsible, for carriers are substantially insurers of property entrusted to their care. The controversy is as to the nature of the bailment when the fire took place.

The jury, under the instructions of the court, found that the railroad company were chargeable as carriers, and this writ of error is prosecuted to reverse that decision. The case, as contained in the bill of exceptions, is, in substance, this:

In October, 1865, at Jackson, a station on the Michigan Central Railroad, about seventy-five miles west of Detroit, one Bostwick delivered to the agent of the company, for transportation, a quantity of wool, consigned to the defendant in error, at Stafford, Connecticut, and took a receipt for its carriage, on the back of which was a notice that all goods and merchandise are at the risk of the owners, while in the warehouse of the company, unless the loss or injury to them should happen through the negligence of the agents of the company. Verbal instructions were given by Bostwick that the wool should be sent from Detroit to Buffalo, by lake, in steamboat, which instructions were embodied in a bill of lading sent with the wool. Although there were several lines of transportation from Detroit eastward by which the wool could have been sent, there was only one transportation line propelled by steam on the lakes, and this line was, and had been for some time, unable, in their regular course of business, to receive and transport the freight which had accumulated in large quantities at the railroad depot in Detroit. This accumulation of freight there, and the limited ability of

the line of propellors to receive and transport it, were well known to the officers of the road, but neither the consignor, consignee, or the station master at Jackson, were informed on this subject. The wool was carried over the road to the depot in Detroit, and remained there for a period of six days, when it was destroyed by an accidental fire. During all the time it was in the depot it was ready to be delivered for further transportation to the carrier upon the route indicated. The charter of the company which was pleaded and offered in evidence, contains a clause, that in all cases the company shall be responsible for goods on deposit in any of their depots awaiting delivery, as warehousemen, and not as common carriers.

On this state of facts the Circuit Court refused to charge the jury that the liability of the plaintiffs in error was the limited one of a warehouseman importing only ordinary care, but, on the contrary, charged that they were liable for the wool as common carriers during its transportation from Jackson to Detroit, and after its arrival there, for such reasonable time as, according to their usual course of business, under the actual circumstances in which they held the wool, would enable them to deliver it to the next carrier in the line, but that the defendants in error took the risk of the next carrier line not being ready and willing to take said wool, and submitted to the jury to say whether, under all the circumstances of the case in evidence before them, such reasonable time had elapsed before the occurrence of the fire.

It is not necessary in the state of this record to go into the general subject of the duty of the carriers in respect to goods in their custody which have arrived at their final destination. Different views have been entertained by different jurists of what the carrier is required to do when the transit is ended in order to terminate his liability, but there is not this difference of opinion in relation to the rule which is applicable while the property is in process of transportation from the place of its receipt to the place of its destination.

In such cases it is the duty of the carrier, in the absence of any special contract, to carry safely to the end of his line and to deliver to the next carrier in the route beyond. This rule of liability is adopted generally by the courts in this country, although in England at the present time, and in some of the States of the Union, the disposition is to treat the obligation of the carrier who first receives the goods as continuing throughout the entire route. It is unfortunate for the interests of commerce that there is any diversity of opinion on such a subject, especially in this country, but the rule that holds the carrier only liable to the extent of his own route, and for the safe storage and delivery to the next carrier, is in itself so just and reasonable that we do not hesitate to give it our sanction. Public policy, however, requires that the rule should be enforced, and will not allow the carrier to escape responsibility on storing the goods at the end of his route, without delivery, or an attempt to deliver, to the connecting carrier. If there be a necessity for storage, it will be considered a mere accessory to the transportation, and not as changing the nature of the bailment. It is very clear that the simple deposit of the goods by the carrier in his depot, unaccompanied by an act indicating an intention to renounce the obligation of a carrier, will not change or modify even his liability. It may be that circumstances may arise after the goods have reached the depot which would justify the carrier in warehousing them, but if he had reasonable grounds to anticipate the occurrence of these adverse circumstances when he received the goods, he cannot, by storing them, change his relation towards them.

Testing the case in hand by these well-settled principles, it is apparent that the plaintiffs in error are not relieved of their proper responsibility, unless, through the provisions of their charter, or by the terms of the receipt which was given when they received the wool. They neither delivered nor offered to deliver the wool to the propeller company. Nor did they do any act manifesting an intention to divest themselves of the character of carrier and assume that of forwarder.

It is insisted that the offer to deliver would have been a useless act, because of the inability of the line of propellers, with their means of transportation, to receive and transport the freight which had already accumulated at the Michigan Central depot for shipment by lake. One answer to this proposition is, that the company had no right to assume, in discharge of its obligation to this defendant, that an offer to deliver this particular shipment would have been met by a refusal to receive. Apart from this, how can the company set up, by way of defence, this limited ability of the propeller line, when the officers of the road knew of it at the time the contract of carriage was entered into and the other party to the contract had no information on the subject?

It is said, in reply to this objection, that the company could not have refused to receive the

wool, having ample means of carriage, although it knew the line beyond Detroit selected by the shipper, was not at the time in a situation to receive and transport it. It is true the company were obliged to carry for all persons, without favour, in the regular course of business, but this obligation did not dispense with a corresponding obligation on its part to inform the shipper of any unavoidable circumstances existing at the termination of its own route in the way of a prompt delivery to the carrier next in line. This is especially so, when, as in this case, there were other lines of transportation from Detroit eastward, by which the wool, without delay, could have been forwarded to its place of destination. Had the shipper at Jackson been informed, at the time, of the serious hindrances at Detroit, to the speedy transit of goods by the lake, it is fair to infer, as a reasonable man, he would have given a different direction to his property. Common fairness requires that he should have been told of the condition of things there, and thus left free to choose, if he saw fit, another mode of conveyance. If this had been done, there would be some plausibility in the position that six days was an unreasonable time to require the railroad company to hold the wool as a common carrier for delivery. But under the circumstances of this case the company had no right to expect an earlier period for delivery. They cannot, therefore, complain of the response of the jury to the enquiry on this subject submitted to them by the Circuit Court.

It is earnestly argued that the plaintiffs in error are relieved from liability under the provisions of their charter, if not by the rules of the common law. Is this so?

The whole section of the charter from which the exemption from liability is claimed is as follows:—"The said company may charge and collect a reasonable sum for storage upon all property which shall have been transported by them upon delivery thereof at any of their depots, and which shall have remained at any of their depots more than four days: *Provided*, That elsewhere than at their Detroit depot, the consignee shall have been notified, if known, either personally or by notice left at his place of business or residence, or by notice sent by mail, of the receipt of such property, at least four days before any storage shall be charged, and at the Detroit depot such notice shall be given twenty-four hours (Sundays excepted) before any storage shall be charged after the expiration of said twenty-four hours upon goods not taken away: *Provided*, That in all cases the said company shall be responsible for goods on deposit in any of their depots awaiting delivery, as warehousemen, and not as common carriers."

It is quite clear that this section refers to property which has reached its final destination, and is there awaiting delivery to its owner. If so, how can the proviso in question be made to apply to another and distinct class of property? To perform this office it must act independently of the rest of the section, and enlarge rather than limit the operation of it. This it cannot do, unless words are used which leave no doubt the Legislature intended such an effect to be given to it.

