DIARY FOR MAY.

1. Wed.. *Philip & James.* County Treasurer to make up books, enter arrears, and make yearly settlement.
4. Sat... Articles, &c., to be left with Secretary of Law Society.
5. SUN. *Rogation.*
9. Thur. *Ascension.*
12. SUN. *1st Sunday after Ascension.*
16. Thur. Exm. of Law Stud. for call to Bar with Honors.
17. Fri.. Exam. of Law Students for call to the Bar.
18. Sat.. Exam. of Art. Clerks for certificates of fitness.
19. SUN. *Whit Sunday.*
20. Mon. Easter Term begins. Articled Clerks going up for inter-exam. to file certificates.
23. Thur. Inter-exam. of Law Students and Articled Clerks.
24. Fri.. Paper Day, Q.B. New Trial Day, C.P.
25. Sat.. Paper Day, C.P. New Trial Day, Q.B.
26. SUN. *Trinity Sunday.*
27. Mon. Paper Day, Q.B. New Trial Day, C.P.
28. Tues. Paper Day, C.P. New Trial Day, Q.B.
29. Wed. Paper Day, Q.B. New Trial Day, C.P.
30. Thur. Paper Day, C.P. Open Day, Q.B.
31. Fri.. New Trial Day, Q.B Open Day, C.P.

THE

Canada Law Journal.

MAY, 1872.

Mrs. Bradwell, the Editor of the *Chicago Legal News*, is one of the most indefatigable of her sex. She applied for admission to the Bar of Illinois; and on being refused, moved all the Courts of the State, from the lowest even unto the highest. But the law was against her, and, cherishing the motto of her paper, "*Lex vincit*," she submitted with serene grace. But it was only to gather up her energies for a new and now successful effort. The Senate of the State of Illinois has been moved, and the result is announced in her paper in jubilant capitals: "Liberty of Pursuit triumphant in Illinois!" Her importunity has secured the passage of an Act, which takes effect next July, and reads as follows:

"Sec. 1.—No person shall be precluded or debarred from any occupation, profession or employment (except military), on account of sex. Provided, that this Act shall not be construed to affect the eligibility of any person to an elective office.

"Sec. 2.—All laws inconsistent with this Act are hereby repealed.

"Sec. 3.—Nothing in this Act shall be construed as requiring any female to work on streets or roads, or serve on juries."

We think this indomitable woman, or "female," as the Act has put it, is now entitled to change the motto of her journal into "*Sex vincit.*" If we may judge from the character of her paper (one of the most spirited of our weekly exchanges), she will, as a barrister, surpass many of her bearded brethren; and in time, we doubt not, should the gown movement obtain among the United States bar, she will arrive at the forensic honour of being "clad in silk attire." We notice that in the Washington District Courts a "female lawyer, coloured," has already been admitted to practice.

These are the halcyon hours of legal authors. Times are changed from the days when counsel were sternly reprimanded if they ventured to cite text-writers. Treatises even so weighty as Viner's Abridgement were once lightly esteemed by the court. In *Farr* v. *Dean* (1 Burr. 364), Mr. Justice Foster interrupted Sergeant Martin, when he was clenching an argument, thus: "Brother, Viner is not an authority. Cite the cases that Viner quotes; that you may do."

Notwithstanding the complacency with which the Judges now take a note of the text-writers cited, it remained for a Western Supreme Court (as duly chronicled in the *Chicago Legal News*) to render the finest compliment ever yet conceived by judicial intellect to legal authorship. That Court, it appears, suspended giving judgment in an important testamentary case, until Mr. Kerr's recent treatise on "Fraud and Mistake" could be imported from England, and placed in the hands of the Judges.

Since the four-and-twenty-day deliverance of the Attorney-General against the historical "claimant," minute statisticians have been overhauling the records of legal speeches famous for their "long, majestic march," if not for their "energy divine." The closest upon Sir John's heels was Miss Shedden, who, in the great Legitimacy case which so nearly concerned her, spoke for twenty-four days before the astonished and despairing law lords. Sir Charles Wetherell is said to have occupied eighteen days in discussing a cause in Chancery. In *Small* v. *Attwood*, the House of Lords listened for twelve days to the compact eloquence of Sergeant Wilde (afterwards Lord Chancellor Truro), whose fee, by the way, was £6,000—about the same sum as that

which now ministers to the solace of Sir John Coleridge.

STRICTURES FROM THE BENCH.

Judges after all are only human beings, notwithstanding the majesty with which their office is invested, and which to a limited extent attaches to their persons; and the amount of awe which they inspire varies, more or less, according to the bump of reverence which each individual among their possible subjects possesses.

Probably it is something akin to this very proper feeling of respect for their office, if not for their persons, which makes it so refreshing to hear their observations, not unfrequently called forth, on the alleged short-comings or stupidity of the Bar, or even of their brethern on the Bench. That they do break out occasionally in righteous wrath at some of the proceedings or omissions of judicial officers over whom they have an appellate jurisdiction, when utter carelessness or incompetence is the cause of the difficulty, is not to be wondered at. For example, some of our County Judges would appear to have a very hazy idea of their duties in taking down notes of evidence, &c., at trials, a most important matter when it is remembered that their rulings are liable to be called in question at any moment by a Superior Court. We happen to have before us two reported cases in the Common Pleas, where the Court makes some very plain observations on this point. In *Arthur* v. *Monck*, 21 C. P., at page 83, the learned Chief Justice expresses "great regret at being compelled to mention the very great difficulty, I might almost say impossibility, which the Court feels in trying to deal properly with a case sent up to us as this has been. We cannot, of course, dictate any particular mode either in trying cases or charging juries, or dealing with objections or reported cases: we must content ourselves with expressing our painful sense of our inability to perform the duty cast upon us by the Legislature, as a Court of Appeal from the County Courts, if the latter tribunals do not place before us fuller and more complete and satisfactory reports of all that took place before them."

The habit of this County Court Judge in this respect would seem to be inveterate, for we hear in *Ainslie* v. *Ray* (reported on page 152 of the same volume), the despairing accents of the Court in their almost impossible endeavour to do justice between the parties for the same cause, in the words of Mr. Justice Gwynne, who said: "This is *another* of those appeals from the County of Kent in which we are not informed how the learned Judge charged the jury, although it *does* appear that defendant's counsel *did* make some exceptions, but what they were is not stated." The italics are ours, but we can fancy they very faintly represent the accentuation of the sentence as read by that learned Judge, whose most expressive and earnest manner of reading his judgments is so highly appreciated at the Bar.

Some of our readers may deem these observations of the Common Law Judges too severe. If so, let us confirm them by the remarks made in Equity. Even the mild flow of Chancery procedure is disturbed by the strange doings of an occasional County Judge.

