DIARY FOR FEBRUARY.

1. Sun. ..Sexagesima Sunday.
2. Mon. ..Hilary Term begins.
6. Frid ..Hagarty, C. J., C. P., sworn in, 1856.
8. Sun. ..Quinquagesima Sunday.
10. Tues. ..Queen Victoria married, 1840.
11. Wed ..R. E. Caron, Lieut.-Governor of Quebec, 1873.
14. Sat. ..Hilary Term ends.
15. Sun. ..Quadragesima Sunday.
16. Mon.... Last day to move against Municipal Elections.
17. Tues. ..Supreme Ct. sitt. Wm. Osgoode, first C. J. of U. C., died 1824.
18. Wed..Canada settled by the French, 1534.
19. Thur..Re-hearing Term in Chancery begins.
22. Sun. ..Second Sunday in Lent.
27. Frid...Sir John Colborne, administrator, 1838.
29. Sun....Third Sunday in Lent.

CONTENTS.

Canada Law Journal.

Toronto, February, 1880.

A Bill has been brought in before the Legislative Council of Victoria, embodying the first part of a proposed code of the law. This action, on the part of that distant colony, foreshadows what must be done before long in the mother country and her other colonies.

In *Mark* v. *Eads*, 2 Sol. J. 127, an attempt was made to set aside the exercise of a power of sale in a mortgage on the ground that the sale was by a person who had paid off the mortgage, but had not actually obtained an assignment of it. But Fry, J., held that the power was not suspended, and that the mortgagee, being a trustee for the person who had paid him, was bound to exercise the power at his instance.

We have published several well written letters as to when a reconveyance may be made of an insolvent estate under section 60 of the Act; the last two coming from Halifax. It is hardly worth while, however, pursuing the subject any further, as the opinion is prevalent that the whole fabric of insolvency procedure will be swept away next session. In any case, those interested must admit that there remains but little to be said on the subject.

In the now famous case of *Phillips* v. *London & South-Western Railway Co.*, L. R. 4 Q. B. D. 506, the largest damages ever awarded by a jury against a railway company for personal injuries have been given at the second trial under the direction of Lord Coleridge. The sum given to the plaintiff, who is a

London physician in extensive practice, was £16,000 sterling. The Common Pleas Division refused a new trial on the ground of excessive damages, and it is said that the Company will appeal to the House of Lords.

In the Index Number of the Supreme Court's Reports (Vol. ii.), just issued, there is a list of Errata, numbering twelve. These could be increased and yet not exhaust all the errors. For instance the author of the well-known law treatises is not "*Archibold*" (pp. 357, 363). Coke on *Littelton* (p. 436) has an odd appearance, as has *Phillipp's* Law of Insurance (p. 416). *Brown* on the Statute of Frauds, adds another letter to his name (pp. 682, 634). *Blackburn's* Commentaries (p. 446) is rather a glaring blunder. So the spelling of Lord *Hardwick* (p. 509), and 2 *Sand.* R. (p. 492) might be amended.

A confectioner had for more than twenty years used large mortars in his back kitchen, which abutted on the garden of a physician. Subsequently the physician erected in his garden a consulting room, one of the side walls of which was the party wall between the confectioner's kitchen and the garden. The noise and vibration caused by the use of the mortars, which had previously caused no material annoyance to the physician, then became a nuisance to him, and he brought an action for an injunction. *Held*, that the defendant had not acquired an easement either at Common Law or under the Prescription Act, and that the plaintiff was entitled to an injunction: *Sturgess* v. *Bridgman*, 41 Law Times, 219.

We learn from the columns of the *Solicitor's Journal* that the Temple Benchers, following the example of those of Lincoln's Inn, are about to provide a set of rooms for barristers and students. Members of the Inn will subscribe 10s. a year therefor. The rooms are to consist of a reading-room, a writing-room and a smoking-room, with a kitchen for preparing tea, coffee and other provisions, on a tariff to be settled by a committee elected by the subscribers. The Benchers at Osgoode Hall might follow these precedents a little more closely, and develop the very serviceable luncheon-room so as to provide for a few more of the creature comforts to sweeten professional life.

It does not seem to be generally known, but it is nevertheless a fact, that there is a Committee of the Law Society known as the Discipline Committee, appointed under section 1 of cap. 31, 39th Vict., which gives power to the Benchers to make by-laws, amongst other things, respecting "matters relating to the interior discipline and honour of the members of the bar." We frequently receive communications on subjects of this nature, and should be glad if, in future, correspondents would authorise us to forward their letters with their names to the Secretary of the Society to be laid before this Committee. Some would probably not like to do this; but every member of the profession owes a duty to his brethren in this matter, which should not lightly be disregarded. The Committee, we understand, do not consider it *their* duty to take up such cases, unless formally brought before them. There is room for question as to how far they are right in this, but it should certainly be some one's duty; possibly it should devolve upon the Solicitor of the Society to make the preliminary enquiries, and lay the case before the Committee.

UNLICENSED CONVEYANCERS.

The last but not the least amusing advertisement of that omnivorous class known as *conveyancers* that we have seen is one that commences with these words, given in large capitals,—"Life is uncertain—Death is sure." The reason of this solemn but somewhat antique warning will be apparent as we proceed. The reader is then told that "Every person should make a will and not leave *their* hard-earned money to be eaten up in law." Then follows the name of the advertiser. We really must give him the benefit of a free advertisement. The sublime impudence of the man must not go unrewarded. He is styled W. F. Kay, J.P. He lives in a village we never heard of, but doubtless he is there a person of some importance; perhaps a prophet, perhaps the town crier, or perhaps the pound keeper, or a broken-down grocer. But he is not merely a J.P., or otherwise, for he "makes a speciality of writing wills (we are thankful for this at all events), deeds, mortgages, chattle (*sic*) mortgages, leases, agreements of all kinds. Charges moderate." We should suppose so, doubtless very cheap, and—very nasty.

This is all very funny; but we wonder if it ever strikes the Benchers of the Law Society or the Attorney-General that ignorant charlatans, such as we may safely assume men like this to be, are not only destroying the legitimate business of the profession, who pay large fees for the right to practise, but are actually dangerous to the community. How long will the profession put up with this state of things. We fail to see the justice of calling upon country solicitors to pay fees when their interests are left utterly unprotected. We direct attention to the several letters on this subject published in another place.

In the name of the profession in country places we call upon the Benchers to take some action in this matter. There is no excuse for further delay. The complainants have justice on their side, and if they act unitedly and energetically they must eventually succeed. They are too influential and numerous a body to have their claims for protection pass unheeded. As far as lies in *our* power we shall further all reasonable demands for their relief. It might be that the best thing in the way of a beginning would be to compel these amateur conveyancers to pass an examination before a committee of the Law Society or before the County Judges, with power to take away their licenses for gross errors or misconduct; they should also pay an annual fee to the Law Society, and be made responsible to the same extent as solicitors. We simply throw out these suggestions. It is for the Benchers to make a full representation of the case to the Attorney-General who should at once take action in the matter. What may be done in the premises will be watched with interest.

SHERIFFS' FEES.

When answering a correspondent in our last issue, we referred to a pamphlet published by Mr. Sheriff McKellar, having for its object the promotion of a Bill to give to Sheriffs certain fees, which, as is therein alleged, are occasionally and illegally taken by attorneys. The pamphlet consists of an introduction, a petition, the comments of the author, embodying a number of bills of costs, affidavits, &c., and a draft of the proposed Act. A correspondent deals with the matter somewhat in detail. We leave that to him.

We are informed that some of the evidence collected by the pamphleteer in support of his case, was obtained partly in the following fashion; and we here

speak of one of the cases entitled *Suter* v. *Servos;* and it is said that the same procedure was adopted in other cases. A person calling himself Suter went to an attorney and instructed him to issue a writ against a person he called Servos, stating that the latter would, at a certain time, be at a place, then designated, and could there be served. The writ was issued accordingly, and the person pointed out as defendant was served by the attorney's clerk, as requested by the plaintiff, so as to save delay. The plaintiff, it appears, subsequently called on the attorney with the defendant, and stated that he had settled the debt with the defendant or something to that effect. The bill being demanded, the amount was paid. This bill with others was then submitted by Mr. McKellar, or by the plaintiffs, to taxation, *not* to the proper officer, but to the Clerk of the County of Waterloo, Mr. John McDougall, who, without any notice to the attorneys, and in suits in which he had no jurisdiction, assumed to tax the bills, and gave allocaturs. Mr. McDougall appears to have taxed off some items which would have been allowable in the counties where the writs issued.

We suppose the expense of getting up all this evidence cost a little money; at least we happen to know one Sheriff who declined to contribute to a fund which Mr. McKellar thought necessary to raise to further the object of this pamphlet.

Our readers can form their own opinion of one holding the high office of Sheriff, who could descend to such means to build a ricketty foundation whereon to erect a monstrous piece of legislation, unnecessary for the purposes assigned in it, unjust to the profession, and highly injurious to the public interests.

Passing over the alleged untruthfulness of the pamphlet, and the recklessness of the affidavits used in it, we feel it a duty to enter a protest against the language used by one officer of the Courts when speaking of other officers, at least quite as much entitled to respect as himself. This language, from one in his position, is utterly objectionable from every point of view, and might fairly be characterized by a much harsher expression.

And again, it might have been hoped that when this pamphleteer accepted the high position of Sheriff, he would have left politics alone; but the reader cannot avoid noticing that most of the attorneys whom he has selected for vituperation, are men who, when he was in the arena of politics, were political opponents, whilst, in a fulsome manner, he apologises to a former ally for referring to his name, the latter being a member of the House, and one who was recently stricken off the rolls for disgraceful conduct. The manner in which the pamphlet has been distributed, is in keeping with this phase of its author's conduct. The pamphlet is apparently intended to give information on the subject in question to the members of the Local Legislature. But we are informed that it was sent only to those who had been, in former days, his political allies, and that it was not sent to any lawyer or prominent member on the other side of the House.

We had thought of suggesting that a person who could act in the way alluded to, is not a proper person to be, in the words of Blackstone, "the first man in his county." But there is a very serious question whether or not Mr. McKellar is in fact a Sheriff at all. He was appointed by the Local and not by the Dominion Government. Very high legal authorities hold the opinion that the appointment of Sheriffs under the British North America Act lies with the Governor-General, and not with the Lieutenant-Governor.

So, after all, it may not be necessary to remove him, but rather to pass an Act, which in such case would be desirable, to protect him from actions of trespass innumerable, including possibly a case where capital punishment was involved, which then might or might not come under the category of "Killing no murder."

THE JUDICATURE ACT.

In directing attention to the Judicature Bill introduced into the Ontario Legislature, on the 14th of January, by the Attorney-General, it may perhaps be of advantage to glance briefly at the history of the English Judicature Act, in order that a true estimate may be obtained, as well of the reforms proposed as of the consideration bestowed in carrying out those reforms.