It is argued, however, that there is no difference between goods to be delivered to the owner at their final destination and goods deliverable to the owner, or his agent, for further carriage; that in both cases as soon as they are "ready to be delivered" over, they are "awaiting delivery." This position, although plausible, is not sound. There is a clear distinction, in our opinion, between property in a situation to be delivered over to the consignee on demand, and property on its way to a distant point to be taken thence by a connecting carrier. In the former case it may be said to be awaiting delivery; in the latter to be awaiting transportation. And this distinction is recognized by the Supreme Court of Michigan in the case of the present plaintiffs in error v. Hale, 6th Michigan, 243. The Court in speaking on this subject says, "That goods are on deposit in the depots of the company, either awaiting transportation or delivery, and that the section (now under consideration) has reference only to goods which have been transported and placed in the company's depots for delivery to the consignee." To the same effect is a recent decision of the Court of Appeals of New York (*Mills* v. *Michigan Central R. R. Co.*, 45 New York, 626), in a suit brought to recover for the loss of goods by the same fire that consumed the wool in this case, and which were marked for conveyance by the same line of propellers on Lake Erie.

It is insisted, however, by the plaintiffs in error, if they are relieved from liability as carriers by the provisions of their charter, that the receipt taken by the consignor, without dissent, at the time the wool was received, discharges them. The position is, that the unsigned notice printed on the back of the receipt, is a part of it, and that, taken together, they amount to a contract binding on the defendants in error.

This notice is general, and not confined, as in the section of the charter we have considered,

to goods on deposit in the depots of the company awaiting delivery. It is a distinct announcement that all goods and merchandise are at the risk of the owners thereof while in the company's warehouses, except for such loss or injury as may arise from the negligence of the agents of the company. The notice was doubtless intended to secure immunity for all losses not caused by negligence or misconduct during the time the property remained in the depots of company, whether for transportation on their own line or beyond, or for delivery to consignees. And such will be the effect if the party taking the receipt for his property is concluded by it. The question is therefore presented for decision, whether such a notice is effectual to accomplish the purposes for which it was issued.

Whether a carrier when charged upon his common law responsibility can discharge himself from it by special contract, assented to by the owner, is not an open question in this court, since the cases of the *New Jersey Steam Navigation Co.* v. *The Merchants' Bank* (6th Howard), and *York Company* v. *Central Railroad* (3 Wallace). In both of the cases the right of the carrier to restrict or diminish his liability by special contract, which does not cover losses by negligence or misconduct, received the sanction of this court. In the case in Howard the effect of a general notice by the carrier seeking to distinguish his peculiar liability was also considered, and although the remarks of the judge on the point were not necessary to the decision of the case, they furnish a correct exposition of the law on this much controverted subject.

In speaking of the right of the carrier to restrict his obligation by a special agreement, the judge said: "It by no means follows that this can be done by any act of his own. The carrier is in the exercise of a sort of public office, from which he should not be permitted to exonerate himself without the assent of the parties concerned. And this is not to be implied or inferred from a general notice to the public, limiting his obligation, which may or not be assented to. He is bound to receive and carry all goods offered for transportation, subject to all the responsibilities incident to his employment, and is liable to an action in case of refusal. If any implication is to be indulged from the delivery of the goods under the general notice, it is as strong that the owner intended to insist upon his rights, and the duty of the carrier, as it is that he assented to their qualification. The burden of proof lies on the carrier, and nothing short of an express stipulation by parol or in writing should be permitted to discharge him from duties which the law has annexed to his employment."

These considerations against the relaxation of the common law responsibility by public advertisements, apply with equal force to notice having the same object, attached to receipts given by carriers on taking the property of those who employ them into their possession for transportation. Both are attempts to obtain, by indirection, exemption from burdens imposed in the interests of trade upon this particular business. It is not only against the policy of the law, but a serious injury to commerce to allow the carrier to say that the shipper of merchandise assents to the terms proposed in a notice, whether it be general to the public or special to a particular person, merely because he does not expressly dissent from them. If the parties were on an equality in their dealings with each other, there might be some show of reason for assuming acquiescence from silence, but in the nature of this case equality does not exist, and, therefore, every intendment should be made in favour of the shipper when he takes a receipt for his property with restrictive conditions annexed, and says nothing, that he intends to rely upon the law for the security of his rights.

It can readily be seen, if the carrier can reduce his liability in the proposed terms, he can transact business on any terms he chooses to prescribe. The shipper as a general thing, is not in a condition to contend with him as to terms, nor to wait the result of an action at law in case of refusal to carry unconditionally. Indeed such an action is seldom resorted to, on accounnt of the inability of the shipper to delay sending his goods forward. The law in conceding to carriers the ability to obtain any reasonable qualification of their responsibility by express contract, has gone as far in this direction as public policy will allow. To relax still further the strict rules of common law applicable to them, by assuming acquiescence in the conditions on which they propose to carry freight when they have no right to impose them, would, in our opinion, work great harm to the business community.

The weghit of authority is against the validity of the kind of notices we have been considering. See 2 Parsons on Contracts, p. 238, note n, 5th edition, and the American note to *Coggs* v. *Bernard*, 1 Smith's Leading Cases, 7th American edition; Redfield on Law of Railway, p. —, 16 Michigan; *McMillan* v. *M. S. & C. I. R. R. Co.*, p. 109, and following. And many of the

courts that have upheld them have done so with reluctance, but felt themselves bound by previous decisions. Still they have been continued, and this resistance has provoked legislation in Michigan, where this contract of carriage was made, and the plaintiffs in error have their existence. By an act of the Legislature, passed after the loss in this case occurred, it is declared that "no railroad company shall be permitted to change or limit its common law liability as a common carrier by any contract or in any other manner except by a written contract, none of which shall be printed, which shall be signed by the owner or shipper of the goods to be carried." Statutes of Michigan, compilation of 187—, page 783, section 2,386.

It is fair to infer that this kind of legislation will not be confined to Michigan if carriers continue to claim exemption from common law liability through the medium of notices like the one presented in defence of this suit.

These views dispose of this case, and it is not necessary to notice particularly the instructions which the court below gave to the jury. If the court erred at all, it was in charging more favorably for the plaintiffs in error than the facts of the case warranted.

The judgment is affirmed.—*Internal Revenue Record.*

DIGEST.

DIGEST OF ENGLISH LAW REPORTS

FOR MAY, JUNE AND JULY, 1873.

From the American Law Review.

(Continued from page 26.)

Libel.

Statements made before a British military court of inquiry are privileged although false and malicious.—*Dawkins* v. *Lord Rokeby*, L. R. 8 Q. B. (Ex. Ch.) 255.

License.—*See* Innkeeper.

Lien.

1. It is legally possible for the master of a vessel to land his cargo without losing his lien for freight.—*Mors-le-Branch* v. *Wilson*, L. R. 8 C. P. 227.