It is said that "If a judge is just, a chancellor is juster still,"—and we suppose a vice-chancellor must be about as just as a chancellor. Take, then, the language of V. C. Strong, in *Northwood* v. *Keating*, 18 Gr. p. 670, where, upon its appearing that the same County Judge had taken upon him to insert something in the certificate endorsed upon the deed of a married woman, after he had signed it, the Court is provoked into saying, "No doubt it was a very irregular and improper thing to have done."

It is, however, from the Bench in England that compliments of this kind fly most freely, and sometimes apparently without the good cause shewn in the extracts given above. We do certainly see, once in a way, in this country, a sentence like the following, which we extract from the judgment of the Court in *Nicholls* v. *Nordheimer*, 22 C. P. 57, on an appeal from the decisions of another County Court Judge:—"On the merits there was enough, possibly, to prevent a non-suit. We can hardly, however, understand any intelligent jury, not to say a Judge, accustomed to criticise evidence, finding for the plaintiff." But it takes an English Judge to express his opinion freely of a brother Judge's view of the law in a case on appeal. There is no beating about the bush to find a polite form of words wherein to express the contempt the one entertains for the opinion of the other; but there is a plain declaration that some opinion

delivered by a judge perhaps of quite as high standing as the speaker is too absurd even for argument, or that such and such a statement is contrary to the first principles of law, or impossible to be sustained on any ground, whatever, &c.

When the Bench "pitches into" each other in this internecine manner, each accepting the chastisement, by the way, in apparently the most amiable and unconcerned manner, hoping, we presume, to take it out of some one else in the same fashion, on the first opportunity, it could not be expected that the Bar would escape. An amusing example of this may be seen in *Hunter* v. *Walters*, 25 L. T., N.S., 769, where Lord Justice James says:—"This case appears to have been argued upon five days before the Vice-Chancellor; it has occupied the whole of one day and a great part of another day before us. I am, however, of opinion that it is one of the simplest and plainest cases that was ever presented to a Court of Equity."—We may mention, *en passant*, that the Vice-Chancellor was Malins, V. C., and, strange to say, his decision was upheld; and we say strange, because the Lords Justices would seem to think it their principal mission, in a general way, to reverse his decisions; probably the appellant thought, under these circumstances, that the chances of success were in his favor, and so thought he would risk the appeal. Lord Justice James, who seems to have been in rather an amiable frame of mind on this occasion, continues:—"To my mind it is almost ludicrous to contend, and it would be most dangerous to hold, that, &c.," and then waxing very severe, he winds up thus—"It appears to me that the proper place for such an argument as that would be in some new satirical work—some new Martinus Scriblerus, or Gulliver's Brobdignag, ridiculing, by clever exaggeration, the doctrines of the Court of Equity with respect to constructive notice." We might refer also to the remarks of the Chancellor, *post* p. 110. But now leaving the topics we have above briefly referred to, and turning to the question of constructive notice in connection with these observations of the learned Lord Justice, while we are quite willing that he should pour out the vials of his wrath on the learned and devoted head of the eminent Q. C. who led for the appellants, we must protest against the idea that any "clever exaggeration" of the doctrine of constructive notice could be considered as too tough for the stomach of a Court of Equity to digest.

JUDICIAL APPOINTMENTS.

The appointment of Sir Robert Collier to a vacant judgeship in the Common Pleas in England, for the mere purpose of making him eligible as one of the four paid members of the Judicial Committee of the Privy Council, has been discussed *ad nauseam;* we do not, therefore, propose to add anything to what has already been said, so much better than we could say it, in the English law periodicals on this subject. It may be well, however, to record for future reference the admirable protest of the Lord Chief Justice of England against the high-handed act of Mr. Gladstone and his Chancellor, which was, in the words of Sir Alexander Cockburn, "at once a violation of the spirit of the Act of Parliament, and a degradation of the judicial office." And in connection with this proceeding, we may refer briefly to some other matters of a kindred nature.

The following is the text of the letter addressed on the 10th November, 1871, to Mr. Gladstone, by the Chief Justice:—

"Dear Mr. Gladstone,—

"It is universally believed that the appointment of Sir Robert Collier to the seat in the Court of Common Pleas, vacated by Mr. Justice Montagu Smith, has been made, not with a view to the discharge of the duties of a judge of that court, but simply to qualify the late Attorney-General for a seat in the Judicial Committee of the Privy Council, under the recent Act of the 34 & 35 Vict. c. 91.

"I feel warranted in assuming the general belief to which I have referred to be well founded, from the fact that the Lord Chancellor, with a view to contemplated changes in our judicial system, has, notwithstanding my earnest remonstrance, declined for the last two years to fill up the vacant judgeship in the Court of Queen's Bench. I cannot suppose that the Lord Chancellor would fill up the number of the judges of the Court of Common Pleas, while to the great inconvenience of the suitors and the public, the number of the judges of the Queen's Bench is kept incomplete.

"I assume, therefore, that the announcement in the public papers, which has so startled and astounded the legal profession, is true; and, this being so, I feel myself called upon, both as the

head of the common law of England, and as a member of the Judicial Committee of the Privy Council, to beg you, if not too late, to reconsider any decision that may have been come to in this matter; or, at all events, to record my emphatic protest against the course proposed—as a judge, because a colourable appointment to a judgeship for the purpose of evading the law appears to me most seriously to compromose the dignity of the judicial office—as a member of the judicial committee, because, while grave doubts as to the legality of the appointment are entertained in many quarters, none seem to exist as to its grievous impropriety as a mere subterfuge and evasion of the statute.

"The statute in question, the 34 & 35 Vict. c. 91, contains in the first section the following enactment: 'Any persons appointed to act under the provisions of this Act as members of the said Judicial Committee must be specially qualified as follows—that is to say, must at the date of their appointment be, or have been, judges of one of Her Majesty's Superior Courts at Westminster, or a Chief Justice of the High Court of Judicature, at Fort William in Bengal, or Madras, or Bombay, or of the late Supreme Court of Judicature in Bengal.'

"Now, the meaning of the Legislature in passing this enactment is plain and unmistakable. It was intended to secure in the constitution of the high appellate tribunal, by which appeals, many of them in cases of vast importance, from our Indian possessions as well as from the rest of our colonial empire, are to be finally decided, the appointment of persons who had already held judicial office as judges of the Superior Courts. Whether wisely or unwisely, it plainly was not intended that the selection might be made from the Bar. It was to be confined to those who were, or had been, judges, and who, in the actual and practical exercise of judicial functions had acquired and given proof of learning, knowledge, experience, and the other qualifications which constitute judicial excellence. No exception in this respect is made in favour of an Attorney-General or other law officer of the Crown, who, however eminent and distinguished their position, of course remain members of the Bar. Nothing could have been easier, had it been intended to make such an exception, than to have included the law officers of the Crown among the persons specified as eligible. But the eligibility of the law officers does not even appear to have been contemplated by the Government in passing the present Act, a provision enabling the appointment to the Judicial Committee to be made from the Bar, contained in the Bill of the previous year, having been, I presume purposely, omitted from the Bill as introduced in the last session. It is, however, unnecessary to dwell further on this point. No one will be found to say that it was intended to make a law officer, as such, eligible under this Act.