In the year 1850, a Commission was appointed in England to inquire into the constitution of the Courts of Common Law; and this Commission reported that "the Courts of Common Law, to be able satisfactorily to administer justice, ought to possess, in all matters within their jurisdiction, the power to give all the redress necessary to protect and vindicate Common Law rights and to prevent wrongs whether existing or likely to happen unless prevented;" and further, that "a consolidation of all the elements of a complete remedy in the same Court was obviously desirable, not to say imperatively necessary, to the establishment of a consistent and rational system of procedure." In 1851, another Commission was appointed to inquire into the constitution of the Court of Chancery, and this Commission reported that "a practical and effectual remedy for many of the evils" which existed might "be found in such a transfer or blending of jurisdiction, coupled with such other practical amendments as will render each Court competent to administer complete justice in the cases which fall under its cognizance."

In consequence of these reports, some changes were made by which the procedure of the Courts of Chancery and Common Law was improved; but the changes made proved wholly inadequate.

In 1867, another Commission was appointed to inquire into the operation and effect of the constitution of the Court of Chancery, the Superior Courts of Common Law, &c., and into "the operation and effect of the present separation and division of jurisdiction between the said several Courts . . . and generally into the operation and effect of the existing laws, and arrangements for distributing and transacting the judicial business of the said Courts respectively, as well in Court as in Chambers, with a view to ascertain whether any, and what changes and improvements . . . may be advantageously made so as to provide for the more speedy, economical and satisfactory dispatch of the judicial business."

The Commissioners (of whom Lord Selborne says they were the best that could possibly have been appointed) issued their first report in March, 1869. In this report they directed attention to the division of the Courts and the distinction between Common Law and Equity, which had "led to the establishment of two distinct systems of Judicature, organized in different ways, and administering justice on different, and sometimes opposite principles, using different methods of procedure, and applying different remedies." After pointing out the evils of the old system, and the inadequacy of the remedies so far applied, they proceeded, "We are of opinion that the defects adverted to cannot be completely remedied by any mere

transfer or blending of jurisdiction between the Courts as at present constituted, and that the first step towards meeting and surmounting the evils com plained of will be the consolidation of all the Superior Courts of Law and Equity, &c., into one Court . . . in which shall be vested all the jurisdiction which is now exercisable by each and all the Courts so consolidated. This consolidation would at once put an end to all conflicts of jurisdiction. No suitor could be defeated because he commenced his suit in the wrong Court; and sending the suitor from equity to law or from law to equity, to begin his suit over again in order to obtain redress, will be no longer possible. All suits should be instituted in the Supreme Court, and not in any particular Chamber or Division of it; and each Chamber or Division should possess all the jurisdiction of the Supreme Court with respect to the subject-matter of the suit, and with respect to every defence which may be made thereto, whether on legal or equitable grounds, and should be enabled to grant such relief or to apply such remedy or combination of remedies as may be appropriate or necessary in order to do complete justice between the parties in the case before the Court, or in other words, such remedies as all the present Courts combined have now jurisdiction to administer."

In order to facilitate the transition from the old system to the new, the Commissioners recommended that the existing Courts should retain their distinctive titles and constitute so many Chambers or Divisions of the Supreme Court.

In 1870, Lord Hatherley introduced a Bill to carry out the recommendations of the Commissioners; but this Bill, after much discussion, was withdrawn. In 1873, Lord Selbourne introduced another Bill, which, after careful consideration by a select committee of the House of Lords, became law, and which, together with a bill introduced by Lord Cairns and passed in 1875, constitute substantially the Supreme Court of Judicature Act now in force in England.

In introducing the Act of 1873, Lord Selbourne said, "Four points have become settled in the minds of those who best understand the subject as well as in the mind of the public. The first is the artificial separation of legal and equitable jurisdiction, such as in principle never did exist and does not exist in any country in the world except those which have borrowed our system. . . There has been a conviction that, whatever else ought to have been done, we must put the finishing stroke to measures of a more particular character adopted in the same direction by bringing law and equity into one single administration in the Courts of Law of this realm. The second point is, that we must bring together divided Courts and divided jurisdiction by erecting or rather re-erecting a Supreme Court, which, operating at various points and with a number of judges, should still exercise an undivided jurisdiction combining all the jurisdiction of all the Superior Courts. The third point is, that it is desirable to provide, as far as possible, for cheapness, simplicity and uniformity of procedure. The fourth point is that is necessary to improve the constitution of the Courts of Law."

It is the law which has been framed in England on these principles which it is now proposed to introduce into this Province, by the Ontario Judicature Act, with such alterations as seemed advisable.

The Bill is divided into seven parts:—(1) Constitution and Judges of the Su-

preme Court; (2) Jurisdiction and Law; (3) Sittings and Distribution of Business; (4) Trial and Procedure; (5) Offices and Officers; (6) Jurisdiction of County Courts; (7) Miscellaneous Provisions. The one great aim is, of course, the fusion of law and equity. For this purpose the reconstitution of the Courts, and the introduction of a new practice have been thought necessary, in order to bring about a uniform system, under which law and equity will be concurrently administered. The Court of Appeal and the Superior Courts of Law and Equity are consolidated into one Supreme Court, which will not, however, in point of fact, as such, exercise any jurisdiction. The Supreme Court is divided into two permanent divisions, one to be called "The High Court of Justice for Ontario," and the other "The Court of Appeal for Ontario." All the jurisdiction of the Superior Courts, and of Assize, Oyer and Terminer and Gaol Delivery, is transferred to the High Court. The Court of Appeal will have all the powers of the existing Court of Appeal. Effect will be given to the equitable rights and remedies of plaintiffs, and also to the equitable defences of defendants. The Courts will give effect to counter-claims of defendants; will take incidental notice of the equities of other parties; will stay proceedings by its own order; will give effect to legal rights and remedies, and will, by rule, prevent multiplicity of proceedings. To prevent any conflict with the rules of the Common Law, and of Equity, the law is expressly declared on certain points, and it is enacted generally that, in all cases not enumerated, the rules of Equity are to prevail.

The High Court is to consist of three divisions, namely, the Queen's Bench Division; the Chancery Division, and the Common Pleas Division. Certain matters of an administrative character are specially assigned to the Chancery Division, but other causes may be assigned to any Division. In case a cause is assigned to a wrong Division, or if for any other reason it seems advisable, a cause may be transferred from one Division to another. All business is, as far as practicable, to be heard by a single Judge; and any proceedings after trial are, if possible, to be conducted before the Judge who tried the case. Contrary to the provisions of the English Act, each Judge is required to decide all questions coming properly before him. The Judges are given large powers as to making Rules, and are to meet once, at least, in every year, to consider the operation of the Act, and of the Rules of the Court for the time being in force, and are to report annually what amendments (if any) they would suggest.

By the Rules of Court, in the first schedule of the Act, it is provided that all actions are to be commenced by writ, on which is to be endorsed "a statement of the nature of the claim made, or of the relief or remedy required." If a writ is not served within six months from its date, it shall no longer be in force, unless leave to renew it is obtained. When a defendant appears to a writ specially endorsed, the plaintiff may call on him to show cause why judgment should not be signed for the amount endorsed, with interest and costs; and unless the defendant shows good cause to the contrary the plaintiff may obtain leave to sign final judgment. In cases also in which the writ is endorsed with a claim for an account, such as an ordinary trust account, even though the defendant appears, an order for the amount claimed will be made, unless it is shewn that there is some preliminary question to be tried.

A uniform system of pleading is pro-

vided, instead of the different methods in use in the different Courts. Every pleading is to contain, "as concisely as may be, a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved." It is provided (contrary to the English rule) that the "silence of a pleading as to any allegation contained in the previous pleading is not to be construed into an implied admission of the truth of such allegation." Local *venue* is abolished, but the plaintiff is to name, in his statement of claim, the place where he proposes that the action should be tried. Notice of trial is not to be countermanded, nor is the record to be withdrawn, except on consent or by leave of the Court or Judge. Orders may be made for the preservation or *interim* custody of the subject matter of any litigation, or, in the case of perishable goods, a sale may be directed. "No action shall be defeated by reason of the misjoinder of parties, and the Court may, in every action, deal with the matter in controversy, so far as regards the rights and interests of the parties actually before it." All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist; and defendants may be joined in the same manner, and provision is made for joining defendants in cases of doubt, and for determining claims to contributions and indemnity as well between defendants as between defendants and persons who are not parties to the action. The intention of the draughtsman being "that, as far as possible, all matters in controversy may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided."

In introducing the Act of 1873, Lord Selborne said: "Of all our institutions there are none which excite a greater or more natural, or more profound interest, than those which relate to the administration of justice. None tend more to bind together the whole fabric of society, and none are held in more general and just estimation and reverence by the people. And it may be for this reason that public opinion on these subjects is of somewhat slow growth, and they are relegated to a more serene region than that ordinarily devoted to polemical and political contests. All classes of men feel that they have a particular interest in these subjects being dealt with on sound and right principles, and, therefore, passion and excitement have but little place in the consideration of such matters."

Whilst we trust that the new Act may be considered by our Legislature and the legal profession in this spirit, we would urge upon the Government not to push the measure through this Session, as seems to be the intention. We have no doubt the Attorney-General has given careful attention to its provisions; but we are quite as certain that if the measure were in the hands of the Bench and Bar until next Session, a more perfect Bill could have been submitted. Suggestions hereafter made will be for the purpose of amending an Act then in force, instead of alterations in a draft Bill. Moreover, if that course were taken, much discussion and many explanations in the Legislature would be unnecessary; members would not be required to ask, what appear to the initiated to be very silly questions, and the Attorney-General be saved, possibly, from the disagreeable necessity of making alterations in his Bill, forced upon him by the clap-trap arguments of members, who, necessarily ignorant of the matter themselves, desire to represent the so-called views of constituents who, having still less knowledge of the matter, are led away by their prejudices, and their hostility to a

state of things now found only in the pages of some old novel, or heard in the declamations of some disappointed suitor or loud-mouthed demagogue.

If there is any pressing demand for such a sweeping change as is now proposed, though this is not very clear, what would be wanted would be a well prepared measure, fully considered as well by the judges and profession as by the leaders, and the lawyers on both sides of the House, and then passed without any regard to the influences we have spoken of. We do not say that the Bill before us is not a well prepared measure; but it would be impossible without further time to examine minutely its details, to express any opinion or give any suggestions that would be of much practical value. We trust the Attorney-General will stay his hand for the present, or at least enact that the Act shall not come into force until after next session, so as to give an opportunity to make any amendments that may commend themselves to him in the meantime.

SIR EDWARD COKE.

(Concluded.)