2. A., an administratrix, entitled to dower in her husband's real estate, and to one-third of his personal estate, executed with her intended second husband a marriage settlement, settling her estate to her separate use with power of appointment by deed or will. With consent of her husband, A. instructed her bankers to keep separate accounts, and to consider any overdraft on her private account secured by deposits in their hands under her account as administratrix. A. was allowed to overdraw her private account on the faith of large deposits under her account as administratrix. By her will A. exercised her power of appointment in favor of certain parties. *Held*, that whether or not the bankers had notice of said settlement they were entitled, against said appointees, to a lien on the funds in their hands under said administratrix account for payment of the sums overdrawn on said private account.—*London Chartered Bank of Australia* v. *Lemprière*, L. R. 4 P. C. 572.

Limitation.

A testator gave property in trust for B. for life, or until he should become bankrupt or insolvent or make a general assignment for the benefit of his creditors, or otherwise deprive himself, or be deprived by law, of the beneficial enjoyment thereof, and after the happening of any such event, over. B. executed a composition deed reciting that he was indebted in divers sums of money which he was unable to pay in full, and covenanting to pay 10*s.* in the pound. *Held*, that B. was bound by the above recital, and that his interest in said property ceased.—*Billson* v. *Crofts*, L. R. 15 Eq. 314.

Limitations, Statute of.

A. had an illegitimate son by a woman whom he subsequently married, and by whom he had another son, the eldest legitimate son. The illegitimate son was always treated as legitimate, and upon his marriage, in 1823, an estate which had been settled upon A. and his first and other sons in tail male, was settled upon said illegitimate son. The illegitimate son remained in possession until his death, in 1842, when his eldest son entered. In 1866 said legitimate son of A. first learned that his brother was illegitimate. On demurrer to a bill by said legitimate son of A., praying that those claiming under said settlement might be ordered to give up possession to him, *held*, that the case was a proper one for a court of equity to entertain; that there was a case of concealed fraud within the Statute of Limitations of 3 & 4 Will. 4, c. 27, s. 26; and that time did not begin to run against the plaintiff until the time when he might first with reasonable diligence have discovered the fraud.—*Vane* v. *Vane*, L. R. 8 Ch. 383.

Maintenance.—*See* Jurisdiction.

Mariner.—*See* Legacy, 7.

Marriage Settlement.—*See* Contract, 1; Settlement.

Married Woman.—*See* Anticipation.

Marshalling Assets.

A testator domiciled in England died possessed of personal estate and of real estate in Scotland. His will was ineffectual according to the law of Scotland to pass real estate, which accordingly descended to his heir at law. *Held*, that the liability of said real estate to the payment of debts, as between the heir and pecuniary legatees, must be determined by the law of Scotland and not by

the law of England, where the testator's estate was being administered.—*Harrison* v. *Harrison*, L. R. 8 Ch. 342.

Master and Servant.—*See* Embezzlement.

Military Court.—*See* Libel.

Mines.—*See* Reservation.

Mistake.

A deed was executed conveying a moiety only of a parcel of land instead of the whole. On a bill praying that the deed be rectified, *held*, that the original deed might be rectified by alteration of the words in it, and that an additional conveyance of said unconveyed moiety was not necessary.—*White* v. *White*, 15 Eq. 247.

See 3; Will.

Mortgage.—*See* Specialty Debt.

Multifariousness.—*See* Discovery, 1.

Negligence.—*See* Carrier; Railway, 1, 2.

New Trial.—*See* Costs, 2.

Notice.—*See* Insurance, 3; Priority.

Nuisance.

An injunction was granted on the circumstances of the case to restrain the defendant from using the ground floor of his house as a stable, and creating a nuisance from the noise of his horses.—*Ball* v. *Ray*, L. R. 8 Ch. 467.

Parliamentary Law.

A peer of parliament is incapacitated from voting at an election for members of the House of Commons, and is not entitled to be placed upon the list of voters.—*Earl of Beauchamp* v. *Madresfield*, L. R. 8 C. P. 245.

Partnership.

1. A nurseryman devised and bequeathed all his real estate, upon part of which he had carried on his business, and his residuary personal estate to his three sons as tenants in common. After the testator's death, a contract for the purchase of additional land for said business purposes, which had been entered into by the testator, was completed by the sons. Subsequently one of said brothers conveyed to the other two his undivided third in said real and personal estate, which was purchased by said two brothers for said business purposes. *Held*, that said land being used for business purposes must be considered partnership property and personal estate.—*Waterer* v. *Waterer*, L. R. 15 Eq. 402.

2. A., a partner in a banking firm, was appointed treasurer of a Board of Guardians, and gave bond for the performance of his duties, with B., also a partner, and C., not a partner, as sureties. All sums of money received by A. as treasurer were deposited in said bank. The bank stopped, owing a considerable sum to said board. The sureties each paid half of the deficit to said board; and then B. claimed to prove against A.'s separate estate. The claim was disallowed.—*Lacey* v. *Hill*, L. R. 8 Ch. 441.

See Carrier; Copyright.

Patent.

1. A patentee who had his machines manufactured by an agent obtained an injunction against an infringing manufacturer, and the latter was ordered to file an affidavit stating the number of machines made by him since the date of the patent, and the names and addresses of the persons to whom the machines had been sold, but was not required to give the names of the agents concerned in the transactions.—*Murray* v. *Clayton*, L. R. 15 Eq. 115.

2. A patent was taken out in America, afterwards in England, and two days later in France. The French patent expired. The Privy Council refused to recommend that the term of the English patent be extended, on grounds of public policy.—*In re Blake's Patent*, L. R. 4 P. C. 535.

Pedlar.

Twelve ladies made garments of materials purchased by others, carried the garments from house to house for sale, and used the profits for a village school and religious purposes. *Held*, that the ladies were not "pedlars" under the Pedlars' Act, 1871, § 3.—*Gregg* v. *Smith*, L. R. 8 Q. B. 302.

Peer.—*See* Parliamentary Law.

Penalty.

By statute the master of a vessel is obliged when going from Quebec to Montreal to take a pilot, under a penalty which is to go to the Decayed Pilot Fund. The master of a vessel going to Montreal took a pilot, who so guided the vessel that a collision occurred. *Held*, that the master was not liable for the collision; where a statute inflicts a penalty for not doing an act, the penalty implies a legal compulsion to do such act.—*Redpath* v. *Allen*. *The Hibernian*, L. R. 4 P. C. 511.

Peril of the Sea.—*See* Insurance, 3.

Personal Estate.—*See* Partnership, 1.

Pleading.—*See* Bankruptcy, 1; Bill in Equity; Bills and Notes.

Power.

1. Under a marriage settlement, G. had a power of appointment over a trust fund. He directed a portion to be held upon such trusts, to take effect only after the marriage of L., as L. should by deed appoint, and until such appointment in trust for L. for life, remainder as L. should by will appoint. *Held*, that said appointment by G. was void for remoteness. G. also appointed another portion of said fund upon similar trusts for E., who subsequently married. G. then reciting the appointments in favor of L. and E. confirmed the same, and made additional appointments with power to revoke the "direction and appointment thereby made." *Held*, that there was a valid reappointment in favor of E.; and that said power of revocation extended only to appointments made by way of "direction and appointment," and not to those made by way of confirmation, and that therefore G. had no power to revoke the appoint-

ment to E.—*Morgan* v. *Gronow*, L. R. 16 Eq. 1.