"It being, then plain that the intention of the Legislature was that the selection should be made from the judges, I cannot shut my eyes to the fact that the appointmnt of the Attorney-General, who, as such, was not qualified under the Statute, to a judgeship (the functions of which he is not intended to discharge) in order that he may thus become qualified according to the letter of the Act, cannot be looked upon otherwise than as colourable, as an evasion of the statute, and a palpable violation, if not of its letter, at all events of its spirit and meaning. I cannot help thinking of what would have been the language in which the Court of Queen's Bench would have expressed its opinion if such an evasion of a statute had been attempted for the purpose of qualifying an individual for a municipal office, and the case had been brought before it on an information in the nature of *quo warranto*. In the present instance, the Legislature, having settled the qualification for the newly-created office, momentarily to invest a party otherwise not qualified with a qualifying office, not that he shall hold the latter, but that he may be immediately transferred to the former, appears to me, I am bound to say, to be nothing less than the manufacture of a qualification, not very dissimilar in character to the manufacture of qualifications such as we have known practised in other instances in order to evade the law. Forgive me, I pray you, if I ask you to consider whether such a proceeding should be resorted to in a matter intimately connected with the administration of justice in its highest departments.

"It would obviously afford no answer to the objection to the proposed appointment to say that a gentleman who has held the position of a law officer of the Crown must be taken to be qualified to fill any judicial office, however high or important. This might have been a cogent argument to induce the Legislature to include the Attorney-General among the persons 'specially qualified' under the Act; but it can afford no justification for having recourse to what cannot be regarded as anything better than a contrivance to evade the stringency of the statute as it stands. The section in question makes the office of an Indian chief justice a qualification for an appointment to the Judicial Committee. Suppose that, as might easily have happened, an Indian chief justiceship had chanced to be vacant. An attorney-general would, of course, be perfectly qualified for the office. What would have been said if the

Attorney-General had been appointed to such a chief justiceship, not with the intention of his proceeding to India to fill the office, but simply for the purpose of his becoming qualified, according to the letter of the statute, for an appointment to the Judicial Committee? What an outcry would have been raised at so palpable an evasion of the Act! But what possible difference, allow me to ask, can there be, in principle, between such an appointment as the one I have just referred to, and an appointment to a judgeship in the Court of Common Pleas, the duties of which it is not intended shall be discharged, for the sole purpose of creating a qualification in a person not otherwise qualified? I cannot refrain from submitting to you that such a proceeding is at once a violation of the spirit of the Act of Parliament and a degradation of the judicial office.

"I ought to add, that from every member of the legal profession with whom I have been brought into contact in the course of the last few days, I have met with but one expression of opinion as to the proposed step—an opinion, to use the mildest terms I can select, of strong and unqualified condemnation. Such, I can take upon myself to say, is the unanimous opinion of the profession. I have never in my time known of so strong an expression, I had almost said explosion of opinion.

"Under these circumstances, I feel myself justified, as Chief Justice of England, in conveying to you what I know to be the opinion of the profession at large, an opinion in which I entirely concur. I feel it to be a duty, not only to the profession, but to the Government itself, to protest—I hope before it is too late—against a step—as to the legality of which I abstain from expressing any opinion, lest I should be called upon to pronounce upon it in my judicial capacity—but the impropriety of which, for the reason I have given, is to my mind strikingly and painfully apparent.

"I beg you to believe that I make these observations in no unfriendly spirit, but from a sense of duty only. I should sincerely rejoice at the promotion of an Attorney-General who has filled his high office with dignity and honour; but in the position I occupy I feel I ought not to stand by, and, without observation or objection, allow a judicial appointment to be made, which from the peculiar circumstances under which it will take place, is open to such serious objection, and which, as I have abundant reason to believe, will be the subject of universal condemation and regret.—I beg to remain, very faithfully yours,

"A. E. Cockburn"

To this letter Mr. Gladstone made a curt reply, and handed the matter over to the Lord Chancellor (Hatherley), whose letter to the Chief Justice was only remarkable for its insolent tone and evident desire to burke the question, and snub, not only the Chief Justice, but the whole Bar of England, who in this matter have loudly and unmistakably condemned the unwarrantable action of the Government.

Of course, as all our readers are aware, the whole affair was brought before the House of Commons, by Mr. Cross moving a vote of censure on the appointment of Sir R. Collier, declaring that it was a violation of the intention of the statute and an evil example in the administration of judicial patronage. Many strong supporters of the Government, and prominently so, Mr. Denman, spoke and voted in favor of this motion, which, however, was lost; but the very small majority in favor of the Government—27 in a House of 513—was in itself tantamount to a very strong expression of censure, and we presume will be so accepted by the Chancellor, as it certainly has been by outsiders, and will be so looked upon by historians.

The *Law Times* thus speaks of the discussion in the House:—

"To us the general results of the debate appear satisfactory, for they show that we still have very many able public men, who will neither sanction nor tolerate an evasion of the law by any Government, whatever its party may be: but, on the other hand, it is by no means reassuring to find the Prime Minister and the Lord Chancellor, after several months of cool reflection, after hearing the most invincible arguments against their view of the construction of the Act of Parliament, come forward and continue to maintain that view by arguments that show a sort of incapacity on their part to understand the distinction between an evasion of, and a full compliance with, the provisions of an Act of Parliament. It is a remarkable fact that neither of the present law officers of the Crown approve of the construction put upon the Act, for we may fairly presume that if they did they would have come forward and said so, and the Government failed to obtain the support of any lawyer of repute in either house except Sir Roundell Palmer, who made a speech for them that was a model of forensic ingenuity, and a perfect epitome of all the fallacies known to logicians; but notwithstanding all this, neither Mr. Gladstone nor the Lord Chancellor said a word that could be construed to mean that they would not pursue exactly the

