DIARY FOR JUNE.

1. Thur.. Last day for delivering appeal books in Court of Error and Appeal.
3. Sat.... Easter term ends. Last day for notice for call.
4. SUN.. *Whit Sunday*
6. Tues.. Nisi Prius Sittings Co. York.
11. SUN.. *Trinity Sunday.*
13. Tues.. General Sessions and County Court Sittings, ex. York. Last day J.P.'s return convictions to Clerk of Peace.
15. Thur.. Court of Error and Appeal sits. Sittings of Oyer and Terminer, Co. York. Magna Charta signed 1215.
18. SUN.. 1*st Sunday after Trinity.*
20. Tues.. Accession of Queen Victoria, 1837.
21. Wed .. Longest day.
25. SUN.. 2*nd Sunday after Trinity.* Lord Dufferin landed at Quebec, 1872.

CONTENTS.

THE

Canada Law Journal.

Toronto, June, 1876.

The Court of Appeal in England does not appear entirely to possess the confidence of the Bar, at least that portion of it which follows the leadership of the *Law Times*. In speaking of the case of *Dickinson* v. *Dodds*, 34 L. T. Rep., N. S., 19. that journal expressed the opinion that Vice-Chancellor Bacon had rightly decided it. The Court of Appeal—consisting of Lords Justices James and Mellish, and Justice Baggallay—however, reversed his decision, whereupon the successful appellant sang a pæan over the periodical thus indirectly "sat upon." The latter, thus challenged, declined to say anything further until seeing the judgment of the latter Court, and remarks that "In our opinion it would be going much too far to say that the decisions of the Court of Appeal, constituted as it is at present, are indisputable law."

The county of Lincoln will be well known in the history of election law in Ontario. The election of Mr. Neelon in 1875 gave rise to an elaborate discussion of the 66th section of the Act of 1868 by Mr. Justice Gwynne, though his very ingenious and forcible argument on that point, and the further discussion of it by the Chief Justice of the Court of Appeal, were not strictly necessary for the decision of the case. The latter held, as will be seen by a full report in another place, that the selling or giving of drink by any person, whether a tavern-keeper or not, to another, within the time and place specified in the section, avoids the election. Mr. Gwynne had decided that the only person who could infringe this section was the tavern-keeper, and consequently he could only avoid the election when he is an agent. The Court of Appeal has, in the *South Ontario case*, which we shall report next month, decided that section 66 is confined to tavern-keepers, but that if the act is done with the knowledge and consent of the candidate, avoidance ensues under sub-sec. 1 of sec. 3 of the Act of 1873; whilst Mr. Gwynne, in the first Lincoln case, limited the treating, &c., to treating with intent thereby to promote the election of the candidate. The second Lincoln case will bring up the construction of what is

known as the "Whitewashing clause," section 49 of the Election Act of last session. It will be curious if the result is to enable the present petitioner, on behalf of Mr. Neelon, to charge Mr. Rykert with corrupt acts in the first election, which on the first trial were abandoned, and prevent Mr. Rykert, the present respondent, from charging Mr. Neelon, for whom the seat is now claimed, with corrupt acts at the same election, of which Mr. Neelon was on the same occasion proved guilty. The profession do not give the Ontario Legislature credit for very careful legislation, but no one would like to charge them with intentionally perpetrating such an enormous injustice as this.

THE TREASURER OF THE LAW SOCIETY.

It is with no ordinary feelings of pleasure that we draw attention to the following address, accompanied by a suitable testimonial, presented to the Hon. John Hillyard Cameron, Treasurer of the Law Society, on the 20th of May last.

From the time that Mr. Cameron was called to the Bar his name has been prominently before the public. His career as a lawyer is all that concerns us at present. As a young man he was a diligent student, and so thoroughly grounded in the first principles of the law, that his off-hand opinion is accepted with a confidence not usually accorded. He is now by seniority the leader of the Bar, but he acquired that honourable distinction years ago, by a professional career of the most brilliant kind. His learning, his extraordinary memory and wonderful capacity of applying his mind to the subject in hand, added to his natural sagacity, gained the confidence of the profession and others who sought his opinion; whilst the same qualities, combined with a tact, readiness and coolness possessed by few, great energy and force of character, a large gift of eloquence, a courteous manner and commanding presence, made him the most successful advocate that this country has yet produced.

But to the profession as a body he is not only known as the brilliant leader of the Bar, but as the head of the Law Society. For thirty years—half his life time—he has been a Bencher. Sixteen years ago he was elected Treasurer on the death of Sir James Macaulay, and he has been re-elected continuously every year since. In 1871 the Benchers were made elective by the Bar, and it might have been thought that this would break the charm; but, on the contrary, he was continued in the same honourable position by the direct representatives of the profession, who have now, upon the expiration of their term of office, in a marked manner, evinced their appreciation of Mr. Cameron's services as Treasurer, and of the "esteem and regard in which he is held by the members of the Bar of Ontario."

One of the pleasantest features of the subject before us is the fact that the Bar of Ontario have risen superior to all petty jealousies and personal prejudices, and that political feeling has never been allowed to interfere either with the administration of the affairs of the Society or with the choice of its Treasurer. We trust this may long continue, but it will require a full appreciation by the Benchers of the responsible nature of their position, not only to keep clear of political bias in their deliberations in convocation, (and there has been no difficulty as to *this*) but also, to withstand the importunities of some of the younger and more ardent men, who are so accustomed to the strife of party politics that they forget what is due to themselves and to others as members of the same honourable and independent profession. It cannot but be gratifying to Mr. Cameron, as it is highly honourable to the Benchers, that

some of his most hearty supporters in convocation are those whose political views are strongly opposed to his own. For his efforts to foster this feeling of professional friendship, a proper *esprit de corps*, and a high standard of professional ethics, as well as for his exertions (ably supported by other Benchers) in improving the legal education and system of reporting, our thanks are due.

The presentation took place in the Convocation Room at Osgoode Hall, which was crowded with members of the Society. Mr. Kenneth McKenzie, Q.C., moved that Sir John A. Macdonald, Q.C., K.C.B., should take the chair, introducing the object of the gathering in a few happily chosen sentences expressive of the appreciation which the profession felt for the many services rendered to it by the Treasurer in his long career of thirty years as a Bencher and sixteeen years as Treasurer. The motion was seconded by Mr. James Bethune, Q.C. Sir John Macdonald then, on behalf of the Benchers, presented the address and testimonial in his usual felicitous style, referring to Mr. Cameron not only as one whose public services were entitled to the fullest recognition, but also as an old and tried friend and his schoolfellow of half a century ago.

The address, which was as follows, was then read by Mr. Esten :—

ADDRESS

To the Hon. John Hillyard Cameron, D.C.L., Q.C., M.P., Treasurer of the Law Society.

Mr. Treasurer,—The Benchers of the Law Society, in convocation assembled, desire at this their last meeting before the general election, to acknowledge the great services you have rendered to the Society, and to express their satisfaction at the efficient manner with which you have so long presided as their chief executive officer in convocation.

During your incumbency the profession has witnessed the establishment of Law Lectureships and of the Law School, affording to the modern students of the law greater facilities for acquiring a sound legal education than those enjoyed by their predecessors of former years; the establishment of scholarships, with a yearly stipend, as a reward to the successful student; provision for intermediate examinations, by means of which the diligent student is enabled to test his ability to master the principles and maxims of the law; and finally, the means by which the standard of fitness and legal knowledge is now as high as it is at the English Bar.

Not only has the education of the Bar been thus provided for, but our library has been largely increased, and a system of law reporting, which we trust will shortly be made efficient, has been devised, by which the judgments of our courts may be placed in the hands of practitioners almost immediately after their delivery.

While the training of the Bar often brings the members of our learned profession into the keen warfare of active public and political life, it is our boast that no tinge of political bias has ever entered into the discussions of convocation, nor influenced the nomination of Benchers, nor the appointment to any office in the gift of the Law Society—a circumstance due in great measure to the tact, and fairness, and judgment with which you have guided the proceedings of convocation.

Standing as the profession of the law has often to stand before the searching light of a jealous public opinion, and pleading as it does before a judiciary high in legal ability and pure integrity, it has ever been the aim of the Law Society that the reflex of that ability and integrity should be shed around the members of a learned and an honourable Bar.

We are only doing justice to your services when we say that in all deliberations of convocation your aim has been to promote those measures which would most largely contribute to the honour, the learning, and the dignity of the Bar; and in now closing our official term, we express the hope that your example may be an incentive to future convocations to guide the deliberations of the Law Society with the moderation and fairness with which you have guided them in the past. As an expression of confidence and respect in you by the Benchers and profession at large, we beg you to accept the accompanying testimonial, in remembrance and acknowledgment of your sixteen years presidency as Treasurer, and your thirty years services as a Bencher of the Law Society.

Mr. Cameron replied as follows :—

"Gentlemen,

Allow me to express to you my sincere and heartfelt thanks for the address which you have presented to me.

The Treasurer of the Law Society.

It is a great satisfaction to me that at the close of the first term of office of those who were chosen by the Bar to represent them in the government of the Law Society, I should receive from them the same kind meed of approbation that was awarded to me by their predecessors, who were the governing body under the old system.

All who have paid any attention to the working of the Society, must be aware of the great progress that has been made in legal education during the last few years, and how sedulously convocation has endeavoured to encourage the student of the law, by offering him those larger facilities for acquiring knowledge, and those greater inducements for attaining a high degree of proficiency, which your address has pointed out; and to the legal profession especially, the large and well selected increase in the library, the additional facilities provided for reporting, and the greater powers granted by the Legislature to the Society, must afford sure and convincing evidence that you have been mindful of the trust that has been confided to you; while the conduct and capacity of the men who have been called to the Bar of late years, must afford evidence equally convincing that your care and attention have had their due effect, and that your labours have not been thrown away.

My profession has ever had my warmest attachment; and it has been my greatest pleasure since I became your Treasurer to endeavour to raise the standard of legal education, and to place the best means of acquiring legal knowledge within the reach of those young men who desired to enter upon the study of the law; and if those measures have met with a fair measure of success, the Bar and the public must give thanks to you, without whose zealous co-operation and constant assistance that measure of success could never have been achieved.

I am most happy to unite with you in your expression of satisfaction, that considerations arising from party politics have never been allowed to enter into our deliberations nor to mar the harmony of our proceedings, and to thank you for the expression of your belief that my aim has ever been, as your presiding officer, 'to promote those measures which would most largely contribute to the honour, learning and dignity of the Bar.'

I accept the testimonial which accompanies your address with the highest appreciation of the kindly feeling which has induced you, as the representatives of the profession at large, to make the presentation; and I can assure you that it will be cherished by my family as their dearest possession long after I have passed away.

And now, gentlemen, in bidding you farewell, permit me to say that during the thirty years I have been a Bencher of this Society, I have ever been associated in its government with a body of gentlemen with whom association was the highest pleasure, and I may truly say that never has the association been continued with a greater charm than during the years it has been had with you. You have always shown me the utmost consideration and courtesy—you have ever been ready to co-operate with me in any proposal that tended to the benefit and advantage of the profession. Year after year you have expressed your confidence in me by unanimously electing me your Treasurer; and now, as your crowning mark of honour, you present me with this splendid testimonial, and part from me with such kind and flattering words, as must live in my recollection as long as my memory lasts."

The address was engrossed on vellum, and beautifully illuminated. The testimonial was a solid silver epergne of unique design, emblematic of the occasion. At Mr. Cameron's special request it was of home manufacture, and reflects great credit both upon the designer and the workman. Upon one side of the pedestal is a view of Osgoode Hall, surmounted by the arms of the Law Society, and on the reverse side are Mr. Cameron's coat of arms, and the following inscription:

"Presented to the Hon. John Hillyard Cameron by the Benchers of the Law Society, on the expiration of their term of office, in May, 1876, as a testimonial of their appreciation of his service during the many years he has been their Treasurer, and of the esteem and regard in which he is held by the members of the Bar of Ontario."

The silver pedestal, standing on a block of black marble, supports a column, round which is a scroll, with the words, "*Magna Charta Angliæ*," and two figures—one, a savage armed with a club, representing the rule of brute force, and the other, Justice, with her sword and balance, representing civilisation, law and order. The shaft supports a silver dish and vase for flowers.

Mr. Cameron has again been chosen Treasurer by the Benchers recently elected.

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

(*Reported for the* LAW JOURNAL *by* HENRY O'BRIEN, Esq., *Barrister-at-Law.*)

LINCOLN ELECTION PETITION.

J. C. RYKERT, *Petitioner*, v. SYLVESTER NEELON, *Respondent.*

32 *Vict., cap.* 21, *sec.* 66 (*Ont.*) *Treating—Implied knowledge by candidate of agent's acts.*

Appeal from the judgment of Mr. Justice Gwynne, avoiding the election and disqualifying the respondent.