2. K. had a power of appointment over certain property by any instrument in writing sealed and delivered in the presence of a witness. K. wrote and signed a paper stating, "If I die suddenly, I wish my eldest son to have it [said property]. My intention is to make it over to him legally if my life is spared." *Held*, that there was a defective execution of the power, which a court of equity would hold effectual.—*Kennard* v. *Kennard*, L. R. 8 Ch. 227.

See Anticipation; Appointment; Lien, 2; Priority; Settlement, 2, 4; Specialty Debt.

Practice—*See* Alimony; Tender; Writ.

Prescription.

The defendant was bound by prescription to maintain a fence between his and the plaintiff's land. The defendant sold the "fallage" of the wood on his land to H., who cut down a tree which in falling broke down a large portion of the fence. The plaintiff's cows passed through the gap and fed on the leaves of a yew-tree which had been felled, and died in consequence. *Held*, that the defendant was liable for the loss of the cows.—*Lawrence* v. *Jenkins*, L. R. 8 Q. B. 274.

Presumption.—*See* Bankruptcy, 3; Executors and Administrators.

Principal and Agent.—*See* Attorney; Carrier; Company, 2; Frauds, Statute of, 2; Innkeeper; Vendor and Purchaser, 1.

Principal and Surety.

A. and B., partners, were jointly and severally liable on a bond to D. for partnership moneys. B. purchased A.'s share in the partnership and assumed his liabilities, covenanting to save him harmless. B. made an arrangement with his creditors under the English Bankrupt Act, 1869, and the creditors, including D., passed resolutions to accept a composition payable by instalments extending over two years. Afterward a deed was executed releasing B. and reserving to creditors all rights against sureties or persons other than B. *Held*, that the effect of said resolutions was to give time to B. and discharge A.—*Wilson* v. *Lloyd*, L. R. 16 Eq. 60.

Priority.

Funds were vested in trustees in trust for L. for life, without power of anticipation, and after her death for her children, and if no children, for such persons as she should appoint. In 1843, L. appointed that, in case she should have no children, said trustees should raise sufficient out of the fund to pay a debt of her husband, and the trustees were notified of the appointment. Subsequently, in place of the old trustees, new trustees were appointed who had no notice of said appointment, and at the request of L. and her husband dealt with the trust funds so that they were diminished. L. died without children. In May, 1870, the trustees received notice of a charge in favor of R., dated 1864, and in October, 1870, of the deed of 1843. *Held*, that the charge under the appointment of 1843 took priority over the charge of 1864; and that the new trustees having received no notice of the appointment of 1843 were not obliged to make good the loss which their action had occasioned.—*Phipps* v. *Lovegrove*, L. R. 16 Eq. 80.

See Specialty Debt.

Privileged Communication.—*See* Discovery, 2, 3; Libel.

Probate.

If a will has been proved in a foreign country, a certified copy will be admitted to probate in England, and an English court will not allow the validity of the will to be there questioned.—*Miller* v. *James*, L. R. 3 P. & D. 4.

Probate Court.—*See* Receiver.

Production of Documents.—*See* Discovery, 3.

Proof.—*See* Bankruptcy, 4, 5; Partnership, 2.

Railway.

1. The plaintiff was injured while travelling on the defendant's railway by the train of another company, which had statutory running powers over said railway on paying certain tolls. The defendants were guilty of no negligence. *Held*, that the defendants were not liable.—*Wright* v. *Midland Railway Co.*, L. R. 8 Ex. 137.

2. The plaintiff was travelling in a railway carriage, and leaned slightly against the door for the purpose of seeing the signal lights of the next station. The door immediately flew open, and the plaintiff fell out and was injured. The jury found a verdict for the plaintiff. *Held*, that there was evidence of the railway company's liability.—*Gee* v. *Metropoliton Railway Co.*, L. R. 8 Q. B. (Ex. Ch.) 161.

See Carrier.

Real Estate.—*See* Partnership, 1.

Receiver.

The court has jurisdiction to grant a receiver of personal estate pending the grant of probate, which has been delayed by a *caveat* in the probate court; where, however, no actual suit has been begun. Also of the rents of real estate, under the same circumstances, where neither the devisee nor the heir-at-law is in actual possession.—*Parkin* v. *Seddons*, L. R. 16 Eq. 34.

Relations.—*See* Legacy, 3.

Relevancy.—*See* Bill in Equity.

Remedy.—*See* Executors and Administrators, 1.

Remoteness.—*See* Power, 1.

Rent.—*See* Specialty Debt.

Reputed Ownership.—*See* Bankruptcy, 3.

Reservation.

Land was conveyed to M. subject to a reservation of all mines and minerals to the grantors, with power to use sufficient land for working the same; and it was provided that it should not be lawful for M. to do any thing whereby the grantors should be obstructed in the exercise of their powers, and that the grantors should pay reasonable compensation for damage or spoil of ground occasioned by exercise of said powers. *Held*, that M. was not entitled to compensation in respect of the mere existence of old pits, but was entitled to compensation for future damage occasioned thereby, and for land used as accessorial to such pits, not so used at the time of the conveyance. Also, that compensation should be assessed with reference to the value of the land for any purpose to which it might be reasonably considered as applicable; and that M. might use said land in any way, provided he did not take the minerals themselves.—*Mordue* v. *Dean and Chapter of Durham*, L. R. 8 C. P. 336.

Residuary Bequests.—*See* Legacy, 2, 5.

Revocation.—*See* Legacy, 4; Settlement, 2; Will, 7, 8.

Sale.—*See* Trover; Vendor and Purchaser, 1, 2.

Scandal.—*See* Bill in Equity.

Seamen.—*See* Legacy, 7.

Service.—*See* Writ.

Settlement.

1. Upon marriage, a woman induced her husband to give up his only means of support, and thereafter for a time both were supported by the wife's mother. After the latter's death, the wife came into a large separate income. From the wife's misconduct the husband was obliged to leave her, and eventually a settlement was made whereby the husband was allowed a small annuity. Subsequently the wife became possessed of a further sum, and prayed the court to decree a settlement of the same upon her. *Held*, that under the circumstances the court would not deprive the husband of his right to said sum.—*Giacometti* v. *Prodgers*, L. R. 8 Ch. 338; s. c. L. R. 14 Eq. 253; 7 Am. Law Rev. 483.

2. A woman executed a voluntary settlement in which was reserved no power of revocation. The deed was delivered to the trustee of the settlement and re-delivered to the woman; who subsequently asked and obtained permission of the master to execute a mortgage of the property. Afterward the woman destroyed the deed of settlement, and expressed her satisfaction at having got rid of it. *Held*, that said settlement was valid and irrevocable, and not affected by omitting a power of revocation.—*Hall* v. *Hall*, L. R. 8 Ch. 430.

3. A wife was entitled to an equity to a settlement in a sum of money. The court directed that in case of the death of the wife and her children the fund should go to the husband whether dying in the lifetime of his wife or not.—*Walsh* v. *Wason*, L. R. 8 Ch. 483.