same course as before if the thing had to be done over again. * * * * *

"The answer to these grave charges, so far as they were answered at all, is to be found in the speeches of Mr. Gladstone, the Lord Chancellor and Sir Roundell Palmer, and we have every wish to do justice to their arguments and views. The propositions on which the arguments of Sir R. Palmer and the Lord Chancellor were based, as far as we can understand them, were two. First, that the Act does not specify any definite period of judicial experience, therefore the Act is satisfied by appointing a person who has the name or status of a Judge when the appointment is made, whenever or however that name may have been bestowed; secondly, that Sir R. Collier was a fit and proper person to be made a Judge of the Court of Common Pleas, and therefore there could be no objection to give him that Judgeship as a qualification for the Judicial Committee. With regard to the first of these propositions its advocates evidently shrunk from the consequences it would lead to, and Sir R. Palmer abandoned his whole position in two several parts of his speech when he observed, 'now if this thing were done wantonly, maliciously, or without a *bonâ fide* view to serve the public, or if it were done over and over again, as the honourable gentleman suggested, I should not stand here to defend it;' and again, in reference to a remark previously made with regard to the Indian qualification, he said, 'I think it would have been improper, though it might have been legal, to appoint to the Judicial Committee any person who was not really and truly such an Indian chief judge as to be in that respect a fit representative on the Judicial Committee of the Indian Judicature.' But really to a lawyer, at least, it is hardly necessary to do more than state the first proposition in order to show its absurdity. The Act obviously provides, if its limitations are to be more than a mere nullity, that the person selected for the Judicial Committee shall be, when the selection is made, a Judge, or *ex*-Judge, not that he may be made a Judge after he has been selected to become a member of the Judicial Committee. As to the second proposition it has really nothing to do with the matter. Sir R. Collier may morally and intellectually be the fittest man in the world to put in the Judicial Committee, but he certainly was not legally fitted for it, unless when selected for the appointment he had *bona fide* the qualification required by the Act. As to the views of Mr. Gladstone, who seems to have been the prime mover in the whole affair, we have some difficulty in understanding what his precise construction of the Act is. One part of his speech almost conveys the impression that he reads the qualification required by the Act not as literally meaning that the appointment should only be given to a Judge or ex-Judge, but as a sort of figurative way of saying that the person appointed should be of a certain standard of fitness and capacity, and upon this view of the Act it would not have been necessary to pass Sir Robert Collier through the Common Pleas at all, before installing him on the Judicial Committee. From the speech, as a whole, we regret to gather, notwithstanding some fine flourishes in it, that Mr. Gladstone is much more concerned about having raised a storm in the House, than having evaded the plain meaning of an Act of Parliament, and we still more regret the tone in which he, as well as the Lord Chancellor, alludes to the Judges. Mr. Denman said in the course of the debate, and we think truly, 'that there was a desire to do something to render our courts less independent, to place them on a lower basis, to prevent them being able to stand between the Crown and the subject, between the Government of the day, or a popular majority in the House of Commons, and the rights of the individual subject, and that there was a disposition on the part of persons now high in authority to destroy some of the securities which we possessed for the independence and high character of our courts of justice.' These remarks we think were fully justified by much that was said on Monday night, and by what fell from the Lord Chancellor on the previous Thursday, when the extraordinary avowal was made that a gentleman had been made a County Court Judge in order that 'he should be restored to competence.' If these are the principles upon which judicial appointments are to be made, and if Judges are to be attacked with sneers and insults whenever they lack subservience to the Government of the day, we fear there is a gloomy future before the bench of England. And we venture to predict that regard for the law will not long survive the decay, if it once sets in, of that feeling of honour and respect in which those who administer it have hitherto been held."

The remark about the County Court Judge refers to the appointment of Mr. Beales, of which the *Law Times* speaks after this fashion:—

"One of the several remarkable theories concerning judicial appointments propounded by the present Government, is that to which, according to Lord Hatherley, the County Court Bench is indebted for the acquisition of Mr. Beales. That learned Judge was deprived of a revising barristership by Chief Justice Erle, on the ground that,

by active political agitation, he had disqualified himself for the office, which is one, of course, intimately connected with political matters. Deeming him an injured man, Lord Hatherley makes him a County Court Judge. This is the ostensible reason for an appointment which at the time we condemned most emphatically, disregarding altogether the question of personal merit; but we confess we should not be inclined to go into other motives which *may* have influenced the Government. We now simply desire to record our most energetic protest against County Court Judgeships being used as crumbs of comfort for hardly used barristers."

We heartily concur in this protest, and add to it the further protest, that no appointment to a judicial office, or to any ministerial office, where professional competence or eminence is required, should be made merely to meet the exigencies of party politics. If, however, this must be (though the confession even of the alleged necessity of this is degrading), let the best men be chosen from the political supporters of the Government which may have the patronage to bestow. As a mere question of party politics, it may well be argued that any other course is suicidal in the long run. But we should endeavour to reach the highest standard in such a vital matter as this, and make the selection from the profession as a whole, irrespective of party or personal considerations, throwing aside all questions of political exigency or personal feeling.

Entirely apart from party politics, it may be that the fall of the Gladstone Ministry, rumours of which are afloat, will not be an unmixed evil, in view of the course taken by them in matters pertaining to the Judiciary. Mr. Gladstone and Lord Hatherley have shown themselves incapable of appreciating the high ground that has hitherto been taken in this respect by British statesmen. The motives for, and the method of appointment to judicial positions, should be pure and unassailable, as well as the appointment itself unobjectionable.

Let it not be said of us in this Province, as is said of the Bench in the Province of Quebec (we quote from *La Revue Critique*):—

"Seats on the bench are amongst the prizes offered by political rings for uncompromising support; and it makes very little matter whether *rouge* or *bleu* be in the ascendant, the same principle is acted on by both parties, and generally judgeships are conferred, not on account of fitness for the office, but because it is necessary to provide for a member of the party in power. The system is radically bad; for in lieu of good lawyers, worn-out politicians are placed on the bench. If a man is a political failure, *presto* he is made judge; so that there is a very fair chance of the Bench becoming the recepticle for that favoured class of the community which, fifty years ago, in England, was said to monopolize the Church. Thanks to the system, the Bench of Quebec does not command the respect which is accorded to persons occupying judicial positions in other countries."

The writer of the above article then goes on to suggest a mode of appointment which would secure better men, very properly premising his observations by advocating an increase of salary to Judges. We give his views for what they are worth. We express no opinion as to the advisability of the course advocated: it is scarcely worth while to discuss it, there being no chance of the suggestion being carried out in these days. He says:

"In England it has been proposed to vest the right of nominating the judges in the Lord Chancellor and Chief Justices. Here it may perhaps be permitted to advocate a still greater departure from old principles.

"Who, may it be asked, have a greater interest in securing the appointment of a fit person to be a judge than the Bar and the Bench of the district within which such judge, after his appointment, is to act? Where can there be found persons better qualified to judge of a person's fitness for a seat upon the bench than those who plead against him and those who hear him plead, nearly every day of their lives. Taking, then, the opportunities possessed of judging fairly, considering also their interest in choosing the most fit and proper person for the office, it must be admitted that the Bar and the Bench of the district in which a man practises his profession, should be the best judges of his fitness for promotion to the bench."

The Tichborne case is still occupying the public mind in England to a great extent. The Attorney-General stated in the House of Commons the other day that six counsel, led by himself, were to conduct the criminal case against the claimant. Lively times may be expected at the Old Bailey if the defence fund is well sustained.

SELECTIONS.

RAILWAY GRANTS.