Let us now turn to a few of the poetical productions of our author. He courts the Muses indifferently in Latin and in English; sometimes (we presume when he likes the idea) he gives it in both languages. When speaking of "Enchanters," he says:

Carminibus Circe socios mutavit Ulysses.

By charmes in rhyme (O cruel fates!)
Circe transform'd Ulysses' mates.

And again,

Carmina de cœlo possunt detradere lunam.

By rhymes they can pull down full soon
From lofty sky the wandering moon.

When discoursing on simony, Coke says: "I have read ancient verses concerning simony and other corrupt entries into churches, which are not unnecessary, in detestation of them, to remember:

Quatuor ecclesias portis intratur in omnes,
Cæsaris et simonis, sanguinis, atque Dei.
Prima patet magnis, nummo patet altera, charis
Tertia, sed paucis quarta patere solet.

Four doors hath every church, and all but one
forebod—
(Whereof unseen some may be peradventure,)
Of Cæsar, simonie, of kindred and of God;
And each churchman by one of these doth enter:
Great men's command doth open wide the first;
At next by money enter many one,
The third to weak allies, but (for the church the
worst),
God's door doth open to a few or none.

In the chapter on buildings, we find a Latin translation by Sir Th. Moor (*sic*) of a passage in Euripedes, and an English version by Coke himself. The latter is:

To build many houses and many to feed,
To poverty that way doth readily lead.

In the same chapter we have a list of the "seven wonders of the world," which for memory, may be expressed in these few verses:

1. Pyramides Memphis; 2. Babylonis mœniacclsæ;
3. Templum ingens Ephesi virgo Diana tuum;
4. Mansoli Cariæ monumentum; 5. Ravaque
Pharo
Turris; 6. Olympiaci splendida imago Jovis;
7. Denique apud Rhodios splendentis statua Phœbi,
Hœc septem mundui mira, viator habet.

Apropos of light-houses; pharos, sea marks or beacons, we find,

Lumina noctivagæ tollit pharus aemula lunæ,

In light house top is rear'd the light,
As high as the moon that walks by night.

The "distichons" that he quotes are numerous, and he frequently lays Virgil and Horace under tribute to point a moral or adorn a tale. In fact, although Coke affected to despise literature; yet—as a recent writer says—he was a pedantic and villainous verse maker. Among the papers seized by the Government, while he was on his death-bed, was one paper of poetry to his children. The beneficiaries lost nothing if the gift failed.

In the Natural Sciences Sir Knight was not very strong. When writing concerning the use of the craft of multi-

plication, made a felony by 5 H. 4, ca. 4 (the shortest Act of Parliament that Coke remembered). He says "It is to be known, that there are six kinds of metalls, viz., *aurum, argentum, æs sive cuprum (quia inventum fuit in Cypro), stannum, plumbum, et ferrum.* That is to say, gold, silver, copper, tynne, lead, and iron; for *chalybs*, steel, is but the harder part of iron, and *orichalcum, aurichalum*, viz., lattyn or brasse, is compounded of copper and other things." Then he defines what is meant by "the craft of multiplication"—it is to change other metalls into very gold or silver. And this they pretend to do by a quintessence, or a fifth essence. Four essences or elements we know, fire, aire, water, and earth, but say they, this *quint essence* is a certain subtill and spirituall substance extracted out of things by separation from the four elements, differing really from their essence, as *aqua vitæ*, the spirit of wine, or the like, and this is called *elixar*, or the philosopher's stone, and is part of alchemie, or chemie, in Latine *ars chemica.* The offenders therein are called multipliers, chemists, alchemists, &c."

Next he gives the origin of all things mundane: "How these several kinds of metalls, as is supposed, proceed originally from sulphur and quicksilver, as from their father and mother, and other things concerning the same you may at your leisure read in George Agricola, lib. 10, ca. I.; Encelms, li. I., ca. I., Pl. Com. 339. Almighty God in the fourth day created the earth, and no mention is made of metals, for they were as parts of the earth."

We learn from him that we may be "poysoned four manner of ways: *gustu*, by taste, that is by eating or drinking, being infused into his meat or drink; *anhelitu*, by taking in of breath, as by a poysonous perfume in a chamber, or other room; 3, *contactu*, by touching, and lastly, *suppostu*, as by a glyster or the like. Now for the better finding out of this horrible offence, there be divers of kindes of poysons, as the powder of diamonds, the powder of spiders, *lapis causticus* (the chief ingredient whereof is soap), cantharides, mercury sublimate, arsenick, roseacre, &c." Poisoning he considered the most detestable of all modes of murdering, "because it is most horrible and fearful to the nature of man, and of all others can be least prevented either by manhood or Providence." By 22 H. 8, c. 9, it was enacted that one guilty of this crime should be "boyled to death in hot water."

He knew a good deal about hawks however, and speaks glibly of goshawks, and sparhawks, and hawks long-winged and short-winged, faulcons and gerfaulcons.

Much curious and interesting information does our author give us. In the chapter on High Treason, we are given the names by which various Parliaments famous in the days of yore were known, such as, the foolish Parliament; the parliament of white bands; the good parliament; the parliament that wrought wonders; the great parliament; the lack learning parliament; the parliament of bats; the black parliament; the pious parliament; the happy parliament; the blessed parliament.

The rack in the Tower, we are told, was called the Duke of Exeter's daughter, because that nobleman introduced its use.

The difference between bigamy, trigamy, and polygamy is pointed out; "bigamy or trigamy is where one has two or three wives at different times and successively; polygamy where one has two or more at the same time. "By the ancient law of England," we are told, "that ifany Christian man did marry with a woman that was a Jew, or if a Christian woman married a Jew, it was felony and

the party so offending was burnt alive." "King Edgar allowed many Danes to settle in England; but as they were given to excessive drinking, the king was in the end constrained to make a law against this excesse (which never cometh alone), driving certain nails into the sides of their cups, as limits and bounds, which no man upon great pain should be so hardy as to transgresse." In the reign of Henry VII. twelve houses of ill-fame were allowed in London, and these had signs painted on their walls as a boar's head, the cross keyes, the gun, the castle, the crane, the Cardinal's hat, the bell, the swan, &c.

The 99th chapter on Flattery, concludes with these words: "But parliaments, palaces of princes and pulpits, should be free from adulation and flattery." And in the margin, is "Not these three P. P. P."

Numerous little stories have we. Sir Walter Tirrel and William the Red, in the New Forest; Canute, his wicked flatterers and the sea wetting his lordly and majestic feet; the battle between David and Goliath; the single combats between French and English knights; Robin Hood and Little John; all figure in his pages together with divers and sundry others, too numerous to mention.

Philology was a favourite study with this Chief Justice, and the derivations of many legal words from Latin and Greek, Saxon and French, are given by him. For instance, we are told that "Robbery" is derived from "*de la robe*," both because in ancient times (as sometimes yet is done), they bereave the true man of some of his robes or garments, and also for that his money or other goods are taken from his person, that is, from or out of some part of his garment or robe about his person." "Murder" is derived from the Saxon *mord*. An "inchanter, *incantator*, is he or she "*qui carminibus, aut cantiunculis demonem adjurat.*" They were in ancient time called *carmina*, because in those days their charmes were in verse." Of "Usury," we are told, *usura dicitur ab usu et œre, quia datur pro usu œris*, or *usura dicitur quasi ignis urens*. "Bribery" cometh of the French word *briber*, whieh signifieth to devour or eat greedily, applied to the devouring of a corrupt judge of whom the Psalmist, speaking in the person of God, saith, *qui devorat plebem meam sicut escam panis.*

His disquisitions in Political Economy are numerous. "The full end of these five are beggary, the alchemist, the monopolist, the concealer, the informer and poetasters. I could give examples (of mine own observation) of all these if it were pertinent to our purpose." "Three costly things there are that doe much impoverish the subjects of England, viz., costly apparell, costly diet and costly building. The best mean to represse costly apparell, and the excesse thereof, is by example: for if it would please great men to show good example and to weare apparell of the cloth and other commodities wrought within the realm, it would best cure this vain and consuming ill, which is a branch of prodigality, and herewith few wisemen are taken. If you will looke at the parliament roll of 2 H. 6, you shall see what plain and frugall apparell that renowned King H. 5., after he was king, did wear, his gowne of lesse] value than 40*s.*"

Perhaps Sir Edward would have liked the Spartan rule by which only a single garment each year was allowed to males over twelve years of age.

After speaking on the laws against excessive eating and drinking, our author concludes with, "nothing is here said against that great peacemaker and branch of liberality, orderly hospitality,

but against the dainty and disorderly excesse of meat and drinks, which is a species of prodigality: for it is provided by act of parliament that the grace of hospitality shall not be withdrawn from the needy."

"We have not," he says, "read of any act of parliament now in force made against the excesse of building; but it is a wasting evill whereunto some wise men are subject. Of these three it hath been truly said: *vestium, conviviorum, et ædificiorum luxuria ægre civitatis sunt indicia et species prodigalitas.*"

His English pride of country appears when he gravely writes, "We have observed that God hath blessed this realme with things for the defence of the same and maintenance of trade and traffick, that no other part of the Christian world hath the like, viz., iron to make gunnes, &c., more serviceable and perdurable than any other. Secondly, timber for the making and repairing of our navie, and especially of the knees of the ships, better than any other. Thirdly, our fuller's earth is better for the fulling of our cloth, than any other. Fourthly, our wooll makes better cloth, and more lasting and defensible against winde and weather, than the wooll in any nation out of the King's dominions; and many other speciall gifts of God."

Sir Edward had no liking for vexatious informers and permooters upon penall statutes; he dips his pen in gall and writes, "You have heard of four viperous vermin, which endeavoured to have eaten out the sides of the church and commonwealth: three whereof, viz., the monopolist, the dispencer with public and profitable penall lawes for a private, and the concealers are blowne up and exterminated; and the fourth, viz., the vexatious informer, well regulated and restrained, who under the reverend mantle of law and justice instituted for protection of the innocent and the good of the commonwealth, did vex and depauperize the subject, and commonly the poorer sort, for malice or private ends, and never for love of justice."

NOTES OF CASES

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

COURT OF APPEAL.

From Armour J.] [Jan. 14.

In Re Arbitration Credit Valley Railway and Great Western Railway.

Arbitration—Appeal from award under Railway Act.

Arbitrators appointed under the Railway Act to determine the compensation to be paid by the Credit Valley Railway to the Great Western Railway in respect of the exercise of their power of crossing the latter railway under sub-sec. 15 of sec. 9 of the Act, made an award on the 30th December, 1877. On the 19th February the Great Western Railway Co. obtained a rule *nisi* to set it aside, and also took steps to appeal against it under sec. 19 R. S. O. c. 165, by filing a bond for security for costs, but did nothing else within the period of one month after the notice of the award. *Held*, dismissing the appeal, that this was not a submission to arbitration within 9 & 10 Will. III., c. 15, or section 200 of the C. L. P. Act; but even if it were the motion for a rule *nisi* to set aside the award should have been moved for before the last day of the term next after the publication of the award; and that the appeal from the award was too late, as the giving security was not a commencement of the appeal within the meaning of the above section.