4. A husband and wife, having power of appointment over personalty, in favor of the children of the marriage, appointed a part of the property to trustees, on such trusts as their son H. should by deed appoint with the written consent of his father, and after the decease of his father, with the consent of the trustees under said father's will, or as said H. should by will appoint; and in default of appointment upon trust, to pay the income thereof for life, or until bankruptcy, insolvency, or assignment, and on the decease of said H., if his interest should not have determined, to his executors or administrators, as part of his personal estate; but if such interest should have determined, upon the like trusts as would have affected the residue of the same share, if the same had been appointed in favor of H. only during his life, or until the period of such determination. *Held*, that H. was absolutely entitled to his share, subject to forfeiture in case of bankruptcy or assignment. By settlement, husband and wife had a life estate in realty, with power of appointment among children, and in default of appointment, in trust for the children, subject to parents' life interest, in equal shares, to vest at twenty-one or marriage. The settlement contained the usual power of sale and exchange, but no trust for sale. A son reached twenty-one and died intestate. Afterwards the husband and wife declared that the shares of persons interested in money arising from any sale of the premises should be of the quality of personal and not of real estate. *Held*, that the appointors had power to convert the real into personal estate.—*Webb* v. *Sadler*, L. R. 8 Ch. 419; s. c. L. R. 14 Eq. 533; 7 Am. Law Rev. 483.

See Contract, 1; Lien, 2; Power, 1.

Signature.—*See* Will, 1, 3.

Slander.—*See* Libel.

Solicitor and Client.—*See* Discovery, 2.

Specialty Debt.

A. agreed to lease a mine from B. Disputes arose between A. and B. upon the subject of the lease. An action was brought by B. and an injunction applied for by A.; but finally matters were left to arbitration. The arbitrator awarded a sum to B. to be paid by A. A. died. *Held*, that said sum was awarded as damages and not as rent, and therefore could not be proved as a specialty debt in the administration of A.'s estate.—*Talbot* v. *Earl of Shrewsbury*, L. R. 16 Eq. 26.

Specific Performance.

The court decreed specific performance of an agreement to execute a mortgage with an immediate power of sale.—*Hermann* v. *Hodges*, L. R. 16 Eq. 18.

Statute.—*See* Attorney; Bankruptcy, 3 Damages; Pedlar; Penalty; Principal and Surety.

Statute of Frauds.—*See* Frauds, Statute of.

Digest of English Law Reports.

Statute of Limitations.—*See* Limitations, Statute of.

Subpœna.—*See* Discovery, 2.

Subrogation.—*See* Costs, 1.

Surety.—*See* Principal and Surety.

Tenant for Life.—*See* Anticipation.

Tender.

In a case of salvage the Cinque Port Commissioners awarded £800. The owners appealed, and tendered by act in Court £100 and costs. *Held*, that such tender could be made, although no tender had been made before the appeal.—*The Annette*, L. R. 4 Ad. & Ec. 9.

Title.—*See* Charity; Vendor and Purchaser, 2.

Tort.—*See* Trover.

Trover.

B. held goods under a bill of sale, which was set aside as fraudulent as against the trustee of the seller, who was bankrupt. At the application of the trustee, B., who had sold the goods, was ordered to pay over the proceeds to said trustee. *Held*, that said trustee had affirmed said sale by B., and therefore could not bring trover against B. for the difference between the value of said goods and the amount of proceeds of said sale.—*Smith* v. *Baker*, L. R. 8 C. P. 350.

Trust.

A testator on his death-bed told F. and her husband that he had left them the bulk of his property, and requested them to pay an annuity to N., which they promised to do. *Held*, that the bequests to F. and her husband in the testator's will were subject to a trust for the payment of said annuity.—*Norris* v. *Frazer*, L. R. 15 Eq. 318.

See 2; Priority.

Unconscionable Bargain.

Actions restrained upon bills obtained for sums advanced with extortionate interest thereon from a minor entitled to a large property in the event of his surviving his father. Discussion of doctrines of equity as to relief of expectant heirs from unconscionable bargains.—*Earl of Aylesford* v. *Morris*, L. R. 8 Ch. 484.

Undue Influence.

Comments upon the degree of influence exercised by a legatee upon the testator necessary to sustain a plea of undue influence.—*Parfitt* v. *Lawless*, L. R. 2 P. & D. 462.

Uses, Statute of.

The owner of a fee granted to B., C., and D. a perpetual yearly rent charge of £9, "to hold the said rent charge unto A., B., and C., their heirs and assigns, to the use of the said A., B., and C., their heirs and assigns, forever as tenants in common, and in equal shares." *Held*, that the grant operated as a grant at common law, and not under the Statute of Uses.—*Orme's Case*, L. R. 8 C. P. 281.

Vendor and Purchaser.

1. E. purchased a lot of land at auction, and agreed to take the timber thereon, which was sold separately, at a price stated by the auctioneer. In stating the price of the wood, the auctioneer accidentally omitted in the valuation a considerable portion of the wood upon said lot. *Held*, that the sale would not be set aside because of the mistake of the auctioneer.—*Griffiths* v. *Jones*, L. R. 15 Eq. 279.

2. Land was sold at auction subject to the conditions that the vendors should, within seven days, deliver an abstract of their title, and that all objections to the title not stated by the purchaser within fourteen days should be considered waived; the purchaser failing to comply with said conditions to forfeit his deposit. W. purchased the estate, and the vendors within seven days delivered an abstract showing no title. The purchaser, *after* the expiration of fourteen days, objected to the title. It subsequently appeared that the vendors' title was insufficiently set forth in the abstract. *Held*, that the purchaser was entitled to recover back his deposit, as no complete abstract of title had been delivered, and as said conditions did not apply to the case of the vendors being unable to give a title.—*Want* v. *Stallibrass*, L. R. 8 Ex. 175.

Verdict.—*See* Criminal Law, 2.

Vested Interest.

A testator gave a legacy to J. to be vested in him on attaining the age of twenty-one years, or if he should die under that age, leaving lawful issue at his death. In case he should die without attaining a vested interest, then over. J. attained twenty-one years, and died in the testator's life-time, leaving a daughter. *Held*, that J. died without attaining a vested interest, and that the gift over took effect.—*In re Gaitskell's Trust*, L. R. 15 Eq. 386.

Will.

1. The deceased requested two illiterate persons to place their signature upon a paper. No explanation was given of the document, and there was no evidence that the name of the deceased was upon the paper when said witnesses signed it. *Held*, that the document was not duly executed as a will.—*Pearson* v. *Pearson*, L. R. 2 P. & D. 451.

2. A testator made two wills containing inconsistent dispositions of his property. The first will only nominated an executor. With consent of all parties, both wills were admitted to probate, and said executor appointed—*In the Goods of Griffith*, L. R. 2 P. & D. 457.

3. A witness to a will stated that on entering the room where the testator was, he was desired by D. to witness the testator's will. No other allusion was made to the will, and nothing was said by the testator. *Held*, that there was no evidence that the testator acknowledged his signature to the will in the presence of the witness.—*Morritt* v. *Douglas*, L. R. 3 P. & D. 1.