His decision sustained as to the complicity of the respondent in the "Stewart case," the particulars of which are set out below, but otherwise as to the "Sunday raid," his knowledge and consent to the corrupt acts of his agents *held* not proven, the circumstances not being inconsistent with his innocence.

The question discussed as to how far or when a candidate is to be assumed to be aware of, and impliedly consenting to corrupt acts done by his agents, of which, in the natural course of things, he can scarcely be ignorant, or of which he wilfully avoids any knowledge.

Semble per Draper, C.J., contrary to the opinion expressed by Mr. Justice Gwynne at the trial, that section 66 of 32 Vict., cap. 21, must be construed distributively, and that under it the penalty may be inflicted, (1) on a tavern keeper &c., who does not keep his tavern closed during the hours of polling, and (2) on any person, whether a tavern keeper, &c., or not, who sells or gives drink to another within the time and place specified.

[January 22, 1876.]

This was an appeal from the judgment of Mr. Justice Gwynne, before whom the petition was tried.

The effect of this judgment was to disqualify the respondent, as the learned Judge held that he was guilty of personal corruption in the Stewart case (the particulars of which sufficiently appear hereafter in the judgments of the Chief Justice of Appeal and Mr. Justice Patterson), and that he must have had personal knowledge of certain corrupt acts of his agents committed on the Sunday night previous to the election. Another question arose which caused much discussion—viz., the treating by one Larkins, an agent of the respondent, at Doyle's tavern. Mr. Justice Gwynne held that under the interpretation which he placed upon section 66 of 32 Vict., cap. 21, the election could not be avoided on this ground. His decision on this point was not appealed from, but as the law bearing on it is discussed by the learned Chief Justice of Appeal in his judgment, it is desirable here to refer to the argument of Mr. Justice Gwynne, who, after speaking of the result of that view of the law against which he was contending, said:

"I confess it does appear to me to be inconceivable that the Legislature could have contemplated the possibility of the section in question being open to the construction that whenever any person, whether a resident in the municipality wherein the election is going on or not, and whether an elector therein or not, sells or gives any quantity of spirituous liquors, whether by wholesale or otherwise, to any person, whether an elector in the municipality or not, and although the transaction, beyond all question, had no relation to, and has no effect upon, the election, the section is violated and the penalty incurred. If then it be, as it appears to me to be, impossible that the section should be construed literally, we must, in order to construe it in the sense intended by the Legislature, endeavour to ascertain with what object, and in order to guard against what evil was this section enacted. And I confess that the difficulties suggested against construing the section as containing two separate and independent offences, appear to me to be so great as to involve the necessity of excluding such a construction, and of reading the section as defining one offence to the committal of which the prescribed penalty is attached.

"The prime object of the act, there can be no doubt, was to secure freedom and purity in elections. The particular section in question is placed under the heading 'Keeping the peace and good order at elections.' The giving spirituous liquor directly, for the express purpose of obtaining a vote, or after a vote was given, in pursuance of a promise made in order to obtain the vote, is sufficiently guarded against, independently of this section, as an act of bribery. The indirect influence which might be exercised by the providing any species of entertainment or drink, whether previous to or during the election to any meeting of electors assembled for the purpose of promoting the election at any place except the entertainer's own private residence, where such entertainment is permitted, and the paying or promising or engaging to pay for any such drink or entertainment, was provided against by the prohibition contained in the 61st section.

"Still it remained possible, if spirituous liquors could be obtained at the hotels, taverns, and shops where they are ordinarily sold, that much drinking might be indulged in, which the

parties partaking of should themselves pay for, and which might injuriously affect the freedom and purity of the election, and from which bloodshedding riots and other breaches of the peace might ensue. Therefore, for greater caution, and with a view to securing that the election should be uninfluenced by any cause arising from the use of spirituous liquors at any of those places during polling day, this section was passed with the intent that 'Every hotel, tavern and shop, in which spirituous or fermented liquors are ordinarily sold, shall be so closed during the day appointed for polling in the wards or municipalities, that no spirituous or fermented liquors shall be sold or given to any person within the limits of such municipality under a penalty of $100 in every such case.' That is to say, in every case in which any such hotel, tavern, or shop keeper shall in violation of this section sell or give such spirituous liquors or drinks, or permit such to be sold or given upon his premises.

"But assuming this to be the true construction, still the treating which is assailed as in violation of the 66th section of the Act of 1868, occurred at a hotel. Doyle, the hotel keeper, within the polling hours sold the drinks, of which McLellan, Lavelle, and Todd partook. Doyle is undoubtedly guilty of a violation of the section, and upon prosecution liable to its penalty. It may be also admitted that the act of selling by Doyle, as in violation of the section, is, under the provisions of the 1st section of 63 Vict., cap. 2, a statutory corrupt act committed by Doyle, although the act was never contemplated by any one to have, and although it had not in fact, any effect whatever upon the election, and that moreover by this act of sale, Doyle, upon his being proceeded against and found guilty under the provisions of the 49th section of the Act of 1871, will be rendered incapable for a period of eight years of being elected to and of sitting in the Legislative Assembly and of being registered as a voter, and of voting at any election, and of holding office at the nomination of the Crown, or of the Lieutenant-Governor of Ontario, or any municipal office. Still two questions remain:—Firstly, is Larkin also guilty of a violation of the same 66th section within the meaning of that section? And secondly, assuming him to be, and that he was an agent of the respondent, is the latter's election thereby avoided? The answer to the first of these questions depends upon the construction to be put upon the 66th section referred to, and to the latter upon the construction to be put upon the 3rd section of the Act of 1873. The 66th section undoubtedly says that no spirituous or fermented liquors or drinks shall be sold or given.

"Now in the case in question, certainly in one sense Larkin, as the person treating McLellan, Lavelle, and Todd, may be said to be the giver to them of the drinks which Doyle sold and for which Larkin paid, but it is contended that the section is pointed against the hotel, tavern, or shop keeper, and that it is upon him that the penalty is imposed, and that where a tavern-keeper sells a glass of liquor to A. for the purpose of treating B., who thereupon drinks it while A. pays for it, there is but one act done in violation of the statute, but one offence committed, which is committed by the tavern-keeper, and that two penalties cannot be recovered, the one against the seller and the other against the treater, for one and the same glass of liquor sold. The glass of spirits, for example, which Lavelle drank, was sold only for the purpose of being drunk by him, although Larkin paid for it. For the sale of that glass Doyle is guilty of a violation of the section, and for that glass, for the sale of which Doyle is responsible and liable to be disfranchised for eight years, it is contended that Larkin cannot also be made responsible and be subjected to the like penal consequences as given within the meaning of the act, merely because he pays the price instead of Lavelle. So if a shopkeeper licensed to sell liquors sells a dozen of wine to A., who buys it for the purpose of being sent and orders the vendor to send it to B., a poor friend of A.'s unable to pay for it himself, although this being done within polling hours may make the shopkeeper liable for selling in violation of the statute, it is contended that A., who bought it only that it might be sent to B., to whom the shopkeeper did send it, is not also liable to another penalty as given. This is a point which would more satisfactorily be raised upon a prosecution for the penalty under the statute. I confess there seems to be great force in the argument. If the true view be, as it seems to me to be, that the act was intended alone to point against hotel, tavern, and shop keepers, upon whose premises spirituous liquors and drinks are ordinarily sold, and who have it in their power to control what is done there, then the words 'sold or given' must be limited to the hotel, tavern, or shop keeper, and must mean sold or given by him; the word 'given' being added to prevent the possibility of the party proceeded against for the penalty evading the statute by setting up as a defence that he did not sell, but himself gave the drinks.

"That this is the true construction seems to me to be apparent, when we trace the source from which this 66th section is derived. It and the preceding sections, numbering from 57, are taken from sections 72 to 81 inclusive, which are grouped under precisely the same heading as clauses relating to the 'Keeping of the peace and good order at elections,' in the statutes of Canada, 22 Vict., cap. 6, the 81st sect. of which act, corresponding with the 66th section of the Act of 1868, enacted that 'Every hotel, tavern and shop in which spirituous or fermented liquors or drinks are ordinarily sold shall be closed during the two days appointed for polling in the wards or municipalities in which the polls are held, in the same manner as it should be on Sunday during divine service; and no spirituous or fermented liquors or drinks shall be sold or given during the said period under a penalty of $100 against the keeper thereof if he neglects to close it, and under a like penalty if he sells or gives any spirituous or fermented liquors or drinks as aforesaid.'

"What was meant by the words in this section, 'in the same manner as it should be on Sunday during divine service,' is not very clear, for there was no law that I can find then in force in Canada prescribing the duty of hotel and tavern keepers to keep their houses closed in any particular manner during divine service on Sunday. [Here the learned Judge referred to the various statutes on this subject, and proceeded]: But none of those statutes which have reference to the period of 'divine service on Sunday' had ever any force in Upper Canada, and it was drinking spirituous liquors at the places which constituted the offence, during the hours of divine service on Sunday. It is difficult, therefore, to understand what the Legislature of Canada meant by the 81st sec. of 22nd Vict., cap. 6, which in plain terms enacted two penalties against the innkeeper—the one for neglecting to 'close his hotel or tavern in the same manner as it should be on Sunday during the hours of divine service,' and the other 'if he should sell or give any spirituous or fermented liquors as aforesaid.'

"How the offence of neglecting to keep the hotel or tavern 'closed in the same manner as it should be on Sunday during the hours of divine service,' could be committed in the absence of the sale or gift of any spirituous or fermented liquors or drinks, and in the absence of all drinking suffered or permitted at the hotel or tavern, I fail to be able to see, and it seems to me that it was most probably this difficulty which induced the draughtsman of the Election Law of 1868 to strike out these ineffectual words, and so to amend the section as to do away with the double penalties, and to enact a single offence with a single penalty, which in my opinion is what is done by the 66th section, which offence consists in the selling or giving spirituous or fermented liquors or drinks at any hotel, tavern, or shop in which spirituous or fermented liquors or drinks are ordinarily sold. The word drinks used in the Act of 1868, and in 22 Vict., cap. 6, seems to me very plainly to indicate that what the Legislature desired to guard against was that general habit of 'drinking spirituous liquors' so common at elections, and which was so well calculated to tend to breaches of the peace and violation of good order at elections, which it was the object of that section of the act from which this 66th section was taken to maintain. But it is further to be observed that in all the above statutes in which I find any reference to the words 'during the hours of divine service,' and especially in the 22nd Vict., cap. 6, it was upon the proprietor of the hotel, tavern, or shop where the spirituous or fermented liquors or drinks are ordinarily sold, and who as such is able to control what is done on his own premises that is made guilty of the offence, and upon whom the penalty for any violation of the statutes is imposed.

"In my judgment, the 66th section of the Act of 1868 was not intended to have, and has not, any different effect in this respect, and such person is, in my opinion, the only person who can be pronounced to be guilty of a violation of the statute, and liable to the penalties which it imposes, and consequently he is the only person who, in the terms of section 1 of the Act of 1873, can be said to be guilty of the corrupt practice which that statute declares a violation of the 66th section of the Act of 1868, within polling hours to be.

"It was the retailing of drink, and drinking in such a manner as was calculated to affect the purity and freedom of election, which was the evil intended to be guarded against; and the Legislature, in my opinion, have deemed that object sufficiently attained by making the proprietor of the hotel, tavern, or shop where the spirituous liquors are ordinarily sold, answerable for what he permits to be done in violation of the act.

"But assuming in the cases put of the treat at the hotel, and the purchase of the dozen of wine at the shop, that not only the seller is liable, but also the person who pays the price, and assuming the latter to be an agent for promoting

the election of a candidate, will the candidate, if elected, forfeit his seat by reason of such act within the meaning of the 3rd section of the Act of 1873, the first sub-section of which enacts that 'When it is found upon the report of a judge upon an election petition, that any corrupt practice has been committed by any candidate at an election, or by his agent, whether with or without the actual knowledge and consent of such candidate, his election, if he has been elected, shall be void.' If a person who is a candidate choose to appoint as his agent a hotel or tavern-keeper who has an independent interest of his own in violating the statute, and whose violation of it may, as it certainly might, lead to violence endangering the freedom of the election, it would be plainly proper that a candidate who appoints such a person as his agent should have his election avoided, if his agent should so conduct himself in plain contravention of the statute, and we should not stop to inquire whether the violation of the statute did or not in fact affect the election. It is quite sufficient that it was well calculated to do so. And it was because it was well calculated to do so that the section prohibiting such practices, and that pronouncing them to be corrupt, were passed. But it seems to be quite another thing, where an agent, not himself a tavernkeeper, and being in need of refreshment goes to a tavern, and for that purpose buys there a glass of beer, wine, or other liquor for himself, and at the same time treats a friend or two to a glass as he would on any other occasion, such treat having no reference whatever to the election, and, it may be, being given to a person not an elector—in such case, although the tavernkeeper who sells the liquor would undoubtedly be guilty of a violation of the 66th section of the Act of 1868, and so of the statutory corrupt practice declared by the Act of 1873, and even though the agent may also be in like manner guilty, shall the innocent principal in such case have his election avoided by such treat?