McMichael, Q.C., for the appellant.

Boyd, Q.C., for the respondent.

Appeal dismissed.

From Proudfoot, V. C.] [Jan. 14.

Pardee v. Lloyd.

Award—Consent reference—Time—Motion to set aside award.

A reference to arbitration had been made by the consent of the parties, and the award of the arbitrator was made in August, 1878, and published before Trinity Term of that year.

The plaintiff moved against the award in November, 1878, before V. C. Proudfoot, who set it aside, the defendant objecting that the motion was made too late.

Held, reversing the judgment of the Vice-Chancellor, that the motion should have been made before the last day of Trinity Term.

From Proudfoot, V. C.] [January 14.

Green v. Provincial Insurance Co.

Deposit by Insurance Company—Creditors entitled to rank therein.

The defendants were licensed under 31 Vict., c. 48, to transact fire and inland marine insurance, while their original charter authorized the transaction of fire and marine insurance without distinction of ocean from inland marine.

Held, affirming the decree of Proudfoot, V. C., that the holders of ocean marine policies, though resident in Canada were not, on the insolvency of the defendants, entitled to rank as creditors on the fund deposited and remaining with the Government of Canada.

Miller and *Biggar*, for the appellants.

McCarthy, Q.C., and *Creelman*, for the respondents.

Appeal dismissed.

[Jan. 15.

Norval v. Canada Southern Railway Company.

Award—Misconduct of Arbitrator.

The fraudulent, improper, or malignant conduct of the arbitrator alone, without any collusion with the person seeking to enforce the award is no defence to an action upon the award.

Crooks, Q.C., and *Cattanach* for the appellant.

Blake, Q.C., and *Boyd*, Q.C., for the respondent.

Appeal dismissed.

From Moss, C. J. A.] [January 20.

McPherson v. McKay.

Presbyterian Church of Scotland—Union—Congregational Property.

In 1836, by letters patent, lands were granted to trustees in fee, to hold the same to and for the benefit of the Presbyterian minister for the time being, Incumbent of the Presbyterian Church of Scotland, then erected in the Township of Eldon. The defendant who had always been a member of such Presbyterian body, was duly inducted as Incumbent of the said church, and so continued, when in 1875, an Act of the Legislature of Ontario was passed for the Union of the several Presbyterian churches then existing in Ontario; but the members of this church voted themselves out of the said Union as provided by the Act, notwithstanding which the defendant gave in his adherence to the Union.

Held, affirming the judgment of the Court below, that, under these circumstances, the lands granted by the said patent, as also the church and other buildings erected thereon, belonged to, and were the property of the congregation, and that the defendant having joined the Union was no longer entitled to hold possession or receive the benefits of the same.

Maclennan, Q.C., for the appellant.

A. MacLean, for the respondent.

Appeal dismissed.

COMMON LAW CHAMBERS.

Armour, J.] [December, 1879.

The Dominion Type Founding Company v. Nagle.

Execution —Sheriff's costs—Taxation.

Held, that a Sheriff's bill of fees may be taxed on notice under sec. 48 of the Execution Act, R. S. O., c. 66, either at Toronto, or in the Sheriff's own county, as the party taxing may elect.

Osler, J.] [December, 1879.

Butler v. Rosenfeldt; Sweetzer v. Rosenfeldt.

Capias—Foreigner—Arrest.

It is against the policy of our law to permit one foreigner to follow another into Ontario and arrest him under a writ of *capias*, upon a debt contracted abroad. But this rule is limited to those cases in which it appears that the debtor is about to return to his own country. Where the debtor intends to remain in Ontario, the creditor may arrest him on a proper case made out.

Mr. Dalton, Q.C.] [December.

Huggins v. Guelph Barrel Co.

Special endorsement—Common counts—Particulars.

The particulars of claim upon a writ of summons specially endorsed do not bind the plaintiff as particulars under a declaration on the common counts, and in such a case he must comply with a demand for particulars made by the defendant.

Hagarty, C. J.] [January 20.

Hagle v. Dalrymple.

Prohibition—Jurisdiction of Division Court—Cause of Action.

The defendant who resides at Port Elgin, had written to the plaintiff at Toronto a letter, instructing him to take certain legal proceedings, which proceedings were taken. The plaintiff sued the defendant for his costs in the First Division Court of York, at Toronto. The defendant was held entitled to a writ of prohibition to this Division Court, on the ground that the whole cause of action did not arise at Toronto.

Mr. Dalton, Q.C.] [January 20.

Woodman v. Blair.

Costs—Examination of parties—Breach of promise of marriage.

The parties in an action for breach of promise of marriage not being competent or compellable witnesses for each other, the plaintiff was not allowed the costs of an examination of the defendant under an order to examine. But the plaintiff's costs of his own examination were allowed, as this took place at the instance of the defendant.

CHANCERY CHAMBERS.

Blake, V. C.] [September 23, 1879.

English & Scottish Investment Company v. Gray.

This was a suit on a mortgage (containing a covenant to insure) against the original mortgagor and mortgagee, the latter having assigned to the plaintiff and covenanted for payment.

The bill had been served on both defendants, specially endorsed, claiming amount due up to the filing of the bill with subsequent interest. Since the service of the bill the plaintiffs had paid certain premiums of insurance which they claimed to have allowed in the decree. Assistant-Registrar McLean declined to allow the premiums or receive evidence of payment because not covered by the endorsement. One of the defendants, the mortgagor, lived in the country, and the other, the mortgagee, in Toronto.

Ewart, for the plaintiff, asked for the direction of the Court under the circumstances.

Blake, V. C. directed notice of settling decree and taking account to be served on the defendant living in Toronto, and that the claim of plaintiff for the premium should be allowed on proper evidence being produced of its payment.

Blake, V. C.] [September 28.

Young v. Wright.

McArthur, for the plaintiff, moved for an injunction to restrain the defendant from collecting rents, and for a receiver. Notice of motion had been served for an order for partition under General Order 640, which was returnable on the 6th October following.

Moss, for the defendant.

Blake, V. C.—It appears on the affidavits that the defendant now sought to be restrained is not one of the joint owners, but a stranger in possession, whose title to be in possession at all is denied. No relief can be had against him on motion without a bill filed. There must be some proceeding in the nature of an ejectment to oust him, and that relief cannot be granted on a summary application under Order 640.

Application dismissed with costs.

Blake, V. C.] [December 15.

Re Hopkins—Barnes v. Hopkins.

Dower— 42 Vict. c. 22.

H. being possessed of some lands executed mortgages of them. Some of them were given to secure unpaid purchase money, and others to secure the payment of money lent to H. The wife of the mortgagor had joined in the mortgages to bar dower.

H. having died intestate :

Held, on the sale of lands under decree, directing a sum in gross, in lieu of dower, to be paid to the widow, that she was entitled to dower out of the whole amount realized from the sale, after deducting therefrom the amount of the mortgages given by H. to secure unpaid purchase money, but not of the other mortgages.

Blake, V. C.] [December 16.

Cook v. Credit Valley Railway.

Sequestration—Motion for—Length of Notice.

On moving for a writ of sequestration for breach of an injunction, two clear days' notice of motion is sufficient.

CORRESPONDENCE.

Sheriff's Fees and Mr. McKellar's Pamphlet.

To the Editor of The Law Journal.

Sir,—A pamphlet has lately been issued and forwarded to the Ontario Government by Mr. McKellar, the Sheriff of Wentworth, having for its object, the redress of the grievances to which he alleges Sheriffs are subjected. This pamphlet contains a copy of a petition signed by thirty-four out of thirty-seven Sheriffs of Ontario, to be presented to the Legislative Assembly at its present session, setting forth what these alleged grievances are, and Mr. McKellar has appended a draft of a proposed Bill, which he hopes to have passed by the Legislature, in the exclusive interest of Sheriffs ; and the pamphlet also contains, what Mr. McKellar considers to be ample proof of the genuineness of the alleged grievances, and conclusive reasons for the speedy interference of the Legislature in behalf of himself and of the Shrievalty throughout Ontario.

Mr. McKellar refers to individual members of the legal profession as "Good honest Charlie," "The Saintly Lauder," "Good Old Rye," "Truly thou art a Deacon fearfully and wonderfully made," and, by covert insinuation, would revenge himself upon gentlemen, who have dared to combat his views upon the subject under discussion. Such "throwing of scurrilous and abusive terms" may, for aught I know, most truly be in keeping with the individual who uses them, and be most becoming to the man ; but, for a little while, could not the Sheriff of Wentworth have lost self-consciousness and, mindful only of his official character, abstained from language so undignified in the holder of an important Shrievalty.

The gentleman refers to two bills of costs, as proving the truth of what his pamphlet asserts ; one in a suit of Watson *v.* Servos (p. 20), the other in a suit of Suter *v.* Servos (p. 21), and he relies upon the taxation of the County Court Clerk of Waterloo in each of these two cases. In Suter *v.* Servos this Clerk allows a charge, and in Watson *v.* Servos, this same charge this same Clerk disallows. Truly this Clerk must be a competent officer, when, upon the faith of this taxation, Mr. McKellar ventures to send broadcast the accusation that Mr. Dalton McCarthy's law firm charged and obtained fees to which they were never entitled. Then Mr. McKellar (may I hope unintentionally) directly misleads the readers of his pamphlet. Take, for instance, the case he refers to, that of Watson *v.* Servos ; the Clerk, in that case, it appears (vide p. 20 of the pamphlet), taxed off the sum of $2.73.

Now Mr. McKellar seeks to leave the impression that this sum of $2.73 was charged by the Attorney for the serving of process. He says (p. 20), "Although Mr. Rye's office is within a stone's throw of the Sheriff's office, he does not give him the writ, but employs one of his own clerks, as he tells us, *and collects* $2.73 *for his services*, while the Sheriff would have got only $1.80." Now the gentleman Mr. McKellar refers to, *did not collect* $2.73 *for his clerk's services, and no where in the bill printed is there any such charge, or any charge at all for the serving of process*, and Mr. McKellar must so have been aware, and should not have put into circulation statements, hazardous to himself, and injurious to the gentleman he refers to.