4. A testator gave instructions to his attorney to prepare his will, with particular directions as to his residuary personal estate. A will was drafted in which the word "real" was inserted instead of "personal" in the residuary clause, by mistake of the attorney, and in that form the will was signed. *Held*, that the alleged mistake could not be corrected.—*Harter* v. *Harter*, L. R. 3 P. &. D. 11.

5. A testator made a will and codicil referring to the will by its date. The name of the executor appointed in the will was written upon an erasure. *Held*, that the declaration of the testator made before the execution of the codicil that he had appointed said person named in his will his executor was admissible in evidence.—*In the Goods of Sykes*, L. R. 3 P. & D. 26.

6. A testator executed a will in 1866 and a codicil thereto in 1871. In 1871 he executed a will revoking all other wills and codicils. In 1872 he executed a codicil to the will of 1866, concluding, "I confirm the appointment of my son as executor of my will and codicil." *Held*, that the will of 1866 was revived, but not the codicil of 1871.—*In the Goods of Reynolds*, L. R. 3 P. & D. 35.

7. A testator in a fit of delirium tremens destroyed his will. The pieces were preserved and the testator subsequently observed that he must have been insane when he destroyed the will, and that he would make another. *Held*, that there had been no revocation of the will.—*Brunt* v. *Brunt*, L. R. 3 P. & D. 37.

8. A testator born in Ireland, but domiciled in Spain, executed a will in England, and several codicils in Spain, and a further codicil in England, confirming said will in whatever it did not clash with the codicil, which was to be considered as the testator's last will. *Held*, that the Spanish codicils were not revoked.—*In the Goods of De La Saussaye*, L. R. 3 P. & D. 42.

See Appointment; Charity; Class; Condition; Estoppel; Evidence; Limitation; Probate; Trust; Indirect Influence; Vested Interest.

Words.

"*Costs to abide the event.*"—See Costs, 2.
"*Heirs.*"—See Legacy, 1.
"*Insanity.*"—See Insanity.
"*Nephews and Nieces.*"—See Devise, 1.
"*Sickness.*"—See Insanity.
"*Specifically.*"—See Devise, 3.

Writ.

The defendants were a Scotch railway company, having no part of their railway in England, but having running powers over an English railway to Carlisle. A writ was served at Carlisle on the defendants' booking clerk, who had no power beyond that of issuing tickets to passengers, and who was the only officer of the defendants in England. *Held*, that the writ was not served upon the company.—*MacKereth* v. *Glasgow and South-western Railway*, L. R. 8 Ex. 149.

CORRESPONDENCE.

Administration of Justice Act, 1873, *discussed.*

To the Editor of the Canada Law Journal.

Sir,—The effect of the Act respecting the administration of justice is exciting observation in legal circles. It seems to me that one almost inevitable consequence of the increased equitable jurisdiction in the common law courts given by the Act, and which has been referred to in your valuable journal, will be to send into those courts a large amount of additional work. The temptation will then be very great to transfer all matters that savour of equity to the Court of Chancery, unless, indeed, there be some increase of judges at Common Law. It is becoming more evident at every Assize (and was notably so at the Fall Assizes in Toronto), that the present judicial strength of the Queen's Bench and Common Pleas is insufficient to overtake the vast development of litigation, which is the legitimate result of the exceeding prosperity of this Province. It is in my opinion necessary to add some members to the bench of both Common Law Courts if the legal business of the country is to be efficiently discharged. This necessity will be still more urgent if the Common Law Courts earnestly undertake and endeavour to make practically beneficial the large equitable powers entrusted to them by the Act of last Session.

Yours, &c.,

Barrister.

To the Editor of the Canada Law Journal.

Sir,—I have read with interest, some excellent articles in the *Canada Law Journal*, on the Administration of Justice Act, 1873. I also noticed some timely observations on the Administration of justice in Toronto, in which prominent notice is given to a suggestion, to have separate concurrent sittings of the Civil and Criminal Courts of superior jurisdiction in Toronto.

The great objection to my mind is the want of a sufficient number of Judges. With an adequate number of Judges there would be no practical difficulty in

having concurrent Civil and Criminal Courts sitting as in England.

The present judicial staff is numerically weak. Each Judge is taxed to his utmost, from the beginning to the end of the year; and no respite can be granted to any without inconvenience to all. The judiciary is now worked on the assumption that all the Judges will be at all times in good health, and able to discharge their important and responsible duties. Should a Judge be unable to do his work there is no other Judge to take his place. The only alternative is to permit him to appoint a County Judge or Queen's Counsel. The difficulty of getting a Queen's Counsel in practice to accept such temporary employment is only too well known to those who have been compelled to resort to this expedient; and there is even a difficulty in getting a competent County Judge to do the work. Besides it is notorious that "Journeymen Judges," even when procured to take seats temporarily on the Bench of the Superior Courts, do not command either the respect or attention of those whose place they fill. Resorts to such expedients are in every aspect unsatisfactory, and are only justifiable so long as the judicial staff is kept at its minimum as regards numbers, and worked to its maximum.* The continuance of this system is a reproach to the intelligence and wealth of our country. Money spent in securing the prompt, firm and decent administration of justice, either criminal or civil, is well spent. It is to be hoped that the day is near at hand when we shall be able to hail the advent of a different state of things.

Some contend that each of our Superior Courts of Law and Equity ought to be presided over by at least five Judges; but having regard to the future, as well as the present, I do not think the appointment of six new Judges, four Common Law and two Chancery, would be at all beyond the mark. I would prefer a court composed of an uneven number of Judges, for the same reason that three arbitrators are preferred to two. The principle is that there may be a majority decision where there is a probability of differences of opinion. It may be said that the differences among our Judges are so rare that no provision of the kind is necessary, and that four Judges in each Court would for the present answer every needful purpose. If the Judges were not so hard pressed for time, it is possible that differences of opinion would be more frequent. Litigants have a right to the judgment of each Judge on each case argued before them. If, for want of time or other such cause, one of several Judges defers merely to the judgment of his brother Judge or Judges, he denies to the litigant his full rights. I do not say that this at present is the case; but certainly when Judges are overworked there is danger of such being the case.

An increase of the Judges is absolutely needed; the measure of that increase must, according to legal fiction, be left to the wisdom of Parliament. The responsibility of delaying or granting the reform, however, rests with the Attorney-General of Ontario. None knows better than he, an ex-Judge of an over-worked Court, the pressing need of such a reform. He possesses the ability, as well as the knowledge necessary to the reform. Some have argued that so long as one political party ruled in the Government of Ontario, and their opponents in the Government of the Dominion, there would be no increase of the judiciary. For my part, I never saw anything in that argument. The importance of having the best men independent of political considerations, is so great, that Governments, both here and in England, as often select their political opponents as their political friends for judicial appointments. The last appointment made by Sir John A. Macdonald to the Court of Chancery was an instance of this. But now that the same political party rules both in Toronto and Ottawa, even the shadow of an excuse for delay is removed.