"The Legislature, no doubt, may arbitrarily enact that any act, even one in which the candidate is in no way concerned, and which is not done in his actual or supposed interest or in pursuit of the object of the election, may notwithstanding avoid the election, but in the absence of the most express words conveying such an intent, we should avoid a construction having such effect.

"What the Legislature has said upon the subject is contained now in the third section of the Act of 1873, which contains two sub-sections that must be read together, and so as to be consistent with each other. The object and effect of that section was plainly, as it appears to me, to repeal wholly the 69th section of the Act of 1868, which has been in effect though not in terms repealed by the 46th section of the Act of 1871, and to substitute a clause in lieu of the 46th section. That 46th section of the Act of 1871 had enacted that where it is found by the report of the Judge upon an election petition under the act that any corrupt practice has been committed by or with the knowledge and consent of any candidate at any election, his election, if he has been elected, shall be void, and he shall during the eight years next, after the date of his being so found guilty, be 'incapable of being elected to, and of sitting in the Legislative Assembly, and of being registered as a voter and voting at any election, and of holding any office at the nomination of the Crown, and of the Lieutenant-Governor in Ontario, or any municipal office.'

"It might perhaps have been held under this section, prior to the passing of the Act of 1873, that a corrupt practice committed by any person should avoid a candidate's election and subject him to disqualification for eight years if committed with his knowledge and consent, for the only practices which were corrupt were such as were directly or indirectly done by the candidate himself or by some person on his behalf, with a view to the promotion of his election within the provisions of the Act of 1868, or the common law of Parliament, but whether or not there could have been any corrupt practice committed by any one, other than the candidate himself or his agent, to which this 46th section of the Act of 1871 could be applied, it is unnecessary to inquire, for that section is repealed by the 3rd section of the Act of 1873, the 1st sub-section of which very distinctly, to my mind, expresses and declares all the cases in which an election shall be avoided, namely, in the cases only of corrupt practices committed by the candidate himself or by his agent at the election, while the 2nd sub-section declares that in addition to the avoidance so declared by the first sub-section, disqualification shall also ensue when the corrupt act which so avoids the election is done by or with the knowledge and consent of the candidate, that is where it is done by himself personally or by his agent, with his knowledge and consent, for unless done by himself or his agents the election is not avoided at all. The second sub-section carefully abstains from saying that any corrupt practice committed by or with the actual knowledge and consent of any candidate shall avoid

the election, as the 46th section of the act of 1871 had done; it simply annexes to the avoidance of the election, which the first sub-section regulates and declares, disqualification if the act avoiding the election (which can only be the act of the candidate or his agent) be done with his knowledge and consent; the whole section taken together enacting that any corrupt practice committed by a candidate at an election, or by his agent, shall avoid the election whether done with or without his knowledge, which words can only refer to the acts of the agent, but if done by himself personally 'or with his knowledge or consent,' (which words must also be held here to refer to the act of the agent, to be consistent throughout, for no other act but that of the candidate or his agent avoids the election), disqualification also shall ensue in addition to the avoidance.

"Now the avoidance of a candidate's election being confined to the acts of himself or his agents, what are the acts of an agent within the meaning of these words in the section, 'committed by any candidate at an election, or by his agent?' The first section of the Act of 1873 adds to the category of corrupt practices the violation of the 66th section of the Act of 1868. This violation can, in my judgment, be committed only, as I have said, by the keeper of the hotel, tavern, or shop where spirituous liquors or drinks are ordinarily sold, but such violation of the section may be committed by a person who is an agent of the candidate, in such a manner as to have no reference whatever to the promotion of the purpose for which the agency was created—in such a manner as in no possible way to be capable of having any effect whatever on the election; as, for example, where a candidate and a friend find it absolutely necessary to take the refreshment of dinner at a hotel, and at the dinner partake of their usual reasonable quantity of beer or wine—it may be one or two glasses, supplied by the hotel-keeper as part of the dinner—can it be that the Legislature contemplated not only avoiding a candidate's election, but also of disqualifying him for eight years, because (admitting, for the sake of argument, the hotel-keeper, within the rigid terms of the 66th section, to have been guilty of its violation) the candidate partook of the refreshments so supplied, or paid for what was supplied to his friend, and was, so far as such act could make him, a consenting party to the violation of the act by the hotel-keeper. The 66th section does not say that any person consenting to a hotel-keeper or other person violating the 66th section shall himself be guilty of a violation of it. I must say that, to my mind, it would be contrary to the plainest principles of common sense and justice, to attribute such an intent to the Legislature, or to put such a construction upon the act. Such a construction would have the effect, in my judgment, of enacting laws of the most penal character by judicial decision—not by Legislative declaration clearly expressed, without which latter sanction, plainly expressed, no penal consequences of any description—much less of the character of those penalties here referred to—can be imposed. Every Act of Parliament should be so construed as to be consistent with common sense and justice, and not so as to do violence to common sense and to work injustice.

"The sensible construction then of the 3rd section of the Act of 1873, which declares the election to be avoided by the corrupt act of the candidate's agent, seems to me to be to confine its operation to such acts as are done by the agent—I do not say within the scope of, but in the course of or exercise of the agency, and in the pursuit of the object of the agency—acts done as specified in the 6th section of the Act of 1868, directly or indirectly by the candidate himself—some act done with a view to promoting in some way the objects of the principal, and not to extend to acts in which the principal is in no way concerned, and which are done not with any view to his interests, or to the object of the agency. Such acts are, it is true, the acts of the person who is agent, but they are not the acts of the agent *qua* agent. In some cases a question may sometimes arise whether or not the act of the agent, which is relied upon as avoiding the election, was done by him *qua* agent, that is to say, in the pursuit of the object of the agency, and with a view to the interests of the principal; in such cases justice will be done, and the purity of election secured, by determining the point in doubt in favour of avoidance, but if, beyond all question, the act complained of is not done in pursuit of the object of the agency, in view of the interest, actual or supposed, of the candidate, or in any way in relation to the election, but solely for the purpose, interest, or gratification of the person who is agent, and is not corrupt otherwise than as it is prohibited and made so by the statute, such an act, not being done by the agent *qua* agent, is not an act which can, in my opinion, be within the meaning of the 3rd section of the Act of 1873.

"I am of opinion, therefore, for all of the above reasons, that the respondent's election cannot be avoided for the treat referred to as given by

Larkin at Doyle's hotel, although Doyle undoubtedly was guilty of a violation of the 66th section of the Act of 1868, and thereby of a corrupt practice within the meaning of the 1st section of the Act of 1873, and is liable to be made amenable, under that section, to all consequences of having committed a corrupt practice."

The case was argued before the Court of Appeal by

C. Robinson, Q.C., and *James Bethune*, for the appellant (the respondent to the petition), and

J. A. Miller for the respondent (the petitioner).

Draper, C.J.—The only reason given for appeal in this case is as follows :—"That there was not sufficient evidence of corrupt practices having been committed by any agents of respondent, or by the respondent himself, or by and with his actual knowledge and consent, to warrant a judgment voiding the election herein." The judgment was that the respondent was not duly elected—that the election was void "by reason of corrupt practices committed by himself personally, and by reason of other corrupt practices committed by his agents with his knowledge and consent."

In the outset, I must say (speaking for myself only) that I entirely concur in the introductory observations to the judgment delivered, to the effect following : "The difficulty which I have experienced in evolving truth from the greater part of this mass of evidence has been great beyond what can well be conceived, arising from the fact that the manner in which many of the witnesses gave their evidence—who from their intimate connection with the respondent in his business relations, and in the connection with the canvass on his behalf, should reasonably be expected to be able to place matters in a clear light—has left an impression on my mind that their whole object was to suppress the truth."

Apart from the weight to which the opinion of the learned Judge is entitled, he having heard the whole evidence and having had the fullest opportunity to notice the demeanour of each witness—his manner of giving evidence, whether serious and considered or otherwise—and having myself repeatedly gone over it to compare the statements of the witnesses, I feel it my duty to say that I recognise the justice of the censure thus passed upon no inconsiderable portion of the testimony; and severe as the comment undoubtedly is which the learned Judge felt himself called upon to make in regard to the evidence of Mr. John W. King, I see much reason for thinking that it was not uncalled for. One illustration of the want of correspondence between their verbal resolves and their actions may be given. On the afternoon or evening of Saturday the 16th January (the poll was to take place on Monday following), as one witness stated, "We spoke about spending money, but it was resolved not to. It was the subject of general conversation. Spending money was talked of the same as any other election matter, but there was no way of spending it, the law was so strict." On the Sunday evening (Mr. James Norris is the witness) some parties met at Mr. John W. King's house, at St. Catherines, Mr. King being the bookkeeper and confidential clerk of the respondent. Mr. Norris says. "There was a discussion that evening which could lead to the requirement of money. They spoke, I think, of money being used against them. The party said so. * * * The impression among us was that money was being used against us, and we spoke of using money to counteract it. We decided not to use any money." That same evening, at a late hour, Robert McMaugh and Hugh Hagan left St. Catherines. They drove to Clements', the postmaster, and with him went to several houses. The evidence as to the acts of some one or other of them is quite sufficient as against them to sustain the charge of bribing voters. Whether the evidence, on a consideration of the whole case, will bring the respondent within the scope of subs. 2 of sec. 3, of 36 Vict., c. 2, on the ground of corrupt practice committed by and with his actual knowledge and consent, is a question which will be more conveniently disposed of after other cases have been stated and remarked upon.

[The learned Chief Justice here referred at length to the Clements case, but thought that there was not sufficient evidence that the respondent did, or that King did on respondent's behalf, give or lend, or agree to give or lend, or offer or promise any money or valuable consideration, either to Clements or his wife, to induce him to vote for respondent.]

The case of treating during polling hours in a tavern in the town of Niagara, by giving spirituous liquors which were drank in the tavern, calls for an interpretation of the 66th sec. of the Act of Ontario 32 Vict., cap. 21.

That section is placed in a division of the statute headed "Keeping the peace and good order at elections," and is thus worded : "Every hotel, tavern and shop in which spirituous or fermented liquors or drinks are ordinarily sold,

shall be closed during the day appointed for polling in the wards and municipalities in which the polls are held; and no spirituous or fermented liquors or drinks shall be sold or given to any person within the limits of such municipality during the said period, under a penalty of $100 in every such case."

The law previously in force in the Province of Canada on the same subject was: "Every hotel, tavern and shop in which spirituous liquors are ordinarily sold, shall be closed during the two days appointed for polling in the wards or municipalities in which the polls are held, in the same manner as it should be on Sunday during divine service, and no spirituous or fermented liquors or drinks shall be sold or given during the said period, under a penalty of $100 against the keeper thereof if he neglects to close it, and under a like penalty if he sells or gives any spirituous or fermented liquors as aforesaid."

It is, as I understand, contended that the change of language in the latter act, omitting the special limitation of the penalty to "the keeper thereof," makes no difference in the construction, and that the offence which subjects to the penalty can only be committed by the hotel, tavern or shop keeper, under the present statute, which I shall not contend would not be the true construction of the statute of Canada.

It is also, as I learn, further contended that section 66 creates only *one* offence, consisting of two parts, viz.: (1) not keeping the tavern, &c., closed; (2) selling or giving spirituous or fermented liquors to any person. If the latter proposition be correct, it may be that no one but the keeper can incur the penalty; but, confining attention strictly to the language of the section, I think the proposition untenable.

I will first endeavour to meet a suggestion that, unless the section is read as indivisible, the non-observance of the first part will incur no penalty. This appears to me to make the question depend upon punctuation. Put a full stop after the word "closed" and it may be so; but read the whole together, without pause, or even with a comma after "closed," and give legitimate effect to the closing words, "under a penalty of $100 *in every such case*," and the objection disappears. In every case in which the preceding enactments are violated a penalty is inflicted, as well when the house is not kept closed as when a glass of wine or of spirits or of beer is sold or given.

There is a further reason for construing this section distributively, though the amount of the penalty is the same in all cases. The authority of *Crepps* v. *Durden*, Cowp. 640, has never been questioned; it has been frequently recognised, and was the unanimous judgment of the Court of King's Bench, delivered by Lord Mansfield. The point decided was that where a statute imposed a penalty upon a man for exercising his ordinary calling on the Lord's day, he could commit but one offence on the *same* day. As regards the form, it can make no difference that our statute is mandatory, ordering that the house, &c., be kept closed, while in the English act it is prohibitory—"No tradesman or other person shall do or exercise any worldly labour, business or work of their ordinary calling on the Lord's day." In Lord Mansfield's language, "The offence is exercising his ordinary calling on the Lord's day, and that, without any fraction of a day, hours or minutes, it is one entire offence, whether longer or shorter in point of duration, and so whether it consist of one or a number of particular acts." In that case the act complained of was exercising his ordinary calling by selling hot rolls of bread. That was the mode in which the ordinary calling was exercised. The selling hot rolls was not prohibited, the exercise of the ordinary calling was. In our case the Legislature have not stopped short at commanding that the tavern should be kept closed, they have also prohibited two other distinct matters —selling and giving liquor, &c. The first is of a character which falls directly within the principle of *Crepps* v. *Durden*—only one such offence can be committed on the same day; the second, forbidding acts which may be repeated again and again with or to different individuals all day long—and they have imposed the penalty *in every such case.*

It appears to me to follow that the keeper of the hotel, tavern or shop is the only person who can incur a penalty for not keeping the same closed during the day appointed for polling.