In the case of Suter *v.* Servos (p. 21), there does appear a charge for services of $1.00; this item was taxed off, and properly so, and I am free to admit the lawyer ought not, in law, to have made this charge, notwithstanding he did the work; but, Mr. McKellar does not admit that if this service had been performed by the Sheriff, it would have cost the defendant not $1.00, but $1.80. Mr. McKellar pointedly draws attention to the fact that "if the summons had been served by the Sheriff, he would have been entitled to $1.80, and no more;" but he adroitly places these words beneath the Clerk's certificate of $5.25 as being the *total amount* taxed off (with a purpose no doubt), instead of admitting that in this case the defendant was saved 80 cents by the lawyer, instead of the Sheriff doing the work.

In the case of Bishop *v.* Douglas (at p. 23), the services of Mr. McKellar's favourite C. C. C. were again brought into requisition, and the sum of $2.25 taxed off. Though there is no charge made here for serving process, Mr. McKellar again has the clerk's certificate appended, drawing attention to the difference between the $2.25 taxed off, and the $1.80 which would have been the Sheriff's fees, had he served the process. Then (at p. 24) Mr. McKellar sets out a bill of costs in Smith *v.* Mercer, in which, it appears, service of writ was charged for at 50c, by the law firm of which Mr. Hardy is the head. Mr. McKellar neglects to say that, had the Sheriff served the writ, the client would have had to pay, in addition to the total amount taxed off, the difference between 50c and $1.80, viz., $1.30; but he seeks to attract attention solely to a comparison between the $1.80, and the total amount taxed off the bill, viz, $5.25. Instead of increasing the taxed bill by the sum which it would have cost to have the Sheriff serve the process, Mr. McKellar artfully points out what has been taxed off the bill, and says "Look! see what the lawyers would rob you of. Now were the Sheriff to do the work only $1.80 would you have had to pay." In only one instance, does Mr. McKellar fail to adopt this plan, and that instance was in the case of McNair *v.* Goering (at p. 9). Here, he does single out what was charged for serving of papers, and explains that the sum of $13.37 was charged for his own services as Sheriff, when, the fact was, the services were not performed by him at all. I do not defend the conduct of Mr. Cahill. If what is stated of him be true, I should not wish to be forced to write words to characterize his actions; but, even in this case, there would seem to have been some justification for Mr. Cahill's course, in an understanding about the matter between Mr. Cahill and *Mr. McKellar's own Deputy*. Yet, however that may be, Mr. Cahill will no doubt, deem it wise to "rise and explain."

Mr. McKellar's argument is that lawyers charge for the serving of papers, when by law they are not entitled to do so, and therefore the Legislature ought to positively prohibit these services being made by any one but Sheriffs. Now I will not contend that lawyers are infallible. I will admit that there are lawyers who are dishonest, who charge what they are not entitled to charge, and who take fees they ought not to take (will Mr. McKellar admit the same thing of some Sheriffs?); but I fail to see the logic by which he arrives at the conclusion that the cure for the evil is in making the Sheriff receive the fees whether he does the work or not. Mr. McKellar treats of the alleged evil, not as against the moral law but as against the public interest.

Taking his standpoint, then, the evil will remain the same (if a change is made) for the public, instead of paying Peter, will have to pay Paul. What in the past they have paid the lawyers (as it is alleged), in the future, they will have to pay the Sheriffs. But the fact is, any change in the direction Mr. McKellar proposes, will increase the evil against the public, if any such now there be. There are but few of the profession who exact fees to which they are not entitled; such instances are rare, and it therefore is the exceptional suitor only, who suffers from business contact with such of the profession; and he, be it understood, has his remedy, but how will it be if Mr. McKellar's wishes are fulfilled. Then, in every single suit in which a writ is issued or a bill filed and served, the suitor will have to pay a fee. Kith and kin all alike must pay. The Sheriff charges the lawyer, and the lawyer charges the client. The lawyer collects, and the Sheriff receives. What now is a rare exception, then will become an unexceptional rule. The public can the better understand the effect of Mr. McKellar's proposed legislation by a comparison of his own figures taken from his pamphlet. At p. 28 it appears that the number of bills in Chancery and writs of summons issued in the year 1876 was 20,380. Of this number Mr. McKellar admits that 11,066 were served by Sheriffs, leaving a balance of 9,314, which he alleges *were* served by attorneys. The fee for service of each of these 20,380 was Mr. McKellar says (at p. 28) as follows:

S. C. process,	6,556 at	$2 70 =	$17,701 20
I. C.	"	11,245 at	1 80 =	20,241 00
Chan.	"	2,579 at	2 25 =	5,802 75
	20,380			$43,744 95

Now, had the Sheriffs served the entire 20,380, the public would have paid, and the Sheriffs received the moderate sum of $43,744.95; from this one source alone, an average sum of $1,182.29 for every Sheriff in Ontario. Mr. McKellar's shrievalty, however, is a large one. His own figures (p. 27) shew what he would have received from this one source, exclusive of any charge for mileage, for the year 1876:

S. C. process,	404 at	$2 70 =	$ 686 80
I. C.	"	779 at	1 80 =	1,402 20
Chan.	"	163 at	2 25 =	666 75
				$2,755 75

Close on to $3,000.00 to Mr. McKellar for merely serving writs and bills alone; and this is the man who is not satisfied. But Mr. McKellar says, the attorneys served the balance, viz.: 9,314. Admitting this, for one moment, then the public saved the nice sum of $20,506.05 by the attorneys, and not the Sheriffs doing the work, according to his own figures, as follows:

S. C. process,	3,511 at	$2 70 =	$9,479 79
I. C.	"	4,512 at	1 80 =	8,121 60
Chan.	"	1,291 at	2 24 =	2,904 75
				$20,506 05

Or the difference in fees, for what work the Sheriffs did do, and what they might have done if, in 1876, Mr. McKellar's sordid legislation had been on the statute book. But Mr. McKellar gets over this view of the matter by flatly asserting that this $20,506.05 "has been collected by the profession, with much more, as shewn by the taxed bills of costs herewith published" (p. 28). This I as flatly deny; a small fraction of this amount may have been collected by irresponsible lawyers, as I have before admitted; but, when he says the entire $20,506.05 "has been collected by the profession, with much more," he writes whereof he knows naught. What allowance has he made for the numerous cases in which writs and bills were issued, and nothing more was done. He says the total number of writs and bills issued in 1876 was 20,380, of which 11,066 were served by the Sheriffs, therefore this allowance must be deducted from the 9,314 alleged to have been served by the attorneys. Thirty per cent. of this 9,314 (or ten per cent. off the number in each Court), is not too much to put this allowance at, reducing thus, the sum of $20,506.05, alleged by Mr. McKellar to have been "collected by the profession, with much more," &c.,

&c., to this sum of $14,354.24. But a still further reduction has to be made; Mr. McKellar makes no allowance for that proportion of suits, which did not end merely with the issuing of process, but which were continued on to judgment, and in which the litigant had the protection of the taxing officer's taxation. In such suits, if a charge for serving process was made the charge would be disallowed by the Clerk, and the attorney would lose the charge for his services, or that sum which he had paid to others for doing work, for which the Sheriffs only can be paid as against the litigant. Now, of the total number, alleged by Mr. McKellar, to have been served by the attorneys, fifty per cent. is not too much to put this proportion at, therefore the above mentioned sum of $14,354.24 has still further to be reduced by fifty per cent. of the $20,506.05 "alleged to have been collected, with much more, &c." The amount collected by the attorneys therefore, on Mr. McKellar's own figures, in place of being $20,506.05, would be $4,101.21. Now, admitting for a moment that the profession did collect this $4,101.21, they did so, Mr. McKellar does not deny, for services duly rendered; the exact services, in fact, for which the public would have had to pay the Sheriffs, had they done the work, the sum of $20,506.05. But, again, is it fair or just of Mr. McKellar to say that the profession collected even the $4,101.21? He offers no proof, but that of his own assumption. What Mr. McKellar puts to paper, he must either believe, or dis-believe, to be true. If the former be the case, then he assumes that lawyers are all dishonest; if the latter be the case, then he proves himself as bad as one of the legal gentlemen of whom he writes. Mr. McKellar, however, does not so assume against the profession. The petition of the Sheriffs, to which his name is subscribed, negatives such an assumption. It seeks to be laudatory of them (4th par.), with an object to be suspected, but not to be mentioned; but the class he refers to, "whose practices he desires to bring under the notice of the House," he singles out in the 5th par. of the petition. So that even this sum of $4,101.21 has to be lessened. It has to be reduced, by the proportion towards it, which those of the profession bear, who are within the 4th par. of the petition, and to the practices only of this particular class who come within the 5th par. of the petition. The reduction will be a large one and the balance, improperly collected, small indeed, for after the lapse of *two years*, "during which time," Mr. McKellar tells us in his own words, he "has made most diligent inquiry;" he is in a position to point out eight bills of costs, and on the strength of these eight bills of costs, taxed by the aforesaid County Court Clerk of Waterloo, Mr. McKellar deliberately charges that the profession has collected improperly and illegally $20,506.05, "and much more." These eight bills of costs, however, do not prove it, and Mr. McKellar knows it. They prove however something, and that is, that litigants, if they are improperly charged, have a remedy. As Mr. McKellar had the the aforesaid bills taxed, so can any individual who is dissatisfied with the charges of a solicitor. A client or litigant always could, and still can, have his bill taxed, and, if a member of the profession lends himself to dishonesty his earthly punishment will come fast and furious from the Society of which he is a member. Then, too, the law being that, unless the service of process is performed by the Sheriff, no fee therefor can be taxed (with which Mr. McKellar is not content, but wants more), the taxing-officer disallows the charge if made, and in the majority of cases bills of costs go before the Master for taxation. Again (at p. 38), Mr. McKellar's figures are inaccurate and designed to mislead. It appears that, in each of four suits, Division Court Clerks were employed to serve papers, and Mr. McKellar would have the impression formed that the fees charged by these clerks, were extracted from the litigant by the attorney. It is more than likely that, in each of these cases, the attorney forfeited the fee charged, as is constantly the case, as all lawyers know, when the loss of this fee is better than the risk of delay or other inconvenience in connection with service by the Sheriff.

Enough has been said to shew the utter unreliability of Mr. McKellar's pamphlet;

but Mr. McKellar out-herods Herod at pp. 30, 31. He gives a list of 18 writs of execution, in each of which the Sheriff is commanded to levy *for the issue of the writ* much more than the law allows. The total amount he says was $153, which the taxing officer reduced to $56.33. Mr. McKellar, for what reason I don't know, except it be to mislead by an unfair comparison, shews that had the summonses, in each of these cases, been served by Sheriffs, the Sheriff's fees would have been $37.80, to which he adds the above $56.33, making a total of $94.33, and then says by the collection of the $153 the attorneys were collecting "their own fees, the Sheriff's fees, and a further sum of $58.57." What could be more absurd! why not one cent of the $153 is made up by a Sheriff's fee. The absurdity appears the greater when it is noticed, as the fact is, that had the Sheriffs served the summonses and earned their fees therefor, the charges on the writs of execution would have been none the less, for the two things are wholly disconnected. He might as well argue that if a merchant, who serves his own process, and finally issues execution for a debt, only half of which is due him and collects it, this merchant, forsooth, by so doing is collecting fees to which the Sheriffs are entitled. The cases are analogous. Because a lawyer charges improperly, is the law to be made more expensive to the suitor, and still more remunerative to the Sheriff, in order to prevent the lawyer from wrong-doing. In each of the above cases, the defendant could have declined to pay the improper charge, and neither the attorney nor the Sheriff could have compelled him to do so; but because the defendants refused (if they did so refuse) to exercise their rights in so declining, Mr. McKellar argues that the Legislature should step in and increase his fees, by compelling everybody to employ Sheriffs to serve papers.