I read with much interest the charge of Mr. Justice Wilson at the opening of the Toronto winter assize. He is one of the most conscientious and painstaking of our Judges. He has never been known to shirk his work; and when *he*, in language cogent, supported by figures which cannot be questioned, advocated an increase of the judiciary, the public can fairly judge of the necessity for the change and the urgency for immediate action.

Yours, &c.,

Sigma.

Toronto, January 24, 1874.

To the Editor of the Canada Law Journal.

Sir,—As the time is drawing near when we are all to practice after the manner of the right wing of Osgoode Hall, perhaps it would be well to consider some of the provisions of the Act that is to bring about the "wholesome reform."

1. Under sec. 11, of the Act (36 Vict. cap. 8), "When in the opinion of a Court of Common Law, or a Judge thereof, it is necessary or proper in any action, to take accounts, &c., which cannot conveniently or properly be taken under the existing practice at law, the Court or Judge may order such accounts to be taken by the Master or any of the Local Masters of the Court of Chancery."

Now that section is unfair to Deputy Clerks of the Crown. Why should they not be qualified to take such accounts? Are the Judges of Common Law Courts to be obliged to send to Chancery officials who are in no way officers of their Courts?

2. What would be "sufficient reasons" (in the plural) under sec. 16?

3. Why not include breach of promise of marriage under sec. 17. Supposing a notice for a Jury has been given under the Law Reform Act in actions not included in sec. 17 of the Act under notice, is it not "too much reform" to give a Judge power to say a jury shall not be had though desired?

4. Under sec. 19, (read sec. 16), if the case be one in which a jury has been demanded, and if neither party asks to have the equitable issues tried by jury, under sec. 16, is the Judge to try the equity side and the jury the legal issue, or the Judge give way to the jury, or the jury to the Judge?

5. Sec. 20: Why not except slander?

6. Sec. 21: Why not let the third Judge "sit separately," "either at the same time or at different times?" What "business" is meant by this section? and does it in any way enlarge the powers held by a Judge in chambers? Perhaps the introduction of the chancery word *decree* means something. The profession will require a batch of rules under this section to guide them.

7. Sec. 23: Supposing decision not given until after fourth day of term, how then?

8. Sec. 24: Beyond adding costs to the suit and getting out of your opponent the secrets of his counsel's brief, of what utility is this section? Such evidence cannot be used on the trial if the witness is within the jurisdiction, &c. (C. S. U. C. cap. 32), and the case of a witness abroad is already provided for.

9. Sec. 39: Why not file the order and issue an execution upon it?

10. Sec. 45: Supposing goods destroyed, must defendant go to gaol?

11. Sec. 48: Has a common law Judge power to order common law costs to be taxed on an equitable issue tried before him?

12. What is the meaning of sec. 49?

I should be glad if some of your many readers would enlighten the rest of us on these points, through the columns of the *Law Journal*.

Yours truly,

Country Attorney.

REVIEWS.

An Epitome of Leading Common Law Cases, with some Short Notes thereon. Chiefly intended as a Guide to Smith's Leading Cases; by John Judemaur, Solicitor (Clifford's Inh Prizeman, Michaelmas Term, 1872.) London, Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar, 1873.

All students should at some time or other "read well, learn, and inwardly digest" Smith's Leading Cases. Most students who do so make an epitome of each case, as well for future reference as for present digesting. Mr. Judemaur did this when reading for his final examination as a solicitor, and has published his abridgment of each case "with some few additional ones and some Short Notes bearing directly on the different decisions." The abridgment will be useful to the student as a help to the reading of the larger volumes, but not as a substitute for them.

We have read of men eminent in the profession who yearly read Smith's Cases in order to be at all times and under all circumstances fully seized of them. A barrister or solicitor, in large practice, cannot well spare the time for such an annual reading, even should he find it desirable to do so. But to all such Jude-

maur's Epitome will be found a useful substitute. It can be read through in half an hour. The arrangement is so good, and the condensation so thorough that for casual reading no reference to the larger volume will be necessary. The book, including a full alphabetical index, is not more than 50 pages octave. It is printed by Messrs. Stevens & Hagnes, in their usual excellent style. We recommend this neat little volume as much to the busy lawyer as to the earnest student.

An Epitome of Leading Conveyancing and Equity Cases, with some Short Notes therein, chiefly intended as a Guide to "Tudor's Leading Cases on Conveyancing" and "White and Tudor's Leading Cases in Equity." By John Judemaur, Solicitor, (Clifford's Inn, Prizeman, Mechaelmas Term, 1872). London, Stevens & Haznes, Law Publishers, Bell Yard, Temple Bar, 1873.

This is by the same author as already mentioned. The success of his Epitome of Common Law Cases was no doubt sufficient to warrant this additional volume. All that the former does for Smith's Leading Cases, this does for Tudor's Leading Cases in Conveyancing and White and Tudor's Leading Cases in Equity. The Conveyancing and Equity Cases are very properly, and for obvious reasons, epitomized together.

This, like the former volume is recommended to the busy lawyer and earnest student. In size and appearance it is about the same. Its aim is similar.

We must say we thoroughly approve of the publication of these summaries. The reading of them again and again enables the reader in effect, again and again, to travel all through the larger works without the time and toil necessary of actually doing so. Frequent readings are necessary to burnish the memory. For that purpose one reading of the summary is nearly as good as the reading of the book summarized. The difference in time between doing the one and the other is such as to make it an object to purchase the summary. If all who can make good use of the summary purchase it, the enterprising publishers will have no cause to regret that venture.

FLOTSAM AND JETSAM.

A Prince of Wales was committed for striking a Judge, but a Deputy Sheriff may strike a Jury.

Baron Channell had a great partiality for the late Lord Westbury, when at the Bar, and placed extraordinary confidence in his opinion. Whereupon the wags said he was like Jeroboam, who set up an idol in *Bethel*.

A Troy policeman swore as follows against a prisoner:—"The prisoner set upon me, called me an ass, a precious dolt, a scarecrow, a ragamuffin, and an idiot—all of which I certify to be true." He was a second Dogberry, whose chief anxiety in the recording of the depositions was that he should be "written down an ass."

A new thing in law has recently occurred in New Jersey. Mr. Cortlandt Parker, an eminent counsel of Newark, not being able to be present in the Court of Errors, telegraphed his brief to the Chief Justice. The brief was read to the Court, and answered the purpose. No doubt our Judges can be persuaded to countenance this practice, and thereby save much time and expense to learned counsel.

Amongst the witnesses called in the Tichborne trial to disprove the statements of the now famous Jean Luie, was one named Nicholls, who, being asked by Mr. Hawkins what name Lundgren's wife was now known by in Bristol, answered rather suddenly, to the great amusement of the Court, "Mrs. Hawkins, sir." "And what was her maiden name?" asked Mr. Hawkins, after a sly glance at his brief. "Sarah Cockburn, sir," was the equally prompt reply. When the laughter which these names excited had a little subsided, the Lord Chief Justice assured Mr. Hawkins that he felt highly honoured by the statement which he had elicited; and Mr. Hawkins, with a grave bow to the Bench, replied, "My Lord, I could not take it all to myself."