The violation of this 66th section is made a corrupt practice by 36 Vict., cap. 2, s. 1, provided such violation occurs "during the hours appointed for polling." The reason for a difference between the 66th section and the 1st section of 36 Vict., cap. 2, is not very obvious; but for some cause penalties are imposed by the one for any violation of its provisions during the *day* appointed for polling; but to constitute the same violations corrupt practices, they must take place "during the *hours* appointed for polling." With that exception, the offences remain as defined in the 66th section, and for the purpose of imposing the penalty there is no change. The Legislature, however, appear to have taken a more serious view of these offences

than they did when the Act of 1868 was passed. There may have been a necessity for some greater punishment than a mere pecuniary penalty to check the undiminished practice of having taverns open on polling days, or of selling liquor or treating on those days, and hence the additional provision in the 36th Victoria.

But for the word "*give*" I might have thought the whole section 66 was confined to the keepers of hotels, taverns and shops. But looking at the object, viz., "Keeping the peace and good order at elections," and the prohibition to *give* as well as to *sell*, I think that would be too narrow a construction; and I am of opinion that any person who during the day appointed for polling shall give any spirituous or fermented liquor or drink to any other person within a hotel, tavern or shop in which such liquors or drinks are ordinarily sold, in the wards or municipalities in which the polls are held, is as guilty of a violation of the section in question as the keeper of such establishment would be who himself should give the liquor. If it was intended to limit sec. 66 to the hotel keepers, &c., by the provision that no spirituous or fermented liquors or drinks shall be sold or given, it would have been much simpler to have said within his hotel, &c., instead of within the limits of such municipality, and simpler still to have said, and no keeper, &c., of any such hotel shall sell or give, &c.

The peculiar form of expression tends to show that the Legislature intended to prescribe one thing, *i.e.*, keeping the hotel, &c., closed; and to forbid another, *i.e.*, selling or giving liquor, and to impose a penalty on every person who neglected to obey the one or who acted in defiance of the other.

As the tavernkeeper, &c., who sells in violation of the statute commits an offence, so the purchaser is equally guilty with the former if he gives the liquor purchased by him to persons in the tavern.

That Larkins was an active agent of respondent is sufficiently proved, and in my view of the law he was guilty of a corrupt practice in treating at Doyle's. The learned Judge, after a very elaborate consideration of the statute and of other authorities which he has referred to in relation to the question, held that the election could not be avoided for this treat, and the petitioner has not appealed against that decision.

The case of W. H. Stewart (the coloured man) remains to be considered. Upwards of two years before the election a pair of respondent's horses ran over Stewart's wife, and one of her legs was broken. She was laid up for eight months in consequence. At that time Stewart was indebted to the respondent, and the debt was written off in the respondent's mill book. Mr. J. W. King gave this account of the matter: "Mr. Stewart had no legal claim. It was an act of charity to pay him what we did. It is two years since we paid him, whatever it was. It was given as a little present on account of the affliction." And on the 23rd November, 1872, Stewart signed a receipt in presence of J. W. King, as follows: "Received from S. Neelon the sum of fifty-four dollars and sixty-six cents, in full of all accounts or claims whatsoever." About a week before the election now under consideration, the respondent having apparently heard that Stewart or his wife were dissatisfied, sent his salesman, Sisterson, to see her. She told him she was not satisfied—she did not think respondent had done her justice. After the election she came and saw the respondent, and he told her he would give her $30, and asked if that would satisfy her. Credit was then given for $19.12 on an account against Stewart, and $18.88 was paid to her in cash, by respondent's direction. But before this payment, and also about a week before this election, Stewart and the respondent met at the municipal election at the Grantham schoolhouse, and according to Stewart's account, respondent said to him, "I would like to have you with me at the election." Stewart replied he could not very well be with him, because he, respondent, did not give what Stewart thought were the damages due to his wife. That he told respondent he had not done him justice, and that respondent said if he had not done what was right he was able to make it right. Respondent did not say anything about his (Stewart's) vote, but he told more than one time that he would like to have Stewart with him. Daniel Stanley was sitting with Stewart at the time, and says respondent asked Stewart if he was going to do anything for him; that Stewart said "No, sir, I cannot." Respondent asked, "Why?" Stewart said, "You did not do the fair thing when my wife's leg was broken." This is Stanley's account, and he goes on: Mr. Neelon said, "If you will see me in this cause or case, if I have not done the fair thing, I will do the fair thing." Stanley says he heard the conversation distinctly—he could not help hearing it particularly, and did not think there was anything wrong in what was said at the time, and did not think from the language that Mr. Neelon was trying to buy the man's vote. And Robertson, who was standing near, heard respondent say, "Mr. Stewart, I am willing to

do it, and will do it." Stewart says respondent began the conversation by saying, "I would like to have you with me at the election." Then Stewart expressed his dissatisfaction as to the compensation made for the injury to his wife, and respondent said if he had not made it right, he was able to make it right. And he wound up his evidence by saying, "Mr. Neelon said to me, 'Mr. Stewart, I want to do what is right. I am able to do what is right. I can do what is right.' It was not said by way of a bargain. Mr. Neelon only told me he wanted me to support him; he did not make the payment depending on my voting for him." Stewart told his wife what had passed, and she wrote a letter to respondent, beginning, "You sent me word by my husband *about voting, and what I had to say, and if you* do what is right, he can use his own pleasure about it. * * * And now you can use your own pleasure about it, but I think you will do what is right. If you do, give me $100, and I don't think that will be anything out of the way." This letter is dated January, 1875, no day stated. Stewart says he went to the mill about dusk with the letter, and gave it to a man who attends at the mill. He saw King and Sisterson afterwards, and not hearing anything about the letter, he asked Mr. King if he had seen the letter, and he said he had read it, hung it up, and put it on fyle. He afterwards asked Mr. King, and he said respondent had read the letter and placed it on fyle. Then afterwards he saw respondent, who gave him $30—not all in cash. He deducted a bill Stewart owed at the mill, and gave the balance in money. Sisterson says that about a week before the election, respondent sent him to see Mrs. Stewart. He told her respondent was still able to do justice—he did not say respondent *would* do justice; he was not authorised to say anything of the kind. Mrs. Stewart told him she would write a letter. It was at her own dictation that she wrote the letter stating what her claim was, and Sisterson said, "That will be just as well."

In reference to this the respondent swears:—"I gave him (Stewart) to understand I would not give him a cent to go with me in the election. I used no such language as 'If I had not done the fair thing, I will do it if you will be with me,' or anything in substance the same; nor did I say, 'If I had not made it right, I would make it right.' After the election was over, Stewart came to the mill and asked if I had received a letter he had left there. I said no. He went out and made inquiry of King or Sisterson, and they came in with the letter, which was found in a pigeon hole in my desk. I opened the letter and read it."

Looking at the whole of this evidence, I cannot resist the conclusion that the respondent errs in his representation—(he does not say so in express words)—that he knew nothing of this letter until after the election. He had heard of Mrs. Stewart's dissatisfaction, and before the election he sent Sisterson to her; she told him she would write, and his statement clearly indicates he was present when she dictated the letter; his remark "that will be just as well," clearly indicates that he knew of its contents, makes it at least highly probable that she had expressed her views to him, which, but for the letter, he would have communicated to respondent. Sent for the express purpose of asking Mrs. Stewart "what was the matter with her," Sisterson must, on his return, have given some account to respondent, and if he said what, if his present account be true, he must have said, that she was going to send a letter, it makes it unlikely that the letter, when it arrived, should have been put away in a pigeon hole unopened. King says, in reference to letters for respondent arriving when he was not at the mill—"If he was not at home I opened them. * * He was not absent, only for meetings, and his letters always remained *on his desk*." Stewart swears that King told him that he had read this letter and put it on fyle, and afterwards told him that respondent had read it and put it on fyle. If King read it, and it seems to have come to his hands upon or soon after its arrival at the mill, I cannot assume that he put it in respondent's desk without mentioning it. On the whole, I deduce as a fact that respondent became aware of it before the election, and thought it as well to leave Stewart to vote without further interference, being satisfied Mrs. Stewart would not influence him adversely.

But in any event the letter shows what impression the conversation with respondent produced at the time on Stewart, and I attach more value to that than to his subsequent assertion, which literally was no doubt true, that respondent did not make the payment depend on his voting for him. Stewart went to his wife, apparently immediately after parting with respondent, and tells her about it, and she writes, or rather dictates, a letter to respondent, beginning, "You sent me word by my husband *about voting*, and what I had to say, and if you do what is right he can use his own pleasure about it." I cannot doubt, that whatever were the precise words used by respondent, the

conversation between him and Stewart related to the election and to Stewart's vote, and that Stewart's statement that respondent said to him "I would like to have you with me at the election," is the key-note to all that followed. Stewart understood it, though his vote was not directly mentioned, and the respondent expected it would be so interpreted though so guardedly veiled; and the subsequent settlement and payment confirm me in this conclusion.

I feel therefore constrained to hold this to have been an indirect offer, originating with the respondent, of money or valuable consideration, made to Stewart to induce him to vote for respondent at the coming election, and I therefore agree in the judgment that the election is void by reason of this corrupt practice committed by the respondent himself, as well as by reason of other corrupt practices committed by James S. Clement, Robert McMaugh, Hugh Hagan, and others his agents.

Before concluding, I desire to make an observation as to the proceedings and bribery which are proved to have occurred on the Sunday night before, or in the early morning of the day of the polling.

The professions of a candidate that he is entirely ignorant of the conduct and acts of his most zealous supporters, especially in reference to such acts as are rarely adopted except as a last resort, must unavoidably be regarded with suspicion, and cannot be accepted without scrutiny. And this the more if among these supporters are found some who for years have been and still are in his service, employed and trusted by him in business relations, some of them confidential, and of frequent, perhaps daily occurrence—the candidate, to insure immunity, to all appearance keeping aloof from the consultations of his friends, avoiding any apparent participation in their acts, and thus remaining ignorant of everything which might not become known to the most ordinary observer—ignorant, in fact, because he will not use the means of information which surround him.

Such ignorance brings to mind the old maxim, *Ignorantia juris quod quisque tenetur scire neminem excusat*, and makes Mr. Best's comment on the maxim more pertinent: "If those only should be amenable to the laws who could be proved acquainted with them * * * persons would naturally avoid acquiring a knowledge which carried such dangerous consequences with it."

And so the wilful avoidance of a knowledge also fraught with danger might, without much strain, be deemed evidence of approval or even of consent.

But in this case I do not find any proof of a determination to resort to bribery until a late hour on Sunday evening, and it was immediately acted upon and carried out by an early hour on Monday morning. As a fact, I cannot find proof of the respondent's knowledge or consent. The evidence of agency I think ample, so also of bribery by those agents, and this avoids the election. The shortness of the interval between the resolve and the execution renders improbable the fact of the respondent's actual knowledge, and a finding against him ought to be free from reasonable doubt.

Burton, J.—I concur in thinking that this appeal must be dismissed, but I desire to base my decision entirely upon the Stewart case.

I agree with the learned Chief Justice, that there is no evidence to connect the respondent with what is spoken of as the Sunday raid. That transaction was conceived and carried out only a few hours before the polling day, and there is not a scintilla of evidence to show that the respondent had knowledge of it, nor, in my opinion, that there was any arrangement to which he was a party, that he should be kept in ignorance of the particular acts of corruption, whilst having a general knowledge that such means were being employed; and adopting the language of the late Mr. Justice Willes: No amount of evidence ought to induce a judicial tribunal to act upon mere suspicion, or to imagine the existence of evidence which might have been given, but which the petitioner has not thought proper to bring forward, and to act upon that evidence, and not upon that which really has been brought forward; and that when circumstantial evidence is relied on, the circumstances to establish the affirmative of a proposition must be all consistent with the affirmative, and that there must be one or more circumstances believed by the tribunal, if you are dealing with a criminal case, inconsistent with any reasonable theory of innocence. There is nothing in the whole of the evidence which is not consistent with the respondent's innocence.

As regards the Stewart case, there was evidence which might impress different minds differently.