From Mr. McKellar's pamphlet throughout but one conclusion can be come to, viz.: that he desires to attain his ends at any cost. The ends are sordid, and the cost deliberate misrepresentation. He seeks to gain advantage of the unhappy prejudice against the profession, and would increase that prejudice that he might gain. His text, Mr. McKellar trusts, the non-professional members of the house will not see through; but the figures, he hopes, will catch their eye. His comparisons he hopes will go unexplained; but his misstatements he wishes to be received as true. He writes unfairly, unjustly, dishonestly of the legal profession, that he may gratify the feelings of those already biased against the profession. He strives to lower the legal fraternity, and all from an insatiable love of gain, that he may increase the emoluments of his office, already the best and most remunerative office in the gift of the Province. I myself am opposed to the profession serving process, and fully agree with Mr. McKellar that doing so is "beneath the dignity which should characterize members of the legal profession;" but there are instances when the profession are compelled to serve their own process. Take the ordinary case of subpœnas. Ten days' notice of trial is given. You have eight or ten witnesses. You rush off and get a subpœna, make your copies and appear at the Sheriff's office. You find there five or six lawyers ahead of you on the same errand as yourself, each of whom must have his witnesses served at once: witnesses are going away, others trying to evade service, and so on. The Sheriff gladly does what he can; but finds it impossible to travel round and summon fifty or sixty witnesses in ten days' time, and so you appear at Court with your evidence unprepared, and torment the presiding Judge with applications for delay. But Mr. McKellar provides in his Bill (sec. 2) for service by persons other than Sheriffs. Truly his proposal is a generous one! The same lawyers at a later period again appear at the Sheriff's office, each of whom presses eagerly for the prompt service of his subpœnas. "Very sorry, gentlemen," says the Sheriff, taking his pipe for a smoke, "my bailiffs are all, you know, busily occupied just now; serve the subpœnas yourselves, gentlemen, serve them yourselves; but mind you comply with the second section of McKellar's Act, and come to me within twenty-four hours.

after the service, with the writ. For, you know, nowadays, the Sheriff is "entitled "to the like fees, to which he would have "been entitled, had the service been "effected by himself or his authorized "bailiff, or officer." "Surely not," reply the lawyers in one voice, "that cannot be McKellar's Act; Mr. McKellar was a Reformer, and he never would permit one man to be paid for the work another does," "That may all be true, gentlemen," answers the Sheriff, "but office, gentlemen, is a strange metamorphoser, and the law is as I say; in fact I have concluded to discharge my deputies and bailiffs, and hereafter I shall allow the profession to do the work, and I shall draw the pay, under McKellar's Act you know; and if I find any of you gentlemen neglecting, within twenty-four hours, to return the writ to me, that *I* may charge *you* for *your* services, I shall have you fined for the first offence, $10; and for the second and every subsequent offence, $20; and, in default, I shall have you put in prison, gentlemen, for one or two months as the case may be." "Can such things be," says one legal gentleman, "and did Mr. Mowat pass such a law." "He did indeed," replies the Sheriff. "Then," asked the leading lawyer, turning to his professional brethren, "Is it not time that we lawyers should amalgamate, and we shall certainly do so, to put down this Sheriff-legislation, and if we fail in our efforts, we must go in and have class legislation also."

The whole of Mr. McKellar's Act is designed to increase Sheriff's fees, and not to protect or save the public. The latter have protection now, but if they have not, the proposed Act will not benefit them, but, as I have shewn, will take more money out of their pocket. I submit, if legislation is needed, it is to protect the public, and not to enrich the Sheriff. If but one man a year is defrauded by improper legal charges, the matter is deserving of legislation, if, without it, the evil cannot be stopped. The public have a remedy now; but it is said they don't apply it. They have themselves to blame then; but if legislation is needed, let the Common Law Procedure Act be amended, and make it compulsory that all bills of costs be taxed; then the affected (*but not the real*) cause of Mr. McKellar's agitation will be securely removed; and the few dishonest lawyers kept in check, and prevented from overcharging by the allocatur of the taxing officer.

It is a strange incongruity, that while almost any man has sufficient capacity to perform the duties of a Sheriff or a Registrar, and only a certain few are qualified to make a Judge, yet the Sheriffs and the Registrars, with few exceptions, are in receipt of salaries of twenty-five and fifty per cent. in excess of those of County Court Judges. Legislation here is needed, but not to increase Sheriff's emoluments.

Mr. McKellar, in his preface (p. 4), says the object of his Act is: 1st. "To surrender ten per cent of the Sheriff's fees to the public, to be given to the municipalities," &c. Very good! *but no mention of any such object is made in his proposed Act.* And his own words shew that his object is not a disinterested one. He says (at p. 32), "acting on the old adage that 'half a loaf is better than no bread, they (the Sheriffs) believe it is better to surrender ten per cent, and secure thirty-five or forty per cent of the fifty they now lose.' The Legislature should take Mr. McKellar at his word, and curtail Sheriff's emoluments, in the way they have done Registrar's (see Rev. Stat. O. cap. 111, p. 1091); but, instead of surrendering the surplus fees to the municipality, the Legislature should enact that they be deposited to the credit of a fund to be called the "Sheriff's inspection fund," the object of which would be to provide a salary for, and to defray the expenses of an Inspector of Sheriff's Offices. We now have an Inspector of Registry Offices, of Division Courts, and of sundry other offices. It is much more important to have inspectors of those offices, in which such large sums of the moneys of the people are received and paid out,

Yours, &c.,

Jan. 12th, 1880. B.

CORRESPONDENCE.

Unlicensed Conveyancers.

To the Editor of THE LAW JOURNAL.

DEAR SIR,—Your last number contained a communication on this subject. I must say that every word in it is true to the letter. In this place there are three so called conveyancers, and who call themselves "lawyers," so much so that the more ignorant persons (and there are lots) will say, "let us go to lawyer so-and-so," meaning the "scribblers." He will do it for less than Mr. Doe, the professional man, and that which makes many think they are lawyers is this—they are often "Commissioners in B.R., &c.," and they show this parchment or commission, which fully convinces the ordinary mind—and when we say he is not a lawyer, the reply is, "yes he is. I saw his diploma. He said he was." What I say is, that those commissions should be cancelled. I must add my voice to that of "An old subscriber." Mr. G. of this place does a great deal of conveyancing, and the people suppose it is all correct, because he gives them a blank filled up, and with a flourish of trumpets, administers the oath to the witness of its execution. This is a cause of injury and complaint of long standing, and is often referred to. I certainly think the Government should do something to aid the profession, as against this evil; and for the general good, if nothing else, take away this commission for administering affidavits, and give it to persons who are above this pettifogging. Why should we be called upon to go through five years' study, and pay yearly fees for that which is practically a myth.

Yours,

SUBSCRIBER.

To the Editor of THE LAW JOURNAL.

SIR,—The very sensible letter which appeared in the last issue of THE LAW JOURNAL, on the above subject, and your comments thereon have induced me to add my protest to the existing state of things.

I think the time has come when it is necessary for the Ontario Legislature to interfere, in the interests of the legal profession, and more particularly those practising in outlying country towns, to protect them from the inroads of self-styled "Conveyancers," *et hoc genus omne*, who swarm throughout the rural portions of the Province, and who, while they pass no examinations, and pay no fees whatever, materially injure legitimate business, by under-bidding lawyers in the drawing of instruments, the legal import of which not one-fourth of them understand. Could not Mr. Mowat, among his other gigantic schemes of Law Reform, pass an Act somewhat similar to Imperial Statute, 44 Geo. III., cap. 98, section 14 of which prohibits unlicensed persons from drawing or preparing any conveyance, &c. (wills excepted), for reward, under a penalty of fifty pounds? and could he not also require non-professional persons who desire to practise "conveyancing" to first pass an examination before the County Court Judge, and obtain a certificate from him, as provided with respect to Notaries Public, by R. S. O., cap. 141, sec. 3; and also compel such persons to pay a reasonable fee, either annually or otherwise, for such privilege? Certainly *something* ought to be done to prevent legally qualified men from being deprived of their proper work, and poor and perhaps ignorant people from being involved in costly litigation by the blundering of incompetent persons.

Would it not also be proper to prohibit County Court Clerks (who are custodians of all instruments relating to chattels, as Registrars are of instruments relating to lands), from practising as Conveyancers during their tenure of office, as the latter are prohibited by R. S. O., cap. 3, sec. 19?

Some of our readers might be surprised to see letter paper with the following "legal" heading, emanating from the office of one of these gentlemen, but I vouch for its accuracy:

"Notary Public, Conveyancer, Office,
Commissioner for taking Court House,
affidavits in B.R., &c., &c., &c. .....18 ."

The three several *et cæteras* refer, I presume, to the "Justice shop" of a J.P., a usurious system of money lending, and an agency for the collection of petty accounts,

which this individual carries on, in conjunction with his official and "conveyancing" business.

Yours, &c.,
Lex.

To the Editor of the Law Journal.

Sir,—I have read with some satisfaction the letter of "An Old Subscriber" in your issue of this month. My case is somewhat similar to your correspondent's. *He* has practised nine years in a country town; I have practised at least eighteen. There are two other professional men in our town, as in his; *he* has to contend with three conveyancers, and I, alas! with thirteen.

Lest my assertion of the number of conveyancers in full blast here should be incredible, I forward an issue of our local newspaper, in which you will find the advertisements of *seven* of them; the others as surely exist, although they do not advertise.

The leading professional men, occupying places in Parliament, principally hail from large centres. Blunders by conveyancers bring grist to their mill. The conveyances drawn in the country would never be drawn by, or be a source of revenue to, them; therefore it may, as "An old subscriber" states, be assumed that any application to the Local Legislature would be ineffectual if the object were to restrict *soi disant* conveyancers.