Once when a very diminutive barrister had made several futile attempts to gain the notice of the court, Jekyll explained his failure by quoting—"*De minimis non curat lex.*" The last audacious application of this much abused maxim is perpetrated on the other side of the border. Recorder Hackett was holding general sessions in New York, and noticed on the calendar, "*The People* v. *Minnie Davis*—

Arson." He recollected it as a very interesting case, which, at a previous term, had failed because of a misnomer, but was to be tried on a new indictment. "How about the case of Miss Minnie Davis," he said to the District Attorney, "will you have trouble about the facts now?" "No," was the answer, "but the law may trouble your honour—how will you get over the maxim, *De Minnie Miss non curat lex?*"

Vice-Chancellor Malins is a most unlucky Judge—the most overruled of all the judges of first instance. Lately, however, he was very happy in his judgment on the facts in a case of an alleged invasion of the right to use as a trade mark, a label with the words "*Nourishing Stout*" thereon. He neatly put an extinguisher upon the plaintiff's claim to an exclusive use of the word "nourishing" by observing (no doubt with the unction of a true Englishman): "The word '*Nourishing*' is a word in common use, and *peculiarly adapted to good stout.*" We must say that this is a much more sensible and even judicial way of dealing with the liquor in question than that which it pleased Chief Justice Read, of Pennsylvania, to assume in a case recently reported. In dissenting from the decision of the Supreme Court of that State, that the local option liquor law was constitutional, he expatiated as follows: "Ale is a healthy liquor, and lager beer is a favourite beverage, particularly of our large German population The question of license or no license is to be submitted to the citizens of Philadelphia, at the general election in October, and if the vote is against license, then the city will be under a prohibitory liquor law during the whole Centennial Celebration, to which we have invited the whole country. On the Fourth of July, 1776, every patriot drank to the independence of the thirteen States; shall it be that on the Fourth of July, 1876, all we can lawfully offer to our guests on this great anniversary will be a glass of Schuylkill water, seasoned with a lump of Knickerbocker ice? I am a strong believer in temperance. For twenty-five years of my life I drank nothing but water, but a dangerous illness made a strong stimulant an absolute necessity, and by the advice of a physician I am obliged occasionally to resort to it. Some of my friends, older than myself, have drank wine all their lives and are temperate men. I believe in moral suasion as the true means of advancing the temperance cause, but I do not believe in a prohibitory law, which would reduce us to the condition of Boston!"

SPRING CIRCUITS, 1874.

EASTERN CIRCUIT.

The Honourable Mr. Justice Galt.

Cornwall	Tuesday, 17th March.
Ottawa	Tuesday, 24th March.
Perth	Tuesday, 7th April.
Brockville	Monday, 13th April.
Kingston	Monday, 20th April.
L'Orignal	Tuesday, 5th May.
Pembroke	Tuesday, 12th May.

MIDLAND CIRCUIT.

The Honourable Mr. Justice Gwynne.

Napanee	Monday, 9th March.
Whitby	Tuesday, 17th March.
Belleville	Monday, 30th March.
Cobourg	Monday, 13th April.
Peterborough	Wednesday, 22nd April.
Lindsay	Tuesday, 28th April.
Picton	Tuesday, 12th May.

NIAGARA CIRCUIT.

The Honourable the Chief Justice of Ontario.

Owen Sound	Tuesday, 10th March.
Milton	Tuesday, 17th March.
Hamilton	Tuesday, 24th March.
St. Catharines	Tuesday, 14th April.
Welland	Tuesday, 21st April.
Barrie	Tuesday, 28th April.

OXFORD CIRCUIT.

The Honourable Mr. Justice Wilson.

Cayuga	Tuesday, 10th March.
Simcoe	Monday, 16th March.
Brantford	Monday, 23rd March.
Woodstock	Thursday, 2nd April.
Berlin	Monday, 13th April.
Stratford	Thursday, 16th April.
Guelph	Monday, 27th April.

WESTERN CIRCUIT.

The Honourable Mr. Justice Morrison.

Walkerton	Tuesday, 10th March.
Goderich	Tuesday, 17th March.
Sandwich	Tuesday, 24th March.
Sarnia	Tuesday, 7th April.
Chatham	Tuesday, 14th April.
St. Thomas	Tuesday, 28th April.
London	Tuesday, 5th May.

HOME CIRCUIT.

The Honourable the Chief Justice of the Commo Pleas.

Brampton	Tuesday, 10th March.
Toronto, Assize, Nisi Prius	Wednesday, 18th Mar.
Toronto, Oyer and Terminer	Tuesday, 28th April.

TO CORRESPONDENTS.

The communication from "J. R." will be inserted with pleasure when he sends his name, not for publication, (though we see no reason why he should object), but to comply with a rule which we must strictly adhere to.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Michaelmas Term, 37th Victoria.

During this Term, the following Gentlemen were called to the Degree of Barrister-at-Law:

No. 1270. Maxwell D. Fraser.
Rupert Etheredge Kingsford.
Joseph Benjamin McArthur.
Roger Conger Clute.
Charles Oakes Zaccheus Ermatinger.
No. 1275. Nathaniel F. Hagle.

The above names are given as on the roll, and not in order of merit.

And the following gentlemen received Certificates of Fitness:

Maxwell D. Fraser.
George B. Gordon.
Hammel Madden Deroche.
Charles E. Barber.
} Without oral examination.
Edward Harry D. Hall.
Kenneth Maclean.
Charles Oakes Z. Ermatinger.
Henry Theophilus W. Ellis.
Charles Bagot Jackes.

And on Tuesday, the 18th November, the following gentlemen were admitted into the Society as Students of the Laws:

University Class.

Richard W. H. N. Dawson.
John E. K. Gourlay.
F. M. Morson.
Robert Shaw.
William H. Culver.
Frank S. Nugent.
Robert E. Wood.
John L. Whiting.
Walter Barwick.
Francis Madill.
Alexander C. Galt.
James H. Madden.
Peter L. Palmer.
Charles L. Ferguson.
Richard P. Palmer.
Albert A. F. Wood.

Junior Class.

Trevelyan Ridout.
James V. Tetzel.
John Alexander Palmer.
Harry Dudley Gamble.
George Edgar Millar.
Lorenzo Udolphus C. Titus.
Ralph Winnington Keefer.
Oliver Richard Macklem.
James Norris Waddell.
James Rymal.
Henry Ryerson Hardy.
Robert Conolly Miller.
E. Sydney Smith.

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

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

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

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

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

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

That the books for the final examination for students at law, shall be as follows:—

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

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

That the subjects for the final examination of Articled Clerks shall be as follows:—Leith's Blackstone, Watkins on Conveyancing (9th ed.), Smith's Mercantile Law, Story's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

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

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

1st year.—Stephen's Blackstone, Vol. i., Stephen on Pleading, Williams on Personal Property, Griffith's Institutes of Equity, C. S. U. S. c. 12, C. S. U. C. c. 43.

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, Story's Equity Jurisprudence, Fisher on Mortgages, Vol. 1, and Vol. 2, chaps. 10, 11 and 12.

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

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

J. HILLYARD CAMERON,
Treasurer.