In dealing with the finding of the learned Judge upon that evidence, we are much in the position of Judges when a rule is moved for to set aside the verdict of a jury on the ground that the verdict is against evidence. The Judges do not consider what conclusion they would have arrived at had they been placed in

the position of the jury, but whether there is sufficient evidence to warrant the verdict, and whether the presiding Judge is satisfied with it. Here the learned Judge has found upon the evidence adversely to the respondent, and I should not presume on a question of fact to set up my opinion against his, when he had the advantage of hearing the witnesses, apart from the deference which I feel to be due to a Judge of his learning and experience.

PATTERSON, J.—This is an appeal from the decision of Mr. Justice Gwynne, which set aside the election and disqualified the candidate for corrupt practices committed by him.

The evidence on one of the charges, viz., that of bribing a coloured man named Stewart, is quite sufficient to sustain the finding, and I see no reason for taking a different view of it from that taken by the learned Judge.

The facts stated in evidence were, that Stewart's wife had her leg broken about two years before the election by Mr. Neelon's team, which had run away, and Mr. Neelon had paid her or her husband $55 as compensation, partly by cancelling an account and partly by cash. It does not appear that after that settlement the Stewarts had had any open account with Mr. Neelon, or had been obtaining goods on credit, until January, 1875. The Stewarts were dissatisfied with the settlement, but nothing was done to remove their dissatisfaction until the approach of the election now in question. This election was on the 18th January, 1875. When the municipal election for the township of Grantham was being held, in the beginning of the same month, Mr. Neelon spoke to Stewart in a school-house where a number of people were, and asked for his support, which Stewart declined to promise, saying that Mr. Neelon had not done the fair thing when his wife's leg was broken, and Mr. Neelon gave him to understand that he was willing to "do the fair thing." Mr. Neelon himself denies that he made any promise to Stewart, although he says that Stewart had put forward his grievance as a reason for not supporting him, both on the occasion in the school-house and on another occasion shortly before that, when Mr. Neelon had been canvassing him for his vote. After going home from the school-house, Stewart appears to have told his wife of the conversation with Mr. Neelon, and some little time afterwards she wrote, or dictated to her daughter, a letter to Mr. Neelon, commencing thus: "Mr. Neelon, you sent me word by my husband about voting, and what I had to say, and if you do what is right he can use his pleasure about it," and ending by asking $100 more. Mr. Neelon had asked a Mr. Sisterson, who was his salesman at the mill, and apparently a confidential agent in the election contest, to go to Mrs. Stewart to see "what was the matter with her," and Mr. Sisterson was at her house when this letter was being written, and was told of it by Mrs. Stewart. The letter was promptly sent by Stewart, and delivered to some one at Mr. Neelon's mill or office. Mr. Neelon says the contents of it did not come to his knowledge till after the election. There is quite room on the evidence for a different inference, but the matter is not very important. The letter shows, at all events, the terms on which the Stewarts understood the negotiation to be proceeding. Following Sisterson's visit and the sending of the letter, the facts next in order of time are shown by entries in Mr. Neelon's books, where Stewart is charged, under date 13th Jan., $4.44 for flour, &c, and on the 16th Jan., $11.17. The election was on the 18th January. On 10th Feb. Stewart is charged with flour, &c., to the amount of $3.51, making in all $19.12. Afterwards, Mr. Neelon himself settled with Stewart, allowing him $30 additional compensation in respect of the accident, which he paid by giving him in cash the difference between the $19.12 and the $30.

The learned Judge having been satisfied, upon evidence of this character, that Mr. Neelon had directly or indirectly, by himself or by some other person, given, offered, or promised money or valuable consideration to Stewart in order to induce him to vote, it is impossible for us to say that he ought to have come to any other conclusion.

This disposes of the appeal without the necessity of discussing the other matters covered by the very careful and elaborate judgment of the learned Judge. One of these subjects, viz., the construction of section 66 of the Act of 1866, and the effect of the Act of 1873, when that section has been violated with the knowledge and consent of the candidate, we have already had occasion to notice in the judgment of this court in the *North Wentworth case*. And we have further to construe section 66 in the *South Ontario case*, in which judgment is now to be delivered.

With respect to the charge founded on what is spoken of as the "Sunday raid," I shall merely say that I am not prepared to assent to the application to that case of the principle on which the *London Election case* was decided, or to hold that on that principle alone the candidate is to be fixed with knowledge of the bribery committed by his agents, however gross and delib-

erate that bribery may have been, and however strong may be the suspicion created in our minds that the candidate can hardly have been quite ignorant of what was being done on his behalf. I entirely assent to the distinction which was clearly pointed out by Mr. Robinson in the very able argument which he addressed to us, between the case of a city where, within a comparatively small area and for the space of two or three weeks, bribery had been going on so extensive and so flagrant as to be appropriately described as pervading the atmosphere; where not to ascribe knowledge of it to the candidate in whose interest it was committed, and who was on the spot, would be to forego experience and give no weight to probabilities so strong as to be almost irresistible; and where, in the graphic language of the same learned Judge whose judgment is now on review, one could "as readily believe it possible for the respondent to have been immersed in the lake and to be taken out dry, as that the acts of bribery which the evidence discloses to have been committed on his behalf, almost under his eyes, in his daily path, with means of corruption proceeding from his own head-quarters and from the hands of his confidential agents there, could have been committed otherwise than with his knowledge and consent," and the present case, where what was done was done only a few hours before the election, and though initiated in the town where the candidate lived and by agents who were in his confidence, was carried out at a place several miles away, and amongst the voters in one locality only of a county constituency.

I agree that the appeal should be dismissed with costs.

Moss, J., concurred.

Appeal dismissed with costs.

CHANCERY CHAMBERS.

Moody v. Tyrrell.

Solicitor—Payment of money to Solicitor.

The retainer of an attorney or solicitor to collect a demand, and to take such proceedings as he may deem proper to effect this object, gives him authority to receive the amount before or after suit, and to discharge effectually the party making the payment, unless the client restricts or terminates the authority given to his attorney or solicitor.

[January, 1876—Blake, V.C.]

Proceedings in this suit were commenced for the purpose of recovering against the estate represented by the defendant damages for breach of a covenant entered into by one Solomon White. On the 15th of March, 1873, by a consent decree it was declared that the plaintiff was entitled to be paid, by way of damages for the breach of this covenant, the sum of $830, and it was ordered that the defendant should, within one month from the date of the decree, pay to the defendant the sum of $830 and the costs, and in default of such payment that the estate of Solomon White should be administered. On the 16th of April, 1873, the defendant paid the solicitor of the plaintiff $700, and on the 3rd of May following the sum of $200, and on the 6th of August of the same year he tendered the plaintiff $195.33 as the balance due. The solicitor for the plaintiff absconded without paying over the $900 paid to him.

On the allegation that the payment to the solicitor was not a good payment, a motion was now made by the plaintiff under the liberty reserved in the decree, for the administration of the estate in question. The plaintiff had employed one Foster, his father-in-law, to look after the suit for him, and the defendant, in resisting the motion, put in affidavits to show that Foster was told of the first payment at least to the solicitor, and neither he nor the plaintiff made any objection.

Hoyles for the plaintiff.

J. A. Boyd for the defendant.

Blake, V.C. There is no doubt that no instructions were given to the defendant not to pay the money to the plaintiff's solicitor, nor to this solicitor not to receive the amount found due. I think the proper conclusion from the evidence is that the plaintiff intended that his solicitor should receive the money for him whenever the defendant paid it. Charles McVittie, clerk of the plaintiff's solicitor, says, that at the date of the first payment he told the plaintiff the amount had been received, and that the defendant had promised to pay the balance shortly; that Foster and the plaintiff's wife were also told of this payment. He says they expected the money would be paid to Whitley (the absconding solicitor). Foster says he understood the defendant was to pay the money into Whitley's office, and he heard that some of the money had been paid to Whitley, who would not settle until all the money was paid over.

I do not think there can be any doubt that, when a client instructs an attorney or solicitor to collect a demand he may have, he thereby empowers him to receive from the defendant payment of that which is handed over as a satisfaction of the claim, and that such payment is a good discharge to the debtor or defendant. By his employment he appoints him his agent to

demand satisfaction in respect of the claim of his client; to take proceedings in case the demand be refused; to compromise if thought proper, and to receive the result of the litigation; and, as a consequence, effectually to discharge the person making the payment. In this respect I can find no difference between the position of an attorney and solicitor.

Mr. Pulling says, p. 104: "The attorney for the plaintiff in an action is the proper person to whom payment or tender of the debt, or damages or costs, should be made. And the attorney on the record is deemed the proper hand to receive the fruits of the execution, and to enter satisfaction after payment; and by his general authority in the action he may remit the damages, or, as it is said, acknowledge satisfaction, though nothing is paid." I think Mr. Pulling is incorrect in the last statement he makes. In Archbold's Practice (vol. i., p. 87, 12th ed.) it is said, in speaking of the power of an attorney, "If he is authorised to do a particular act, he may do everything that is necessary for the accomplishment of it. Where a party is sued for a debt, payment or tender of it to the plaintiff's attorney is the same as payment or tender to the plaintiff himself, and the attorney's receipt binds the client." This rule seems to date back for many years. In *Morton's case*, 2 Shower, case No. 115, p. 140, it is said: "Suppose that the sheriff die or become insolvent, the plaintiff must not lose his debt; otherwise, if the money had been paid to the plaintiff's attorney upon record, for that would have been a payment to the plaintiff himself." Some years after that we find the very strong case of *Powell* v. *Little* 1 W. Bl., 8, "The plaintiff had privately countermanded his attorney in this cause. The defendant afterwards pays him the debt in dispute for the use of the plaintiff, and the Court held it a good payment, because the attorney was changed without leave obtained from the Court."

In *Crozer* v. *Pilling*, 4 B. & Cr., 28, *Morton's case* is approved of. "F. Pollock now moved for a new trial. First, he contended that the debt and costs ought to have been paid or tendered to the plaintiff, and not to his attorney upon the record. [Upon this point the Court intimated a clear opinion that the attorney upon the record was the proper person to receive payment of the debt and costs, and that the tender was properly made to him.]" Bayley, J., says, "In *Morton's case* it is laid down by the Court that a defendant is not bound to pay money to the sheriff, but to the party, and it was said that it was sufficient if the money was paid to the plaintiff's attorney upon the record, for that would have been a payment to the plaintiff himself." In *Savory* v. *Chapman*, 11 Ad. & El. 832, Littledale, J., says: "The authority of an attorney in general is determined after judgment, but he may still sue out execution and receive the money, and his receipt is then the same as that of the principal; and according to 1 Roll, Ab., 291, tit. Attorney (M.), cited in Com. Dig. Attorney (B. 10) he may, after payment, acknowledge satisfaction on the record." In *Mason* v. *Whitehouse*, 4 Bing. N. C., 692, it was held that "a demand by the attorney of the party, without an express power of attorney, was sufficient," and an attachment issued for the non-payment of the sum thus demanded was allowed to stand. The judgment of the Court in *Bevins* v. *Hulme*, 15 M. & W. 88 seems conclusive as to the authority of the attorney. The Court there says: "We agree that the original retainer is to be presumed, *prima facie*, to continue as long as by law it might, as argued by Mr. Prideaux on the authority of Lord Ellenborough's *dictum* in *Brackenbury* v. *Pell*, 12 East 588; although we think he was right in contending that the original retainer was not determined by the judgment, but continned afterwards, so as to warrant the attorney in issuing execution within a year and a day or afterwards, in continuation of a former writ of execution issued within that time, and also to warrant his receiving the damages without a writ of execution, the weight of prior authorities being against the decision of Heath, J., in *Tipping* v. *Johnson*," 2 B. & P., 257. It is to be observed that the Common Law Courts, while thus laying down the law as to the power of an attorney, do not differ at all from the practice found in Courts of Equity, as to the power of a solicitor to bind his client by a receipt of mortgage money. This is shown in the case of *Sims* v. *Brutton*, 5 Ex. 802, decided by the Court of Exchequer, which agrees with the decision of Lord Hatherley, in the case *Withington* v. *Tate*, L. R., 4 Chy. 288. Upon the facts found in this case it cannot be taken that it was any part of the business of the defendants as solicitors to receive repayment of the mortgage money, and lay it out again at interest. For that purpose there must be some authority, either express or applied. *Wilkinson* v. *Candlish*, 5 Ex. 91, decided that a solicitor has no authority, from the mere possession of the mortgage deed, to receive either principle or interest."

In *Broudillon* v. *Roche*, 27 L. J., Chy. 681, the present Lord Hatherley considered the position of a solicitor as to the receipt of money on behalf of his client; and after reviewing the authorities, placed the matter upon an intelli-

gent footing. He quotes with approval the language of Lord Justice Turner in *Viney* v. *Chaplin*, 27 L. J. Chy. 434: "I take it to be settled that a solicitor is not by virtue of his office entitled to receive purchase moneys, even although he may have possession of the deed of conveyance; and it would be strange if he were, for it is no part of the ordinary duty of a solicitor to receive money belonging to his client, and the deed of conveyance comes into his hands for a wholly different purpose;" again he approves of this language, "that it was no part of the ordinary business of a solicitor to receive purchase money, and he could not fix Plowman with the consequences of Roche's receipt, being unable to draw any distinction between purchase money and money due on mortgage." So that the power to receive money appears to rest on the object for which the attorney or solicitor was retained.