These gentlemen do not confine themselves to the filling up of blank forms, and receiving pay therefor; but strike out into other fields of legal labour, such as practising in Division Courts, and in the Surrogate Court. One at least attends every funeral within twenty miles; is said to hunt in couples with the tomb-stone man, whose business it is to attend on those melancholy occasions. "You will have some surrogate work to do," he suggests to the survivor, entitled to probate or administration. "No use going to lawyers; they are great rogues. I am an honest man, and will put *thy* business through for one-half of what it will cost thee, if thou employest a lawyer." So he gets his instructions, prepares the papers, leading probate, or administration; sends them to Surrogate Registrar, in name of applicant, and pockets the fees, which I must do him the justice to observe, are *not* less than would be charged by a lawyer.

Take Division Court, Surrogate, and conveyancing business from a country practitioner, and what is left? He is pretty nearly reduced to the condition of the Robin Redbreast described by somebody as "*Vox, et preterea nihil*," and I would say to country practitioners, let us raise our voices, and endeavour to obtain some recognition of rights, supposed to be secured by long and arduous study, good conduct, the expenditure of large sums of money in fees and in annual subscription to maintain the dignity and efficiency of the Law Society.

That magical name should be suggestive of hope; but when we look back and see what that Society has *not* done for us; how, in return for our annual subscriptions, it has *not* fostered our interests; how it has *not* attempted to protect us against interlopers; how it remains utterly indifferent, and allows without interference its creations to be placed at a disadvantage, then hope from that source almost ceases to exist.

I am fully aware that I render myself liable to the charge of temerity (and feel the sort of desperation that must have animated Cæsar when in the act of crossing the Rubicon), when I venture to ask: Why the Law Society does not interfere?

It is either an influential body, or it is not.

It is certainly a body fully competent to judge of the matters in question.

It is continually manufacturing new batches of lawyers.

It is continually, I submit, *not* protecting them as they should be protected.

It is receiving fees for a protection it does *not* afford.

I assume that the Law Society is an influential body, and that its representations would have far more weight with the Legislature than other representations could, or ought to, have.

You sugggest that "this is a matter which, in our opinion, should engage the attention of the Attorney-General for Ontario," &c. If you are right, would it not be a proper thing for the Law Society to suggest to the Attorney-General a plan of action, by which the necessary protection might be afforded?

Your obedient servant,

Scriptor Sine Scriptum.

January 16, 1880.

Insolvency.—Reconveyance.

To the Editor of The Law Journal.

Sir,—Being Solicitors for Mr. David Falconer, the petitioning creditor, at whose instance proceedings were taken for the removal of the Assignee of the Estate of Howard C. Evans and Company, we have read with a great deal of interest the correspondence in your journal on the judgment delivered by the County Court Judge at Halifax, Judge Johnston, in the matter.

The question at issue being one of practical importance must plead our excuse for troubling you with the present communication.

The Judge held that the Assignee was not justified in reconveying the estate to the Insolvents until the deed of composition and discharge had been confirmed by the Court. A good deal depends, we think, on the meaning that is given to the words "executed as aforesaid." Are the words to be limited to the mere signing of the deed by the requisite number or to the approval by the creditors of the deed as in section 51, or can these words be legitimately construed so as to embrace within their meaning, in addition to the other two, the confirmation of the deed by the Judge, or in other words can a deed be said to be "executed as aforesaid" while anything remains to be done to give it validity? It will, we think, be conceded that the sections of the Act from 49 to 63 both inclusive apply to a discharge or to a composition and discharge given by creditors. Section 49 speaks of the deed being "*signed*" by a majority; section 51 provides for the consideration of the deed and of the creditors' approval or dissent therefrom. Thus far the word "executed" has not been used in reference to the deed; section 53 says: "an Insolvent who has procured the execution of a deed of composition and discharge," may petition the judge for a confirmation of the discharge effected thereby." We have then to inquire what is the duty of the Judge on the presentation of the petition. Is he as a matter of course to confirm the deed? No, the Insolvent is not entitled to the confirmation of his deed if it appears that he has been guilty of fraud or evil practice in procuring the execution of his deed. The power thus vested in the Judge is, to our minds, Mr. Editor, strongly corroborative of the position that a Judge has something to say as regards the execution. Suppose then the Judge is asked to confirm a deed apparently signed by the requisite number and majority, and on investigation he finds that the majority of the creditors who have signed have not proved, or that they did not represent the requisite amount. He is then bound to stay his hand and say "this deed is not executed; it is worthless," or if it is proved to his satisfaction that the Insolvent procured the signatures to his deed by means of the grossest fraud and by resorting to evil practice, the Judge is bound to say "I will not confirm this deed, it is not executed according to the statute and therefore is not executed at all." The Insolvent, however, immediately on procuring the signatures of the creditors demands from the Assignee a reconveyance of the estate. The Assignee possesses no judicial powers; the law vests in him no authority to enquire into the means used to obtain the signatures, and on the assumption that the words "executed as aforesaid" refer to the signing alone, he has no alternative but to hand over the estate. But it is contended by one of your many correspondents, for which he claims the sanction of judicial authority, that "executed as aforesaid" implies more than the mere signing, that it includes, the *approval by the meeting of creditors*. By what course of reasoning we ask is the conclusion arrived at that these words include the approval of the creditors but not the confirmation by the Judge especially when the sections referring to the approval and the confirmation both precede section

60, which contains the clause "executed as aforesaid."

But for the sake of argument admit that the words "executed as aforesaid" embrace within their meaning approval by the creditors, the mischief is not removed. In the case supposed, where the majority is obtained by the signatures of creditors who have not proved and others who have obtained a preference, the Assignee has no power to interfere, or strike off any signature, his duties being merely ministerial, to convene the meeting and record the proceedings and the vote. Is there no remedy, and is the Judge a mere cypher?

By section 52, after the assent of the creditors to the deed has been obtained, the Assignee is to annex to the deed a certificate of the number and who have given their assent to it and to transmit such certificate without delay to the Clerk of the Court—for what purpose? To enable the Insolvent to procure his discharge? Not alone, for his application for confirmation of discharge is optional and not compulsory. And by section 52 the Insolvent is the party to file the deed and certificate previous to giving notice and presenting his petition. Why then is the Assignee required to transmit *without delay* his certificate to the Clerk? With all deference we reply to enable the Judge to ascertain whether the deed is properly executed, and whether as a consequence the Insolvent is entitled to a reconveyance. If the Insolvent wishes to obtain his estate he must apply to have the deed confirmed, and by the Judge confirming the deed it is authoritatively determined that it is "executed as aforesaid." This argument obtains force from a reference to section 60, where it is declared that the reconveyance is only effectual when made in conformity with the terms of a *valid* deed. What if the Judge should determine the deed not to be valid? Then the Insolvent has no right to the reconveyance and the estate ought to be returned to the Assignee. But the Act makes no provision for the Assignee resuming possession except in case of the nonfulfilment of the *terms* of the deed.

Further section 60 assumes that the deed may be contested and provides for the suspension of any payment or instalment during such contestation, but makes no provision for the Assignee resuming possession should the contestation succeed.

From all this we arrive at the conclusion that the words "executed as aforesaid" intend that three things should concur.

1st. That the requisite number give their assent by signing the deed.

2nd. That the creditors approve of the same at a meeting called for the purpose.

3rd. That the deed be confirmed by the Judge.

By accepting this construction no hardship will accrue to the Insolvent as during the delay necessary to procure a confirmation of the deed he can work the estate through the Assignee and inspectors, and in the event of the deed not being confirmed should he become repossessed of his estate which the law intended should be held in trust for the creditors he might dissipate or transfer the assets so as to have nothing available for them. Thanking you for so much space we are,

Yours, &c.,

MOLTON, MCSWEENEY & FIELDING.

Halifax, Jan. 6th, 1880.

To the Editor of THE LAW JOURNAL.

SIR,—Much difference of opinion has arisen as to the time when a creditors' assignee is justified in reconveying the estate of an Insolvent to him or his appointee, as is directed by section 60 of the Insolvent Act. As yet there is but one judicial opinion upon this question, that I am aware of in this Province, which is to the effect that such reconveyance cannot properly be made until the discharge is confirmed. As I, in my capacity of creditors' assignee, have never refused to reconvey the estate after the deed was filed in the office of the Court, I propose to give my reasons for the course which I have adopted while I disregarded the decision above referred to.

The authority for reconveying is found in section 60, in these words:—"So soon as a deed of composition and discharge shall have been executed as aforesaid, it shall be

the duty of the assignee to reconvey the estate, &c., &c." The principal question then, if not the only one, is—when is the deed *executed as aforesaid?* The word "execute" has a meaning in law which, it appears to me, settles the matter. Worcester, following Burrill, says, "a deed is *executed* when it is signed, sealed and *delivered.*" The signing and sealing are of course contemporaneous and previous to the delivery. In this respect a deed of composition and discharge does not differ from any other deed. Assuming then that the deed is properly and sufficiently signed and sealed, when is it delivered? or in other words, when is the execution completed? Bouvier, I think it is, says, "In law, a paper is said to be *filed* when it is *delivered* to the proper officer, and received by him to be kept on file." It is perfectly clear that there is no delivery previous to this filing, for by reference to the first lines of section 53, it appears that the deed is to be filed in the office of the Court by the Insolvent, showing that he, at this point, is in possession of it. It is also perfectly clear that there is no delivery after this filing, for it is received by him (the officer of the Court) to be *kept* on file. It remains on file forever, and, consequently it can never be delivered any more, or any further, unless the Court is delivered with it.

Again—the deed is to be executed as *aforesaid*—the word "aforesaid" has, in this connection, a significance sufficient in itself to remove every doubt as to the meaning of the word "executed." Mark you, the words "executed as aforesaid," occur in section 60—sections 54 to 59 inclusive refer to the confirmation of the discharge and there is not one word in the whole Act referring to such confirmation until you reach section 53, which directs the notice to be given of the intention to apply to the Court. Form J, which is a part of and embodied in section 53, reads as follows:—"The undersigned (that is to say, the Insolvent) has filed in the office of this Court, a deed of composition and discharge, *executed* by his creditors." The Insolvent is directed to say that the deed is *executed* as soon as it is filed, as provided by, and mentioned in, section 53, and there is not another word about it being executed; in fact, the word "executed" does not again occur until you find it in section 60, where the deed is now spoken of as "executed as aforesaid."

It seems to me, therefore, that I am obliged to draw the following conclusion from the premises which I have laid down.

The assignee shall reconvey, so soon as the deed is *exeeuted* as aforesaid, that is to say, so soon as the deed is *signed, sealed and delivered* as aforesaid.

The deed is *signed, sealed and delivered* as aforesaid, when it *is signed, sealed and filed in the office of the Court,* as provided by section 53.

Therefore (taking the words of the Act in full) it shall be the duty of the assignee *to reconvey* the estate so soon as the deed shall have been *signed, sealed and filed in the office of the Court,* that is to say, so soon as the first five lines of section 53 shall have been complied with.