The construction of railroads as aids to the settlement of our public lands is an enterprise of the highest national importance, and as such ought to receive from the community and from the Government all the assistance which they can command. Every person must have seen with satisfaction the liberality with which our rural and urban municipalities have subscribed to the stock of the various companies now in process of organization or which are already pushing on the construction of new lines. The Provincial Legislature have resolved to insure the success of these enterprises by granting to them large tracts of the public lands. Are these grants constitutional? Such is the question to which the writer purposes to draw public attention. This point of constitutional law would have been raised more opportunely before the incorporation of these companies; but it cannot be denied, even at the present time, that it is one of great practical importance. If the success of the present railway movement depends in great measure on the grant of those public lands; if the money votes of the municipalities have been given on the faith of these grants, it becomes necessary to ascertain that their legality cannot be called in question. If the constitution is defective in this respect, it must be amended, not violated. The following opinion is published only after a full discussion in the editorial committee of the *Revue*, and after having received the approbation of several *confrères* of the Montreal Bar.

By the common law, all the public lands are the property of the Crown. It was formerly a disputed question whether the Kings of England had the right to alienate the Crown Lands. In course of time the Kings certainly exercised the right of granting the Crown Lands at their pleasure. But the exercise of this prerogative having greatly impoverished the Crown, it has been restrained by several modern statutes.*

In the Province of Canada previous to 1867, the public lands were the property of the Crown for Provincial purposes and subject to many restrictions enumerated at length in chapters 22, 23 and 24 of the Consolidated Statutes of Canada. Certain free grants could even be made by the Governor in Council. As to the Legislature, its power over the public lands was unlimited.

Under the British North America Act of 1867, the tenure of the public lands has undergone very large modifications. The ownership is vested in the Dominion or in the Provinces, according to the nature and situation of the property. With regard to the Dominion, section 108 declares that "the Public Works and Property of each Province enumerated in the third schedule in this Act, shall be the property of Canada." This property comprises the canals, public harbours and fortifications, and others of a like nature.

The right of ownership in the Dominion of this property is absolute and free from all restriction. Section 91 enacts that the exclusive legislature authority of the Parliament of Canada extends to certain matters therein specified and particularly to "the public debt and property."

Is it thus with the right of ownership vested in the several Provinces? Section 109 declares: "All lands, mines, minerals and royalties belonging to the several Provinces of Canada, Nova Scotia and New Brunswick at the union and all sums then due and payable for such lands, mines, minerals and royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, in which the same are situate and arise, subject to any trusts existing in respect thereof, and to any interest other than that of the Province in the same."

Thus, the public lands are the property of the Provinces, subject to the restrictions imposed by the law. There is no doubt that if the Imperial Parliament had not made any other provision, the Provincial Legislature could dispose of the public lands in the same manner as the heretofore Province of Canada, subject to the trusts established by previous laws, such as the trusts in favour of the Clergy, the Indians and the Schools. But the constitution, adopting in this respect a policy wholly different from the one applied to the Dominion, has taken care to limit the exercise of the right of ownership of the Provinces to certain objects. It declares at section 92, par. 5, that the exclusive authority of their legislatures shall extend, not to the ownership of the public property or lands of the Province, but to "*the management and sale of the public lands* belonging to the Province and of the timber and wood thereon."

Thus, then, the Province is proprietor of the public lands; she can administer and sell them, but she cannot make a gift of them. Without this 5th paragraph, she might dispose of them according to her good pleasure by sale, gift or otherwise; but with these expressions the enumeration of the powers given ought to be interpreted as limiting and exclusive, according to the maxim *qui dicit de uno negat de altero*.

It cannot be asserted that the 16th paragraph, giving to the local legislature jurisdiction "generally in all matters of a merely local or private nature in the Province," gives to it by implication the right of making land grants. That paragraph, in fact, relates only to matters which have not been expressly provided for by the constitution. Now, as the public lands have been arranged in a certain way, it cannot be supposed that it was the intention of Parliament that the Local Legislature should dispose of them in a different way.

* 5 Cruise's Dig. 46 2 Greenleaf on Real Property, 39.

The intention of the Imperial Parliament appears to have been to ensure the permanency of the local revenues and to put the lands beyond the reach of great corporations, religious or otherwise, like those railway companies which in the United States have become mighty political potentates through the aid of numerous land grants. There can be no doubt that it is it the highest degree dangerous to abandon the public domain in favor of any corporation which is not under the exclusive control of the Government. This question of high political importance,—can have no place in the pages of a legal review. But it cannot be denied that the aim of the framers of the constitution was to prevent these grants, seeing that the prohibition bears only upon the public lands and forests, and does not touch the mines, minerals and other royal reserves or the Provinces, nor the property of the Dominion, over which the respective legislatures have absolute and unlimited control. It may be said that the intention of the Imperial Parliament was to confer upon the Dominion Parliament and the Provincial Legislatures the whole of the powers formerly enjoyed by the legislature of the Province of Canada. We can only say of the legislature with Lord Ellenborough in *Rex* v. *Shone, quod voluit non dixit.** "If the Legislature intended more," said Lord Denman in *Haworth* v. *Ormerod*, "we can only say, that according to our opinion, they have not expressed it."†

"A *casus omissus*," said Dwarris,‡ "can in no case be supplied by a court of law; for that would be to make laws. Judges are bound to take the Act of Parliament as the Legislature have made it."

The grant of public lands by the Imperial Parliament to the Provinces must be strictly interpreted; it must, in fact, be regarded as a grant by the Crown; that is, most favorably to the Imperial Parliament and against the Provinces. "A grant made by the King," says Blackstone, (lib. II, p. 347.) "at the suit of the grantee, shall be taken most beneficially for the King and against the party.....The King's grant shall not enure to any other intent than that which is precisely expressed in the grant." "The King's grants," says Cruise, vol. 5, p. 53, "are construed in a very different manner from conveyances made between private subjects; for being matter of record, they ought to contain the utmost truth and certainty; and as they cheifly proceed from the bounty of the Crown, they have at all times been construed most favorably for the King and against the grantee, contrary to the manner in which all other assurances are construed."

Story lays down as a rule of interpretation of the American Constitution—similar to ours in so many respects—the following principle: "A rule of equal importance is, not to enlarge the construction of a given power beyond the fair scope of its terms, merely because the restriction is inconvenient, impolitic or even mischievous. If it be mischievous the power of redressing the evil lies with the people by an exercise of the power of amendment."* Further on (sec. 207) the learned commentator remarks: "It is often said that in an instrument a specification of particulars is the exclusion of another. Lord Bacon's remark that as exception strengthens the force of a law in cases not excepted, so enumeration weakens it in cases not enumerated, has been perpetually referred to as a fine illustration."

It has been also said, that a statute must be construed, if possible so as to give sense and meaning to every part, and the maxim *expressio unius est exclusio alterius* is never better applicable than in the interpretation of a statute. †

Dwarris, p. 605, says: "The maxim is clear, *expressum facit cessare tacitum*, affirmative specification excludes implication."