I think it is clear that when an attorney or solicitor is retained to collect a demand, and to take such proceedings as he may deem proper to effect this object, that it embraces the right to receive the amount from the defendant before or after suit, unless or until the plaintiff restricts or terminates the authority given to his solicitor; that by this employment the solicitor is appointed the agent of the plaintiff to demand and receive the claim, and to discharge effectually the party making the payment. This right does not allow the attorney or solicitor to receive money of the client because he may happen to have deeds, mortgages, or other papers in his hands belonging to him, unless the client instructs the solicitor to receive the money which may be paid him. It does not follow from this conclusion that a person ordered to pay money into court is effectually discharged by paying it to a solicitor; nor that money once paid into court can be paid out otherwise than personally to the party entitled to receive it, or to his agent duly appointed under a power of attorney. In the first case the Court requires an exact fulfilment of the terms of its decree, and in the latter it sees that the money goes directly to the hand entitled to receive it. In some cases the Court in England appears willing to relax somewhat this rule: *Ex p. De Beaumont*, 13 Jur. 354; *Waddilove* v. *Taylor*, 13 Jur. 1023; *Mansfield* v. *Green*, 1 W. N. 220.

In the present case the solicitor was retained by the plaintiff to collect from the defendant the demand, the subject of the suit. The solicitor was bound to take steps that would lead to this result, and was entitled at any time to receive from the defendant that which he was employed to collect. This power was never withdrawn, and, in the exercise of it, he received $900 of the claim, and to that extent he effectually discharged the defendant. The plaintiff cannot therefore collect this from the person who has paid it; and as these proceedings are taken to endeavour to effect this object, the application must be dismissed with costs.

Re Bazeley.

Infants—Application of property for maintenance—29 Vict., cap. 17, and 33 Vict., cap. 21, sec. 3.

33 Vict., cap 21. s. 3 (O), only authorises the application of the interest on insurance moneys, apportioned to infants under 29 Vict., cap. 17, for the maintenance of the infants. The principal can, under these acts, only be applied for advancement, but under the general jurisdiction of the Court may be applied for maintenance.

[February 7, 1876—Proudfoot, V.C.]

The deceased father of the infants had insured his life under 29 Vict., cap. 17, for the benefit of his wife and children. The amount apportioned to the children was $1,000, and was held by a trustee for them. It was shown that the income had already been anticipated to the extent of $100, and that the necessities of the children required payment of a portion of the principal.

Foss now applied on behalf of the children for an order authorising the application of a portion of the principal for the maintenance of the infants.

Proudfoot, V.C.—I do not think that I could give any direction involving the application of the principal for maintenance if the case depended on 33 Vict., cap. 21., s. 3. That act only authorises the application of the interest for maintenance. The principal may be applied for advancement.

But the petitioner may amend his petition, asking relief under the general jurisdiction of the Court, and when that is done an order will be made.

Under the circumstances of this matter I think it would be a proper direction to sanction the application of $100 for the immediate necessities of the children, and application may be made again if the necessity continue. The costs of this application to be paid out of the funds.

MASTER'S OFFICE.

Kennedy v. Brown.

Costs—Higher or lower scale.—Subject matter involved in the suit.

A bill was filed for the specific performance of a contract for sale of land, for a sum less than $150. Before suit the plaintiff, the vendee, had entered

upon the land and made improvements upon it, which increased its value to more than $200.

Held, that the "subject matter involved" in the suit was more than $200, and that the plaintiff was therefore entitled to costs according to the higher scale.

[February 15, 1876—Taylor, Master.]

The bill in this suit was for specific performance of an agreement, whereby defendant agreed to sell to plaintiff a certain parcel of land for less than $150. After the agreement, and before bill was filed, plaintiff entered upon the land and erected a house upon it, which increased the value of the land to more than $200. Decree was for specific performance, and contained a reference to the Master, to inquire how much was due to defendant, and directed defendant to pay to the plaintiff his costs of suit. The Master found that the amount due was less than $200.

Hoyles, for defendant, contended that under the above circumstances plaintiff was only entitled to costs upon the lower scale.

J. S. Ewart, for plaintiff, contended that the value of the land, together with the building, was the test.

Taylor, M.—The plaintiff seems entitled to have his costs taxed upon the higher scale. What is "the subject matter involved?" The land as it stood at the date of filing the bill. It is true that the purchase money agreed to be paid for it, when bought some years before, was less than $200; but in the meantime improvements have been made, and the value of these added to the land, make it of greater value than the $200. These are all involved in the present suit.

NOTES OF CASES

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

QUEEN'S BENCH.

HILARY TERM, 1876.

Stubbs v. Johnston. (March 17.)

Contract—Construction.

Action on agreement, whereby plaintiff agreed to cut, &c., a certain number of standard logs on 1,800 acres of land mentioned in a schedule to the agreement, for specified prices, which agreement, after other provision as to building roads, etc, concluded, "the defendants to provide the pine timber which is to be cut on the lots mentioned," &c. Breach, that the defendants did not provide the pine logs or make roads, &c. Second count for money payable for logs cut, &c.

Held, that under the terms of the contract the defendants were not bound to point out the trees to be cut on the land; that the word "provide" applied to the lots of land.

The jury having found that the plaintiff was overpaid $100 for the trees actually cut, and $10 in his favour as damages for breach of contract in defendants not building certain roads, and a verdict having been entered at *nisi prius* for the defendants, *held*, also, that the plaintiff was entitled to a verdict of $10 on the count for the breach.

J. K. Kerr for plaintiff.

Osler for defendants.

Spooner et al. v. Western Assurance Co. (March 17.)

Marine Insurance—Average—Deck-load.

Special case. Plaintiffs owned the vessel "Canadian," insured with defendants against perils of navigation, the policy containing no exceptions as to deck-loads. On the 19th September, 1873, the plaintiffs' agent undertook to carry a full hold and deck-load of coal from C. to T.; the bill of lading contained the words "*all property on deck at the risk of the vessel and owners.*" The vessel went ashore on the voyage between C. and T., and was got off by a tug after the deck load was thrown overboard. The case stated that the usage of vessels on this route was to carry deck loads, and that the jettison of the deck-load was made to save the vessel and the rest of the cargo. A statement of general average having been made, the plaintiffs insisted that defendants must contribute.

Held, though with some doubt, that under the special terms of the bill of lading, quoted in italics, the defendants were not liable; but for these terms, the decision might have been otherwise.

Remarks on the propriety of placing such a contract beyond doubt by clear and unambiguous language.

McMichael for plaintiff.

Bethune for defendant.

Ætna Insurance Company v. Green. (March 17.)

Insurance—Agent—Payment.

One B., plaintiffs' agent, effected an insurance on the life of defendant, who was in charge of a branch of the City Bank. B. had overdrawn his account at this branch, and when defendant

was about to pay the first premium on the policy, B. asked him to deposit it to his (B.'s) credit. Defendant accordingly drew a cheque on another branch where he had funds, and the amount was transferred to B.'s credit. B. at the time handed the policy to defendant duly executed. B. not having paid plaintiffs this sum,

Held, in any action to recover it from the defendant, that the transaction amounted to a payment to plaintiffs.

Semble, also, that the acceptance of the policy and the other facts raised a promise to pay the premium.

Hagel for plaintiffs.

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

VACATION COURT.

Devlin v. Hamilton and Lake Erie Railway Company.

(April 25, 1876.)

R.W. Co.—Mandamus to assess damages—Structural damage.

Defendant's road is brought into the city of H. through C. Street, a very narrow street, with the leave of the municipality. Plaintiff had one brick and two rough-cast houses on the street, and the trains caused the houses to vibrate and plaster to fall, and were a serious inconvenience to the user of the houses.

Hagarty, C.J., C.P., on an application to assess damages, *held*, that no such peculiar structural injury is shown as would entitle plaintiff to relief, and, apart from structural injury, no relief could be granted.

J. B. Read for applicant.

C. Robinson contra.

Re Arkell and Corporation of St. Thomas.

(April 28, 1876.)

Limiting licenses to one—Billiard tables—Hours for closing.

Held, following *In re Brodie and Bowmanville*, that a by-law limiting shop licenses to one is *ultra vires*.

Hagarty, C.J., C.P., *held*, that the corporation have power to declare that no billiard table kept for hire shall be allowed in any licensed tavern.

Held also, under the power given by sec. 12 of the last Tavern and Shop License Act, as to shops, that the municipality "may impose any restrictions upon the mode of carrying on such traffic as the Council may think fit," the Council may require shops to sell between the hours of 7 A.M. and 7 P.M. only.

Robinson, Q.C., for applicant.

F. Osler contra.

Re Donelly and Township of Clarke.

(April 28, 1876.)

Liquor licenses—Different duties in same municipality.

The council of a township passed a by-law fixing the duties to be paid for licenses for taverns and shops in several villages in the township at one sum, and in the rest of the township at a lower sum.

Hagarty, C.J., C.P., *held*, that the distinction was unwarranted and contrary to the spirit of sec. 224 of 36 Vict., cap. 48.

Hutcheson for applicant.

Re Wycott and Township of Ernestown.

(May 5, 1876.)

Dunkin Act by-law—Defective publication—Power to quash.

In publishing the requisition and notice for a by-law under the Dunkin Act, there was no publication at all during *one* of the "four consecutive weeks" before the day fixed for the poll, as required by sec. 5 of the act. The by-law was carried by a large majority, and there was no allegation on the part of the applicant that any voters were misled by want of the notice.

Harrison, C.J., *held*, that granting the Court might in its discretion quash the by-law, it was not, under the circumstances, a proper case for the exercise of that discretion. *Cox* v. *Pickering*, 24 U.C.Q.B. 441, and *Milcs* v. *Richmond*, 28 U.C.Q.B. 333, distinguished.

The rule was discharged without costs, as the corporation did not see fit to appear.

F. Osler for applicant.

Re McLeod and Town of Kincardine.

(May 9, 1876.)

Harbour dues—By-law to raise—Duties on merchandise.

The town of Kincardine passed a by-law, sec. 1 of which made all goods, wares, merchandise, coming into or going out of the harbour, chargeable in the hands of consignees, with certain scheduled duties for the purposes of the harbour. Sec. 2 gave the harbour officer power to seize and sell the goods for these duties. Sec. 3 gave an action for the dues; and sec. 4 provided for punishing any one evading payment of the duties. Sec. 6 provided imprisonment for 30 days, for any one who fouled, injured, or incumbered the harbour piers, &c.

Harrison, C.J., *held*, that sections 1 to 4 were clearly *ultra vires* of the corporation, as the duties must be imposed on the vessels.

Held also, that so much of sec. 6 as imposed imprisonment for 30 days must also be quashed.

F. Osler for applicant.

McMichael, Q.C., contra.

COMMON PLEAS.

MICHAELMAS TERM, 1875.

ROBERT CAMPBELL ET UX. v. JAMES CAMPBELL.

(December, 13, 1875.)

Slander—Adultery of wife—Special damage—Damages—Arrest of judgment—Evidence—Effect of judgments in crim. con. and suit for alimony.

In a declaration by a husband and wife, for the slander of the wife in accusing her of adultery, it was alleged as special damage that the wife had lost and been deprived of the hospitality of friends with whom she was in the habit of associating, and who now refused to associate with her.

Held, on a motion for arrest of judgment, a sufficient allegation of special damage to support the action.

Quære, whether the allegation of the loss of the *consortium* of the husband would have been alone sufficient.

Held also, that the declaration claiming the damages as the wife's, although when recovered they might belong to the husband, was no objection, and, at all events, merely a matter of form and so amendable.

Held also, that the course adopted by the husband at the trial, with the defendant's concurrence, in conceding the action to be, in substance, that of the wife alone, and coming forward as a witness for the defence in support of a plea of justification, and allowing the case to be submitted to the jury on the question of the truth or falsity of the accusation, would now preclude the motion in arrest of judgment.

The husband had sued the person accused of the adultery, for charging which this action was brought, and recovered a judgment against him in an action of crim. con., and judgment had been given in Chancery against the wife, on the ground of adultery, in a suit brought by her against the husband for alimony.

Held, that under these circumstances the verdict entered for the plaintiff must be set aside, when the plaintiff, Robert Campbell, if so advised might raise the question whether he was not *dominus litis*.

M. C. Cameron, Q.C., for plaintiff.

Harrison, Q.C., for defendant.

DAVIES v. APPLETON ET AL.

(December 13, 1875.)

Contract—Not to be performed in the year—Statute of Frauds—Agreement—Construction of—Right to terminate.