I am obliged to add another observation, owing to the fact that the purport of the last two lines of section 66 have been sadly misrepresented. In order to avoid this misrepresentation it is only necessary to distinguish between the words "deed" and "discharge." The deed hereinbefore referred to has two provisions—The composition part of the deed is the promise by the Insolvent to pay his creditors a certain proportion of his debts. The discharge part is the agreement by the creditors to release the Insolvent. The two parts taken together, namely: the composition and the discharge, with possibly other obligations, comprise what is termed the *deed.* If you will carefully peruse the first dozen lines of section 59, you cannot fail to observe the distinction between the words "deed" and "composition" and "discharge," and will have no difficulty in agreeing with me that while a *discharge* may have no effect as provided in section 66, the *deed* in every other respect, and in all its other functions and requirements, may be and remain in full force.

If section 66 had said that a *deed* should have no effect until it was confirmed, I would be obliged to admit that sections 60 and 66 were contradictory, but as section 60

refers to the *deed*, while section 66 refers to the *discharge* there is no contradiction, and I have no difficulty in coming to the conclusion that the deed is "executed as aforesaid" when it is filed, as provided by section 53, and that the *deed* being so filed, is of effect in so far as is requisite to justify the assignee in reconveying the estate, notwithstanding the *discharge* "proposed" in and by said deed, may be or become of no effect for want of confirmation.

Yours, &c.,

H. H. B.

Halifax, Jan. 19, 1880.

LAW STUDENTS' DEPARTMENT.

Law Society Examination Papers.

First Intermediate.

Smith's Manual of Common Law and Statutes.

1. State generally the facts necessary for a plaintiff to be able to prove in order that he may be entitled to recover damages for a malicious prosecution.

2. Define and distinguish between *(a)* a promise and *(b)* a contract.

3. What difference is there as to powers and means of rescinding *(a)* a gratuitous promise, *(b)* a parol contract based on good consideration, and (c) a contract under seal?

4. What are the rights of the landlord and tenant respectively to buildings put on the landlord's property by and at the expense of the tenant, with the landlord's consent in writing?

5. A goes into B's shop and says to B, "Let C have certain articles and charge me with them," and B thereupon furnishes C with the articles in question. On these facts, can B sue A for the price of the goods, and why?

6. Give the effect of Statutory enactments in regard to sending notices of protest of bills of exchange and promissory notes.

7. What is required in order to make binding a promise made after full age to pay a debt contracted in infancy? Answer fully.

Second Intermediate.

Broom's Common Law and Statutes.

1. Give a short sketch of the elements of which our "Common Law" is composed.

2. Can an action be maintained here upon a verbal contract made in France and not to be performed within a year, such contract being enforceable in France? Give the reason for your answer.

3. In how far can a private person on his own authority abate a public nuisance?

4. A, a lunatic, commits an assault on B. In how far is A answerable civilly and criminally?

What rights have riparian proprietors to running streams flowing past their lands?

6. A tenant in tail who is *sui juris* is entitled to bring an action to recover possession of certain lands and fails to do so within ten years from the time such right of action accrued. What effect will this have on *(a)* his own right of action, and *(b)* the right of his son who would be entitled as tenant in tail on the death of his father? Give reasons for answer.

7. From what time will the Statute of Limitations run against a plaintiff who has been deprived of his land by means of a concealed fraud?

First Year Scholarship.

Haynes' Outlines of Equity.

1. In what classes of cases will the Court of Equity grant relief on the ground of accident?

2. Describe the proceedings in an action of ejectment under the former practice. Show how it was that several successive actions might be brought in respect of the same land.

3. Describe the position and power of a married woman with reference to her separate estate acquired under a settlement which imposes restraint upon anticipation, during coverture, during widowhood, and after a second marriage.

4. Under what circumstances will the Court entertain a bill for the perpetuation of testimony.

5. State shortly the proceedings in an administration suit. What classes of persons are usually plaintiffs in such a suit?

SECOND YEAR SCHOLARSHIPS.

Williams' Real Property—The Registry Acts.

1. What was the nature of a conditional fee? What power of alienation had the owner of such a fee?

2. What is the meaning of an "estate in fee tail?" What is its origin, and what effect had Saltarum's case upon it?

3. What is a base fee? How can it be converted into a fee simple? What effect will a devise of it as if an estate in fee simple have?

4. State shortly the effect of the statute *Quia emptores.*

5. What was the intention, and what the effect of the Statute of Uses?

MARITIME COURT.

RULES.

The following Rules have recently been promulgated for the Maritime Court of Ontario:—

In pursuance of "The Maritime Jurisdiction Act, 1877," and with the approval of the Governor in Council, I, Kenneth Mackenzie, Judge of the Maritime Court of Ontario, do make the following additional General Rules:

274. No order for advertising a notice of the cause and intended sale in a cause *in rem*, by default, shall be made unless upon the application for such order it is made to appear to the satisfaction of the Judge or Surrogate Judge as the case may be,—

(*a*) That no owner or mortgagee of the property proceeded against resides in Canada,—or

(*b*) That the whereabouts of none of the owners or mortgagees in Canada can be ascertained after reasonable efforts in that behalf,—or

(*c*) That the institution of the cause has come to the knowledge of the owners, or some of them, if in Canada,—or to the knowledge of the agent in Canada of the owners, or some of them—and that the institution of the cause has come to the knowledge of at least one of the mortgagees under each mortgage upon the property registered in Canada, or to the knowledge of his agent, if any, in Canada.

275. No order for the sale of the property proceeded against in a cause *in rem*, whether by default or otherwise, shall be made; unless upon the application for such order it is made to appear to the satisfaction of the Judge or Surrogate Judge, as the case may be,—

(*a*) That the institution of the cause has come to the knowledge of at least one of the mortgagees under each mortgage upon the property registered in Canada, or to the knowledge of his agent, if any, in Canada,—or

(*b*) That the whereabouts of none of the mortgagees in Canada can be ascertained after reasonable efforts in that behalf.

276. Two or more persons having claims against the same property for wages or for necessaries may join against the same property in one petition, and unless the sum or sums adjudged to the claimant or claimants in a petition in a cause of wages or of necessaries amount to the sum of one hundred dollars at least, no costs shall be allowed to the claimant or claimants, as the case may be, unless under all the circumstances the Judge or Surrogate Judge thinks proper to allow a sum in gross not exceeding ten dollars in lieu of all costs.

This rule does not authorize the joining in one petition a claim for wages and a claim for necessaries.

277. No warrant to arrest a vessel shall be issued in a cause of necessaries or of repairing unless the national character of the vessel proceeded against shall be stated in the affidavit, and that it shall also be stated in the affidavit that no owner or part owner is domiciled within the Province of Ontario at the time of the necessaries being supplied, or at the time of the repairs being made.

Dated November, A.D. 1879.

(Signed) KENNETH MACKENZIE.

Law Society of Upper Canada.

OSGOODE HALL,

MICHAELMAS TERM, 43RD VICTORIÆ

During this Term, the following gentlemen were called to the Bar, the names are placed in the order in which they entered the Society, and not in the order of merit:—

JAMES CULLEN LILLIE.
WILLIAM JOHN FRANKS.
JAMES WILLIAM HOLMES.
JOHN SANDFIELD MACDONALD.
GERARD HOLMES HOPKINS.
WILLIAM JOSEPH DELANEY.
WILLIAM MCKAY READE.

And the following gentlemen were admitted into the Society as Students-at-Law and Articled Clerks.—

Graduates.

PETER SINCLAIR CAMPBELL.
ALEXANDER EDWARD WARD PETERSON.
JAMES ANDREW THOMAS.
EDWARD ROBERT CAMERON.
GEORGE BENJAMIN DOUGLAS.
JOHN JOSEPH O'MEARA.
JOHN WILSON ELLIOTT.
WILLIAM H. BARRY.

Matriculants.

JAMES GRACE.
WILLIAM AITCHISON PROUDFOOT.
WILLIAM T. ALLAN.
HENRY THOMPSON BROCK.
ALBERT CARSWELL.
ALBERT EPHRAIM GRIER.
ADOLPH AUGUST KRAFT.
WILLIAM EDWARD MIDDLETON.
CHARLES POTTER.
JOHN CLINIE DREWRY.
FRANK HEDLEY PHIPPEN.
GRANVILLE C. CUNNINGHAM.
CHARLES A. GRIER.
JOHN WILFAD.
JOHN A. RICHARDSON.
FLAVIUS L. BROOKE.
MARCUS W. RUSS.
WILLIAM D. INNES.

Junior Class.

JOHN THOMAS SPROULE.
DYCE W. SAUNDERS.
HENRY JOHN WICKHAM.
GEORGE HALES.
ARTHUR BURWASH.
JOHN ALEXANDER MCINTOSH.
GEORGE CORRY THOMSON.
NORMAN MCMURCHY.
CHECKLEY FRANCIS JOHNSTON.
WILLIAM JAMES CHURCH.
HUME BLAKE ELLIOTT.
SHERIFF HARKIN.
JAMES MILLER.
CHARLES FRANKLIN FAREWELL.
ALEXANDER GEORGE MURRAY.
WILLIAM HIGHFIELD ROBINSON.
JOHN MCNAMARA.
FREDERICK THISTLEWAITE.
CHARLES MORSE.
EDWARD AUGUSTUS WISMER.
JOSEPH ALPHONSE VALIN.
GEORGE WEIR.
WALTER SAMUEL MORPHY.
LOUIS HAYES.
JAMES S. BODDY.

Articled Clerk.

JOHN ARTHUR ALLRIGHT.

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

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

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

Articled Clerks.

Ovid, Fasti, B. I., vv. 1-300; or,
Virgil, Æneid, B. II., vv. 1-317.
Arithmetic.
Euclid, Bb. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography — North America and Europe.
Elements of Book-keeping.

Students-at-Law.

CLASSICS.

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

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

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

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

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

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

Translation from English into Latin Prose.

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

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.

Composition.

Critical analysis of a selected poem :—

1879.—Paradise Lost, Bb. I. and II.

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

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

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek.

FRENCH.

A Paper on Grammar.

Translation from English into French Prose—

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

1879 and 1881 } Emile de Bonnechose, Lazare Hoche.

or GERMAN.

A Paper on Grammar.

Musaeus, Stumme Liebe.

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

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

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

INTERMEDIATE EXAMINATIONS.

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

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

FINAL EXAMINATIONS.

FOR CALL.

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

FOR CALL, WITH HONOURS.

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

FOR CERTIFICATE OF FITNESS.

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

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

SCHOLARSHIPS.

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

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

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

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

The Law Society Matriculation Examinations for the admission of students-at-law in the Junior Class and articled clerks will be held in January and November of each year *only*.