It was on the same principle that the statutes by which our Courts were invested with jurisdiction in civil and criminal causes, were recently construed, in the Guibord case, as limitative and exclusive of ecclesiastical matters.

Coleridge *in re The Queen* v. *Ellis*,‡ observed: It is an inflexible rule that under a special power, parties must act strictly on the conditions on which it is given."

It has been intimated that the restriction could be evaded by making a sale to the Railway Companies for a merely nominal consideration. But the Legislatures, any more than individuals, are not allowed thus to trifle with the laws of their country. Land grants are either constitutional or unconstitutional. If they are unconstitutional, they cannot be made in an indirect manner and in fraud of the law. Mr. Justice McLean, for the Supreme Court of the United States, said: "The power must not only be exercised *bonâ fide* by a State, but the property, or its product, must be applied to public use.....The public purpose for which the power is exerted must be real, not pretended."‖

Judge Woodbury said in the same cause: "If on the face of the whole proceedings it is manifest that the object was not legitimate, or that illegal intentions were covered up *in forms*, or the whole proceedings a mere pretext, our duty would require us to uphold them."

How is this want to be remedied? The Constitution has wisely withheld from the Parliament of the Dominion all control over the Provincial lands; it has been conferred expressly and it is certain that it has not been granted impliedly by section 91, declaring that the Parliament of Canada "for the peace, order and good Government of Canada" has general jurisdiction "*in relation to all matters not coming within the laws of subjects assigned*

* 6 East 518. † 6 Q. B. 307. ‡ p. 598.

* Const. of U. S., § 193.
† Brown's Legal Maxims, p. 592; 9 Johns, U. S., 349.
‡ 6 Q. B. 501, 1844.
‖ West River Bridge Co., v. Dix et al., 6 Howard, T. S. 537.

exclusively to the legislatures of the Provinces." The matter of the public lands is especially assigned to the Provincial Legislature.

An amendment of the British North America Act by the Imperial Parliament is the only legal means to remedy the evil. Each Provincial Legislature can change or amend its own constitution without the sanction of the Parliament of Great Britain agreeably to section 92. par. 1; but these changes can affect only its local political organization as establishsd by ss. 58–90, for instance the abolition of the Legislative Council, and they cannot extend to its jurisdiction or the distribution of the legislative powers. These can be changed only by means of an Imperial Statute, sect. 129. This mode of procedure may be slow and troublesome, but it is prudent at the least, if not absolutely necessary.—*La Revue Critique.*

THE JUDGMENTS OF VICE-CHANCELLOR MALINS.

If a Judge is disposed to take eccentric views of law and fact, and to decide in a way which courts of appeal find it impossible to approve, it is hard to conceive any remedy for the evil. In this respect experience does not always teach, and we believe there are not many Judges who take reversals of their decrees by our courts of appeal much to heart.

We are certain that no court of common law would regard as a matter of the least importance the fact that the Exchequer Chamber failed to take the same view as itself, and we quite understand that Vice-Chancellor Malins does not feel himself in any way prejudiced by the circumstance that Lord Hatherley comes to diametrically opposite conclusions on similar statements of fact, and in the construction of the same Act of Parliament.

It is somewhat an invidious task to discuss who is right in this conflict, and we shall perhaps be excused if we simply place the divergence of judicial opinion on record. The most recent instance in which it occurs, is in the case of *Turner* v. *Collins*, decided by Lord Hatherley on the 22nd instant. A voluntary settlement had been made by a son in favour of his father, which the son sought to set aside on the following grounds:—That the plaintiff was a young man, and was ignorant of the nature of the instruments he was induced to execute; that no proper explanation of the effect of what he was doing was given to him; that his interest throughout the transaction was not regarded, and that there had been an entire absence of that independent legal advice and protection which would justify the court in sustaining this voluntary settlement by which plaintiff had given up a large portion of his fortune. In an elaborate judgment, delivered on the 8th July last, Vice-Chancellor Malins came to the conclusion that the litigation was altogether unjustifiable, inasmuch as the deeds in question dated in 1855 simply carried into effect the deliberate, well-considered intentions of the plaintiff; that he had ample independent advice, which put him in possession of a distinct knowledge of what he was about to do, and that the arrangement, having regard to the situation of the family and the relative circumstances of the father and son at the time, was a reasonable and proper one; and that, in addition to all the other objections, the delay of fourteen years in filing the bill, and, admittedly, seven years after the plaintiff had full knowledge of his rights, was fatal to the bill, which, so far as it sought to impeach the transactions of 1855, must be dismissed with costs. From this decision plaintiff has appealed.

Now on the material point as to the due execution of the settlement, the Lord Chancellor differed from the Vice-Chancellor, and concurred alone on the ground of the delay.

He was "unable to agree with Vice-Chancellor Malins that the provision made by this young man for his father, and his father's family, was either a prudent or a reasonable arrangement for a young man circumstanced as he was to have made." The Lord Chancellor then adds this extraordinary remark: "The Vice Chancellor seemed to be influenced by one or two considerations which, with great respect for his Honour, *had nothing whatever to do with the case.*" This is very startling, but as the case was one in which individual opinion of the operation of particular motives upon a man's mind would be likely to differ, the illustration of judicial conflict is not so striking as in a case where the construction of an Act of Parliament is in issue.

As we stated at the outset, we have an instance of this also, the judges being the same.

In *Pemberton* v. *Barnes* (25 L. T. Rep. N. S. 577) the Lord Chancellor reviewed and overruled a decision of Vice-Chancellor Malins dealing with the Partition Act of 1868 (31 & 32 Vict. c. 40). The judgment of the Lord Chancellor opens in a manner quite as extraordinary as the passage in his judgment in *Turner* v. *Collins*, to which we have referred. "It appears to me," said his Lordship, "that in this case the Vice-Chancellor has adopted a construction of the Partition Act which entirely destroys the effect of the 4th section." The suit was for partition of a large estate. The plaintiffs, who were devisees in trust under a will of one equal undivided moiety, asked for a sale instead of a partition, under the aforesaid sect. 4. The Vice-Chancellor held that a large estate like the one in question was not within the purview of the Act, and made a decree for partition. The Lord Chancellor said that the difficulty of partition was dealt with in sect. 3, and that there is not in sect. 4 a single word about the size of the estate or the difficulty of partition—it simply speaks of a case where half the parties interested desire a sale, and it provides that they shall have a prepond-

erating voice. Consequently the decree of the Vice-Chancellor was reversed, and an order for sale substituted for that for partition.