The plaintiff entered into a verbal agreement with the defendant to canvass Canada for subscribers to a certain book, and on completing Canada to go to Liverpool and canvass for subscribers in England, the plaintiff to be paid $3 for each subscriber he should obtain in Canada, and $8 in England. In an action for terminating this agreement it was stated by the plaintiff in his evidence that the agreement as to Canada and England was all one, and that it would take from eight to twelve months to complete Canada and over two years to do this work in England.

Held, a contract not to be performed within a year, that being the intention of the parties and apparent from the nature of the employment, that the plaintiff therefore could not recover.

Held also, that the agreement was only to pay the plaintiff for every subscriber he should obtain, neither party having the right to terminate the engagement, and the only claim the plaintiff could have against the defendant was for subscribers obtained before his dismissal, which the evidence here shewed that the plaintiff had been paid for.

M. C. Cameron, Q.C., and *R. P. Stephens* for plaintiff.

Lash for defendants.

MILLER v. THE GRAND TRUNK RAILWAY CO.

(December 13, 1875.)

R.W. Co.—Approaching highway crossings—Neglect to give signals—Liability—Misdirection.

Persons approaching and passing over level railway crossings are bound to exercise their ordinary powers of observation, and the omission to ring the bell or sound the whistle, as directed by the statute, in no way releases them from the exercise of such care.

In this case there was evidence that the morning, when the accident happened, was rather wild and blustering, with snow blowing in the plaintiff's face. The plaintiff swore that he approached the crossing on a walk, and looked both ways along the track, but saw nothing until the engine was close upon him. He then whipped up his horses, but the engine struck the sleigh, and killed one of them. Defendants' witnesses, on the other hand, said that the plaintiff could not have failed to have seen the train approaching had he looked. It was clear that the bell was not rung as directed nor the whistle sounded.

The jury were told that they must be satisfied that the plaintiff in crossing took all the precautions which a prudent man would have taken; and that if he did, taking into consideration the weather, the manner of approaching the cross-

ing, &c., and notwithstanding this the accident happened, and the defendant's servants did not ring the bell at all, or did not ring it so that the plaintiff could hear it, or until the crossing was passed, the plaintiff was entitled to recover.

Held, a proper direction, and a verdict for the plaintiff was upheld.

The views expressed in *Johnston* v. *Northern Railway Co.*, 34 U.C.Q.B. 482, considered and affirmed.

Robinson, Q.C., for plaintiff.
McMichael, Q.C., for defendants.

Darragh qui tam v. Patterson.

(January 8, 1876.)

Justice of the Peace—Neglect to return convictions—Several penalties.

Held, that the neglect of a justice of the peace to return convictions made by him, as prescribed, renders him liable to a separate penalty for each conviction not returned, and not to one penalty for not making a general return of such convictions.

The various statutes on the subject reviewed.

An application made at the trial and reserved till term to add a plea of a former judgment recovered for the non-return of the same convictions herein, was disallowed, there being no affidavit of *bonâ fides*, and the judgment appearing collusive.

J. Creasor for plaintiff.
Robinson, Q.C., for defendant.

Adams v. Corcoran.

(January 8, 1876.)

Trover—Married woman—Devise of personal property.

In an action of trover against defendant for the conversion of certain personal property bequeathed by testatrix, a married woman, to plaintiff in trust for her children, and appointing him executor, the defendant claimed the property by gift *inter vivos* from testatrix, and on such gift being disproved, defendant amongst other objections objected to the validity of the will, on the ground of the absence of the husband's consent; but there was no plea on the record denying plaintiff's status as executor, nor did defendant defend under the husband's right.

Held, under these circumstances it was not open to defendant to raise the objection.

R. Smith (Stratford) for plaintiff.
J. K. Kerr for defendant.

VACATION COURT.

Steen et ux. v. Swalwell.

(October 19, 1875.)

Bond—Failure of consideration—Equitable defence.

To an action on a bond whereby the defendant became bound to pay to the plaintiffs $400 as soon as the patent to certain land should issue, and in case one W. G. should make default in the payment of the said sum, the defendant pleaded, on equitable grounds, that the only consideration for the bond, though not stated in it, was that W. G., being the purchaser of the said land, and having paid part of the purchase money, the receipt, through some mistake, was made as if the payment had been made jointly by W. G. and one J. G., the then husband of the female plaintiff, whose name became inserted in the Crown Lands Office in connection with the lot, creating a difficulty which for some time prevented W. G. obtaining the patent: that J. G. having subsequently died and the female plaintiff having intermarried with the co-plaintiff, the plaintiffs agreed that if the defendant would execute the bond, neither they nor J. G.'s children would do anything to prevent, but would do all in their power to assist, the issue of the patent to W. G.; but that nevertheless the plaintiffs and the children opposed the issuing to W. G., both before the Court of Chancery and before the heir and devisee commission, whereby the defendant became discharged from his obligation.

Wilson, J., *held*, a good defence in equity, for it shewed that the plaintiff's conduct was the cause of the defendant's non-performance, and that there was a total failure of consideration; and although the alleged consideration was not stated in the bond, it was in no way inconsistent with or repugnant to it, and if so stated would have been a good defence at law.

O'Brien for plaintiffs.
McMichael, Q.C., for defendant.

Haldan v. Smith.

(October 22, 1875.)

Administrator pendente lite—Right to sue without authority of Court—Pleading—C.S.U.C., cap. 16, sec. 54.

Declaration on the common counts by plaintiff as administrator for one W. The defendant pleaded that a suit was and is pending in the Court of Chancery concerning the validity of W.'s will, and that, in such suit, the Court of Chancery did appoint the plaintiff, during the pendency of said suit, to be administrator of W., in pursuance of the statute in that behalf subject to the control of said Court, and

ordering the plaintiff, as administrator, to act under the directions of said Court; and defendant averred that the plaintiff never obtained the authority or direction of the Court to bring this suit; and that save as aforesaid, the plaintiff is not the administrator of W.'s estate and effects. To this the plaintiff replied that in two suits named, pending in Chancery, the plaintiff was appointed by the Court administrator pending these suits, with all the powers of a general administrator, under which authority he now brings this action.

Wilson, J., *held*, on demurrer to the replication, that as it appeared from the pleadings that the plaintiff was not a general administrator, but only *pendente lite*, the declaration should have alleged his authority to be so limited, and that the suits during whose pendency the plaintiff was administrator was still pending, and in this respect the declaration was bad, and that part of the plea traversing the plaintiff being a general administrator was good.

2. That the plaintiff having, under C.S.U.C. cap. 16, sec. 54, all the rights of a general administrator, might sue without the prior leave, and that that portion of the plea alleging the want of such leave was therefore no defence.

3. That the replication, in alleging that the plaintiff was a general administrator during the pendency of the suits, was bad.

Donovan for plaintiff.

Foy for defendant.

Spencer v. Conley—Dooley, Garnishee.

(April 21, 1876.)

Garnishee order—Rival claimants to debt.

On an application under the C.L.P. Act, for a garnishee order for a debt alleged to be due by the garnishee to the judgment debtor, the debt was claimed by a third person, and on such ground the garnishee disputed his liability to pay it to the judgment debtor. The Judge to whom the application was made, under these circumstances, directed a writ to issue under sec. 291.

On a motion, in this court, by the garnishee, to set aside this writ, Harrison, C.J., *held*, that in the absence of any power in the Judge to direct an interpleader issue, or summon such third party before the Court, the course adopted by him was the proper one, but that if the garnishee wished to avoid the responsibility of deciding between the rival claimants, he might file a bill in equity calling upon the parties to interplead.

Remarks as to the absence in the act of provisions similar to these contained in secs. 28-30 of the English C.L.P. Act, 23-24 Vict., cap. 125.

J. K. Kerr, Q.C., for judgment creditor.

F. Osler for garnishee.

Kilroy v. Simpkins.

(May 2, 1876.)

Promissory Note—Agreement—Failure of consideration—Tender—Pleading.

To an action on a promissory note for $498, made by the defendant to the plaintiff, the defendant pleaded on equitable grounds that by an agreement made between the parties, a partnership which had existed between them was dissolved, the defendant to give the plaintiff the promissory note in question, and to pay certain debts and liabilities of the firm, and in consideration therefor to become the sole owner of certain property of the firm, and to have assigned to him by the plaintiff all the plaintiff's interest in certain debts and accounts due the firm, as well as certain debts due the plaintiff personally: that the defendant had performed his part of the agreement by giving the note and paying such debts and liabilities, but that the plaintiff, although requested to do so, had neglected to perform his part of the agreement by giving the defendant such a power of attorney or assignment as would enable him to sue for the said debts and accounts, whereby he was prevented from obtaining payment of the same; and that, except as aforesaid, there was no consideration for the making of the said note: and that such debts and accounts are equal to the plaintiff's claim on the said note.

Harrison, C.J., *held* the plea bad, both at law and in equity, as only shewing a partial failure of consideration; and that defendant's remedy was by cross action.

Semble, that the plea was also bad for not averring a tender to the plaintiff for execution of the required power of attorney or assignment.

It was urged by the defendant that as the plea did not aver that the agreement for the dissolution was in writing, it must be assumed not to be so, and so in equity an account would have to be taken, and on this ground the plea was supportable.

Held, that this contention could not prevail, for that even if such an averment were necessary, the defendant could not take advantage of a defect in his own pleading; but that there was no necessity for such an averment, the distinction in this respect between the declaration and the subsequent pleadings being now abolished,

the Court presuming a writing where one is required.

McMichael, Q.C., for plaintiff.
Bethune, Q.C., for defendant.

CHANCERY.

Heron v. Moffatt.

(April 3, 1876.)

Trustee and cestui que trust—*Purchase by trustee.*

After the judgment, as reported in 22 Gr. 370, where the facts sufficiently appear, the plaintiffs proceeded to a hearing at the last examination term in Toronto, before the Chancellor, and there gave evidence that Moffatt had, at the auction sale there spoken of, offered some property of his own for sale by auction, and had the same person (Barclay) employed as his agent to bid for that lot as well as for the property held in trust; and that Barclay did accordingly bid, and the property was knocked down to him; when the auctioneer called upon him to sign the sale-book, and he (Barclay) then explained that his bidding was as Moffatt's agent only, and therefore the auctioneer did not press Barclay to sign, considering, as he stated, both properties bought in. It was contended for the plaintiffs that the case now was distinguishable from that presented on the motion for injunction, and that Moffatt was bound to complete the contract, which was valid by reason of Barclay's name being entered in the book as agent for Moffatt.

Spragge, C., said that no doubt he would be bound if he bid with the intention of becoming a purchaser, but it is quite clear that he had no intention of becoming a purchaser; and if he had not, the bidding was in order only to get a good price. It may have been irregular or even improper, but Barclay's agency, taking it to be ever so strongly established, cannot be more binding upon him than if he had bid himself. The judgment already delivered is clear upon these points: "The cases establish that if a trustee for sale buy in the property, intending to become the purchaser, the *cestui que trust* has the option of holding him to his bargain: *Campbell* v. *Walker*, 16 Gr. 526.

And it seems also that assignees in bankruptcy cannot buy in the property for the benefit of the estate, unless having authority from the creditors,—and if they do so, they may be held to their purchases. "In the class of cases, however, represented by *Campbell* v. *Walker*, the trustee bid with the intention of purchasing for himself. In the bankruptcy cases it has to be noticed that the assignee had no discretion, no authority to interfere with the sale; his duty was to carry out the instructions of the creditors. In this case, however, the trustee was authorised, *in his sole and independent discretion*, to sell either at public auction or private contract for cash or on credit at fair reasonable prices, and to re-sell. So that Moffatt was the person who was to exercise the discretion that in bankruptcy is vested in the creditors. It is the duty of a trustee for sale to take reasonable precaution to protect the property, to prevent its being disposed of at an undervalue."

Upon the question of Moffatt being disallowed the moneys expended by him for insuring the buildings, the subject of the trust, his Lordship remarked that he entirely agreed with V.C. Proudfoot, that "the question depends on whether Moffatt was a trustee or only a mortgagee; and considering the duties imposed on him by the agreement, I have no difficulty in determining him to be a trustee. And a trustee is entitled to insure, and charge the premium against the estate." The plaintiffs, however, are entitled to an account.

The usual reference reserving further directions and subsequent costs was made.

J. A. Boyd for plaintiffs.
Crooks, Q.C., and *Boulton* for defendants.

The Grand Junction Railway Company v. Bickford.

(March 24, 1876.)

Railway Company—Delivery of railway iron.

This was a suit to restrain the defendants, Bickford & Cameron, and the Bank of Montreal, from removing a quantity of railroad iron, alleged to have been delivered by Bickford & Cameron to the defendant Brooks, who had entered into a contract with the plaintiffs for the construction of their road, under a contract to do so made with Brooks. It appeared that under an agreement executed in June, 1874, between Brooks and Bickford & Cameron, the latter had agreed to furnish Brooks with 4,000 tons of rails at $47 a ton, on a credit of six months from the several deliveries of the iron, the periods for which were set forth in the agreement, Brooks, amongst other securities, agreeing to execute an irrevocable power of attorney in favour of the Bank of Montreal, to receive the Government and certain municipal bonuses mentioned in the bill—"the vendors to hold their lien and ownership on the iron till laid down on the track, when the several grants and bonuses are payable"—and agreeing also to procure from the plaintiffs a mortgage for a sufficient sum,

say $200,000, on the railway, to be executed in favour of the officer of the bank or his nominee as collateral security for the notes, which Brooks agreed to give for the iron as delivered, such mortgage to be first and only first security or charge on the road until discharged; and which mortgage was to create a lien on the railway as such security, but was not to contain any covenant for payment by the company.

Brooks did accordingly sign a request for the company to execute a power of attorney and mortgage, and the same was accordingly executed to the officer of the bank. In pursuance of their contract, Bickford & Cameron did deliver at Belleville the amount of iron agreed for.

To enable them to do this, the Bank of Montreal had advanced money to Bickford, he assigning to the Bank the bills of lading for the iron, of which fact both Brooks and the president of the company were aware, and the legal ownership of the iron remained in the bank thereunder; but all the iron was delivered at Belleville for the purpose of fulfilling the contract. Brooks gave notes for the amount, but he having failed to complete his contract, Bickford sued for the notes and recovered judgment against Brooks. The Company and Brooks being both insolvent, the Bank, under the power in their mortgage, duly advertised a quantity of the iron which remained at Belleville for sale, and did offer the same for sale by public auction, when Bickford became the purchaser thereof at $33.50 per ton, and he subsequently sold the same to another railway company, to whom he was about delivering it when the present bill was filed seeking to restrain the removal of the iron.

Under these circumstances, on the 2nd of October, 1875, an application for an injunction was made before Proudfoot, V.C., when an order was made restraining such removal. On the 9th of October a motion was made for an order to continue the injunction, but this Proudfoot, V.C., refused to grant. Subsequently, and on the 18th of January, 1876, the cause came on by consent, to be heard by way of motion for decree, when by consent a decree was made referring it to the Master, to take an account of what was due to Bickford & Cameron under the contract. On the 9th of February the Master made his report, finding $46,841.10 due the defendants in respect of the iron laid on the track; but that nothing was due in respect of the iron delivered at Belleville and subsequently removed. The defendants claimed that they were also entitled to be allowed the sum of $13.50 per ton on the whole of the iron sold, being the difference in price agreed to be paid under the contract and the price realised for the same by auction, together with interest, and therefore appealed from the report of the Master; which appeal was argued before Vice-Chancellor Proudfoot, who, after looking into the authorities, dismissed the appeal with costs.

The case has since been carried to the Court of Appeal and argued, but a re-argument on certain points was directed.

James Bethune and *Moss* for plaintiffs.

Hector Cameron, Q.C., *J. A. Boyd* and *Crombie*, contra.

Re Robbins.

(April 27, 1876.)

Executors—Evidence Act—Compromising claim—Corroborative evidence.

This was an administration suit. In proceeding in the Master's office at Brantford, a charge was made in the accounts of the executors of $250 paid to one Millard, who had claimed to be a creditor of the testator to an amount exceeding $1,000. It appeared that Millard had presented an account to the executors for the latter sum, which they declined to pay; and after some negotiations and several attempts at a settlement, the executors agreed to pay this creditor $250 in full of this demand against the estate, and which he accepted. In passing the executors' accounts Millard was the only witness to prove the claim, which was alleged to be for money lent, and the Master disallowed the amount to the executors, adding to his conclusions from the evidence an additional reason for so doing, that "sufficient corroborative evidence to support it should be given under the statute, as there is no admission by the testator's books nor in any writing of his, and the legatees, who are interested and should have been consulted, repudiated the claim."

The executors appealed from this, amongst other findings of the Master.

Blake, V.C., said he thought the Master should not have found that the claim could not be allowed because there was not corroborative evidence, as in his opinion the act did not apply to such a case. He did not find his report wrong, and he did not actually dissent from his finding on the question; but the reason given would in effect prevent any executor compromising a claim made against the estate, which he was clear they had a right to do under the act as to executors, and therefore sent the matter back for the purpose of enabling the Master to reconsider his finding on this point.

Wilson and *Cassels* for appeal.

W. H. Kerr and *G. Kerr* contra.

Sawyer v. Linton.

(April 23, 1876.)

Demurrer—Fraudulent conveyance—Certainty of allegation.

The plaintiffs, who sued as well on behalf, &c., by their bill charged that defendant Wm. Linton, being owner in fee of land in Haldimand, did, on the 2nd of January, 1872, for a "professed" valuable consideration, convey the same to the defendant John Linton (his son), who still owned the same; that in January, 1873, the said defendant Wm. Linton, and the defendant Thomas Linton, became indebted to the plaintiffs in the sum of $450, for which they gave plaintiffs their promissory notes according to the terms of a contract between the parties; that on the 24th of January, 1876, plaintiffs recovered judgment on certain of the said promissory notes, and executions were issued thereon against goods and lands which remained in the hands of the Sheriff unsatisfied, the Sheriff being unable to find any property out of which he could make the amount of the writs. The bill further charged that the said conveyance "was made with intent on the part of the said defendants to defeat, delay, and defraud the said plaintiffs and the other said creditors," and prayed relief accordingly.

The defendants demurred for want of Equity, contending that the allegation of want of consideration was not sufficient, the words of the statute being "a pretended consideration;" that the bill itself alleged that the grantee, John Linton, still owned the land, which could not be the case if the conveyance were fraudulent; that it required to be stated that the conveyance was made with intent to defeat, hinder and delay the creditors, and that the whole relief now sought could have been obtained in the action at Common Law, under he ruling in *Knox* v. *Travers*, ante p. 148, the bill shewing that judgment had not been recovered until January, 1876.

Blake, V.C., overruled the demurrer, considering the statements of the bill sufficient to satisfy the requirements of the Statute of Frauds, both as to the want of consideration and the fraudulent intentions of the parties to the deed; that the bill correctly asserted the title to be in John Linton, for as between the parties to a fraudulent conveyance, the title did vest in the grantee; and as to relief having been obtainable in the action at law, it was impossible to say, from the allegations in the bill, that the action had not been commenced before the passing of the Administration of Justice Act, although judgment was not recovered until long after that date.

Moss for demurrer.

McQuesten contra.

COMMON LAW CHAMBERS.

Reg. ex rel. Regis v. Cusac et al.

(March 20, 1876.)

Municipal election—Want of qualification—Acquiescence of relator.

Harrison, C.J.—An elector who, at a nomination meeting, acquiesces in a statement which, if true, would entitle the defendants to sit, will not be heard afterwards as a relator, to object that in fact the statement was incorrect, and that the defendants were therefore disentitled.

Osler for relator.

G. D. Boulton, contra.

Gordon et al. v. G.W.R. Co.

(March 20, 1876.)

Appeal—Application for further time.

Application to extend the time for giving notice of intention to appeal to the Court of Appeal, on the ground that the attorney for the party desiring to appeal had omitted to give the required notice within the prescribed fourteen days. There had been a delay of a month in making the application.

Harrison, C.J., *held* that the mere statement of an unexplained "oversight" on the part of the attorney was an insufficient reason for granting the leave, though it might be different if there were an important question of law involved as to which there was a conflict between the Courts; but he did not think that was the case here.

J. B. Read for application.

D. B. Read, Q.C., contra.

In re Ladouceur v. Salter.

(March 21, 1876.)

Division Courts—Service of summons out of jurisdiction—Residence—Con. Stat. U.C., cap. 19, sections 71, 79.

Harrison, C.J.—There is nothing in the Division Court Act to prevent a bailiff serving a summons out of the jurisdiction, though he is not obliged to do so. It is immaterial that a defendant is without the jurisdiction at the time he is served, if at such time he is in law a *resident* within the jurisdiction. In this case

the defendant worked at Aylmer, in the Province of Quebec, whilst his wife and family lived at Rochesterville, across the Ottawa, in the Province of Ontario, where his wife kept a store, and where the defendant often came to see her. *Held*, that his residence was with his family.

J. B. Read for plaintiff.

A. Cassels for defendant.

Reg. ex rel. Harris v. Bradburn.

(March 28, 1876.)

Municipal Election—Leaving names of candidates off ballot papers—Acquiescence.

Harrison, C.J. The name of a candidate who has been nominated, but who withdraws (with the consent of the electors) before the close of the nomination, need not be placed upon the ballot paper.

The omission of the name of a candidate from the ballot paper is not *per se* a ground for setting aside an election, if it is not shown that it has in some manner affected the result of the election.

The case of *Reg. ex rel. Regis* v. *Cusac ante*, followed, as to the result of acquiescence by a relator in irregular proceedings.

D. B. Read, Q.C., for relator.

Wells, contra.

Page v. Foster.

(March 31, 1876.)

Non pros.—No proceedings for a year.

Held (by Mr. Dalton, whose decision was afterwards upheld on appeal by Harrison, C.J., that section 81 of C.L.P. Act prohibits the defendant from signing judgment of *non-pros.* after the expiration of a year from the return day of the writ, and that he, as well as the plaintiff, is prohibited from taking any step after that time.

Osler for plaintiff.

Robinson & O'Brien for defendant.

Doolan v. Martin.

(April 7, 1876.)

Staying proceedings until costs of former action paid—Trespass—Malicious prosecution.

The plaintiff, in a previous action, sued in trespass, but was nonsuited, on the ground that her remedy, if any, was by action for malicious prosecution. She accordingly sued in the latter form of action. The defendant then applied to stay all proceedings until the costs in the first action should be paid, on the ground that this suit was brought for the same cause of action.

Harrison, C.J., (on appeal from Mr. Dalton, and reversing his decision) *held* that this was not so, and the application was refused.

Semble, that the jurisdiction to stay proceedings in cases of this kind should be sparingly used.

F. Osler for plaintiff.

W. R. Mulock for defendant.

FLOTSAM AND JETSAM.

"The king, being God's lieutenant, cannot do a wrong." 11 Rep. 72 a.

English Solicitors.—The duty on solicitors' certificates—the name of "attorney" no longer being used in legal circles—amounted in the year ended 31st of March last to £94,433. The number practising in the United Kingdom was 14,409.

Scotch Law Courts.—Most people know the irreverent and slovenly way in which the oath is administered to English witnesses. The witness hurries into the box, and while judge and jury and the spectators are chatting and rustling in a pause of the business, the clerk of the court hands him a small Bible, which he holds in his right hand. The officer then recites his mumbled formula—"The evidence you shall give to the court and jury, touching the matter in question, shall be the truth, the whole truth, and nothing but the truth. So help you, God!" The witness, without uttering a word, ducks his head and puts his lips to the Bible cover—unless he is cunning and ignorant enough to evade the ceremony by kissing his thumb. Now, in Scotch courts the procedure is far more dignified and impressive. When the witness appears, the Judge himself rises from his seat, and raising high his right hand, looks fixedly on the offerer of the evidence, who, as instructed, also raises high his right arm, and looks the Judge in the face. The Judge then, amid general silence, calls the witness to say aloud after him—"I swear by Almighty God to speak the truth, the whole truth, and nothing but the truth!" No paltry symbol is added to the simple solemnity of this declaration, which appears likely to be far more binding on the conscience of him who makes it before the Judge and in the silence of the crowded court.—*Leisure Hour.*

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Hilary Term, 39th Victoria.

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

The names are given in the order in which the candidates entered the Society, and not in the order of merit.

No. 1350.—John William Frost.
Herbert Charles Gwynne.
Josias Richey Metcalf.
Arthur Godfrey Molson Sprague.
Robert Gregory Cox.
Edward Douglas Armour.
No. 1356.—Albert Romaine Lewis.

And the following gentlemen received Certificates of Fitness :

E. George Patterson.
Robert Pearson.
James Leitch.
Robert Gregory Cox.
Thomas Cooke Johnstone.
Edwin Perry Clements.
William Myddleton Hall.
Edward Douglas Armour.
Albert Ernest Smythe.
Heber Archibald.
James Carruthers Hegler.
George Atwell Cooke.
David Lennox.

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

Graduates.

William Egerton Perdue.
John Morrow.

Junior Class.

Samuel John Weir.
Frank Egerton Hodgins.
William White.
Daniel Erastus Sheppard.
Wallace Nesbitt.
James B. McKillop.
James Morrison Glenn.
J. Stanley Huff.
Michael A. McHugh.
Ernest V. D. Bodwell.
Hugh D. Sinclair.
James William Elliott.
Robert Cassidy.
Duncan Charles Plumb.
William Avery Bishop.
Francis Arthur Eddis.
James Garbutt.
John Charles Coffee.
James Riddell.
Howard Jennings Duncan.

Articled Clerk.

John A. Stewart.

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

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

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

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. Doug. Hamilton's), English Grammar and Composition, Elements of Book-keeping.

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

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

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

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

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

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

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

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

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

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

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

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

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

J. HILLYARD CAMERON,
Treasurer.