And lastly, the Vice-Chancellor seems to have stretched the equitable doctrine of the liability of trustees to an extent calculated seriously to alarm trustees. The comments of our contemporary, the *Times*, will best describe the alarm:—"The myriad trustees and executors scattered throughout the kingdom will have read with dismay our report of the judgment of Vice-Chancellor Malins in a case reported in our columns last Thursday, and have asked themselves, 'Who, then, is safe?' Many more, who are not yet trustees, will probably have resolved, from a perusal of the same report, never upon any consideration to to undertake the office. A man knows that he subjects himself to great trouble for few thanks, but he strains a point to oblige a living friend, or to do what he can for the family of one whom he has known intimately and pleasantly all the years of his manhood. He is content to give his time and his pains for the sake of 'auld lang syne.' Vice-Chancellor Malins shows us by his decision in *Sculthorpe* v. *Tipper* that a trustee exposes himself to many liabilities beyond the mere labour and the vexation of spirit attendant upon it. He may have to make good the value of the estate which he has most conscientiously striven to guard. A man dies, and by his will leaves certain property to some friends to watch over and sell 'so soon after his death as they may see fit.' For little more than two years they dealt with it just as he would have done had he been alive, and it then turns out to their unbounded surprise, as it would have been to his unbounded surprise, that part of it is worthless. If the man had lived, he would have suffered the loss, and those upon whom he intended to confer his bounty would have suffered it: but as he luckily died at an opportune time, his friends and executors find that they are personally called upon to pay for his indiscreet investments. If the law be as it was enunciated by Vice-Chancellor Malins, the executors and trustees in *Sculthorpe* v. *Tipper* must perforce submit to it. There is, however, always the possibility of an appeal, and until the time for it has passed by it would be premature to call upon Parliament to relieve trustees from so unexpected a pitfall." And our contemporary feels so strongly on the case that it goes into the law of it, quotes Lord Cottenham against the Vice-Chancellor, and plainly doubts whether the latter's view of the law be sound.

These three cases even as they stand, the third being unappealed as yet, present an extraordinary condition of things—a condition of things unpleasant to comment upon, and which it is only possible to deal with gracefully by leaving alone.—*Law Times.*

EXAMINATIONS FOR CALL TO THE BAR.

In future the passing an examination in law will be made compulsory on all those seeking admission to the Bar. Hitherto such admission has been obtained in one or other of three ways, viz., by reading in chambers, by attendance at certain lectures instituted by the Inns of Courts, or by submitting to an examination. Upon the first two ways we do not propose to offer any remarks beyond reminding our readers that in the one the payment of a fee of 100 guineas, and in the other attendance at the lecture, not to the lecturer, has been the important point. It is to the third that we would direct attention. The examination for call to the Bar should be pre-eminently practical—how far does it satisfy these requisites? The subjects it includes are five, viz.: (1) Constitutional Law; (2) Equity; (3) Real Property; (4) Jurisprudence, Civil, and International Law; (5) Common Law. For an ordinary certificate, the candidate must "pass" in three at least of the above, viz., in real property, in either constitutional law or jurisprudence, &c., and in either equity or common law. He of course may, and if a competitor for honours must, take up the whole list.

The next point is the amount of reading required in each subject. Turning to the regulations just issued for the next examination we find that the books mentioned under (1) are Hallam and Broom's Constitutional Law. Hallam ends at 1760, and therefore a candidate may pass in constitutional law without knowing a bit about modern legislation, without ever having heard of the Reform Acts, of the Regency Bills, of the various Religious Relief Acts, of the Municipal Corporations Act, or of the "Union." This subject is also dignified with the additional appellation of "legal history," but as the extent of "legal history" required can be gleaned from the "concluding chapter of Blackstone's Commentaries," no student need fear overloading his brains on this score. We might perhaps venture to suggest the addition of May to complete the constitutional history, and a few pages from the Year Books in order to secure some acquaintance with the only source of our legal history.

In the next subject, Equity, an attempt is made to secure a complete general, though elementary, knowledge. Two or three works are set down, each well known to beginners, and candidates for honours have also to look over the first volume of White and Tudor's Legal Cases.

In real property there is also a work named, Williams on the Law of Real Property, the reading of which is, no doubt, useful for instilling into the mind of the eager tyro some theoretical notions. A deeper knowledge is expected to be attained by the perusal of infinitesimal portions of various authors, viz., fifteen pages of Jarman on Wills, twenty pages

on vested or contingent devises and bequests, from Hawkins on the Construction of Wills, a bit of one chapter of Dart's Vendors and Purchasers, and one of Tudor's Leading Cases in Real Property and Conveyancing, viz., *Morley* v. *Bird*.

The last two subjects are a complete mystery. We are utterly unable to conceive what object the Council of Legal Education had in view when they selected the heterogeneous collection of authors grouped under these two branches. The reader on jurisprudence, civil, and international law has to examine in—what? One would naturally suppose jurisprudence, for one thing. Not at all. The aforesaid council utterly ignore jurisprudence. "Austin" is evidently to them a sealed book, unworthy or unfitted for the perusal of future lawyers and legislators. But, of course, they make up for the omission by requiring an intimate acquaintance with Roman law and French law—with that system so often styled perfection, and with the famed Code of our neighbours—and so enabling the student to deduce for himself the principles of jurisprudence. The half of one of the four books of the Institute, and less than an eighth of the Code Civil—not a section from either of the other codes—is all the knowledge of ancient and modern legal systems demanded from a barrister. And his acquaintance with international law is limited to Part II., ch. 2, of Wheaton—*i.e.*, to about one-eighth of the whole volume, and that the least important part. A solitary chapter from Maine's Ancient Law, and Part III. of that schoolboy's book, Lord Mackenzie's Studies on Roman Law, make up the jurisprudence section.

But what shall we say of the Common Law branch? It is an ingenious production, evidently elaborated with much care, and bears on the face of it the marks of many men, the *diversa concilia mentium diversarum*. Seven authors or divisions are included under this subject; the Council of Legal Education is composed of eight members; shall we be very far wrong in assuming that one of them was absent when the common law part of the examination came on for consideration, and that each of the others contributed a portion? "'Smith' was a good book when I was a youngster; put it down," observes one. "Not the whole of it," objects another. "It's on contracts; we must give them something on torts;" and, anxious not to burden the students, he suggests the five shortest of the "Leading Cases" on torts. A third says, "We can't very well omit action at law, though there won't be any necessity for the Reader to trouble them much on that score;" and a fourth adds, "We had anyhow better give something on evidence; I don't suppose, however, they will look at it." A fifth reminds his colleagues that "even in this most moral and civilised age crimes are occasionally committed." We ought, perhaps, slightly to direct their attention to this head. They may find the knowledge they acquire, slight as it will be with most, of some service to them in after life, if not to defend the clients they will never get, at least to protect the characters they now have." And so "The law as to simple larceny" is set down. "They ought to look at some of the statutes," adds a sixth; "we took some trouble over the 24 & 25 Vict.—does anyone object?" and, silent all, a dozen sections are chosen haphazard from 24 & 25 Vict. c. 96 and 100. But a chorus of disapprobation arises when a learned gentleman remarks, with something very like a growl, "The old reports are never read now; it was only the other day that my junior could not comprehend the meaning of 'Cro. Eliz.'" "I have never read Coke, or Rolle, or Croke," say three or four. "I never but once opened the Year Books," ejaculates another; "Heaven save me from venturing on the experiment again." But the old gentleman is obstinate, though he compromises the matter by limiting his demand to four cases taken from Coke.

In what terms shall we comment upon the above as an examination qualifying those who pass it for the Bar? If we style it an utter farce we shall be speaking within bounds. Practice is utterly ignored. Alike in conveyancing, in equity, in common law, a man innocent as a child of practice may be blazoned forth to all the world as a thorough student, and not a mere hey-dey barrister, his *imprimatur*, attested by the conjoint wisdom of the Inns of Court, his certificate signed by the greatest of living lawyers?—*Law Times*.

A point taken in the course of the debate on Sir Roundell Palmer's resolutions deserves more consideration than it received. Admission into the Professions, and particularly to the Bar, taxes the pecuniary resources of candidates too much, and their mental resources too little. Up to the end of last year the question of going to the Bar was simply one of money. It is now equally a question of money, but also a question of brains. The tax imposed by the revenue upon candidates for admission to practise the law is very heavy—much heavier in the case of an attorney than in the case of a barrister. The majority of youths from college will find it difficult to pass the examination without preparation with private tutors, and this is expensive. The same observation has long been applicable to attorneys. These duties which the revenue demands ought to be considerably reduced or altogether removed, the attorneys' certificate duty going with them. We do not attach much weight to the argument that if the stamp duties were abolished many of the public would become members of the Inns of Court, and thus learn some law; but it is much to the interest of the Profession that the Revenue should have as little as possible to do with it.—*Law Times*.

CANADA REPORTS.

ONTARIO.

ELECTION CASE.

EAST TORONTO ELECTION PETITION.

Nicholas Rennick, *Petitioner*, v. The Hon. **Matthew Crooks Cameron**, *Respondent*.

Agents—Accounts of expenditure by—Excessive expenditure—Personal expenses of candidate—Payment to canvassers—Refreshments—Treating—Bribery.

A candidate in good faith intended that his election should be conducted in accordance both with the letter and the spirit of the law; and he subscribed and paid no money, except for printing. Money, however, was given by friends of the candidate to different persons for election purposes, who kept no accounts or vouchers of what they paid. *Held*, that bribery would not be inferred as against the candidate, who neither knew nor desired such a state of things, from the omission of these subordinate agents to keep an account of their expenditure, especially as the law is new, and contains no provision similar to the Imperial statute, which requires a detailed statement of expenditure to be furnished to the returning officer. But it is always more satisfactory to have the expenditure shown by proper vouchers; and if money is paid to voters for distributing cards, or for teams, or for refreshments, this will be open to attack, and judges will be less inclined, as the law becomes known, to take a favourable view of conduct that may bear two constructions, one favourable to the candidate and the other unfavourable.

The candidate is not restricted to his purely personal expenses, but may (if there is no intent thereby to influence votes, or to induce others to procure his return) hire rooms for committees and meetings, and employ men to distribute cards and placards, and similar services.

The friends of the candidate formed themselves into committees, and some of them voluntarily distributed cards and canvassed different localities with books containing lists of voters, noting certain particulars as to promises, &c. These canvassers often came across voters in public houses, and when there, according to custom, treated those whom they found there, and thus spent their money as well as their time. On this being represented to those who had charge of the money for election expenses, the latter, in several cases, reimbursed the canvassers. *Held*, 1. That these general payments, if not exceeding what would be paid to a person for working the same time in other employments, would not be such evidence of bribery as to set aside an election. 2. That the furnishing of refreshment to a voter by an agent of a candidate, without the knowledge or consent of the candidate, and against his will, will not be sufficient ground to set aside an election, if not done corruptly or with intent to influence votes.

The total expenditure proved was $610, and the number of votes on the roll was 4,669. *Held*, that the expenditure was not excessive.

Various acts of alleged bribery discussed; and *held*, that the evidence was not sufficient.

The language of Martin, B., in the *Wigan Case* (1 O'M. & H. 192), adopted as a general rule applicable to this case.

(Toronto, March 21, 1871, & Sept. 2, 1872.—Richards, C.J.)

This petition was filed on the 29th April, 1871. The third paragraph charged respondent, by himself and agents, with bribery, undue influence, intimidation and other illegal and prohibited acts and corrupt practices within the meaning of the Election Law of 1868 and the Controverted Election Act of 1871, before, during and after the election, whereby he became incapable of being elected or serving in the Legislative Assembly. Then followed objections to many of the voters of the respondent—as not being subjects of Her Majesty: not duly registered on the list of voters; and voters who had voted more than once.

That the votes of voters not qualified by law to vote were received for the respondent.

That votes of persons guilty of bribery, and being bribed and of corrupt practices within the meaning of the Election Law of 1868 and the Act of 1871, were tendered, and received, and recorded for respondent.

That the names of persons were recorded for respondent who had not voted for him.

That certain persons used fictitious names and falsely voted for respondent.

That vehicles to convey electors to and from the polls were hired by the respondent and other persons on his behalf, and the persons who hired the vehicle to convey the electors to and from the polls voted for respondent.

That undue influence was used by persons on behalf of respondent towards a great number of voters to induce them to vote for respondent.

That persons who were employed in reference to the election (during the election) to forward respondent's interest as agents or supporters and who received or expected to receive money, place or employment, voted for respondent.

That persons, not owners or tenants of the value of $400 on assessment roll, voted for respondent.

That owners of property, not rated for a sufficient sum to qualify both, voted for respondent.

That persons who had real property fradulently conveyed to them to entitle them to vote, voted for respondent.

That persons, acting with intent to promote the election of respondent, furnished entertainment at their expense with such intent to electors of the division, contrary to the Election Law of 1868.

And the petitioner claimed that Francis H. Medcalf had the highest number of legal votes, and should have been elected.

Maclennan and *Delamere* appeared for petitioner. The respondent himself and *McMichael, contra.*

The petitioner abandoned the charge of personal complicity of respondent in any of the matters charged in the third and twelfth paragraphs of the petition, but not such acts by his agents as might affect his seat; and proposed to shew a large number of votes bribed by Mr. Cameron's agents, and that undue influence was practised by said agents.

The petitioner proposed to go into a scrutiny, but that was afterwards abandoned.

The holding of the election and the qualification of the petitioner was admitted.

On the trial of this matter evidence was given to show the expenditure of various sums of money on behalf of the respondent by his friends. It was mentioned, incidentally, that Mr. McMichael, respondent's law partner, had paid some charges for printing, and this was the only sum that was expended by the respondent himself and as to this, it was not suggested that there was anything that was not perfectly correct.

Any other moneys that were expended were raised by the friends of the respondent, and if any was improperly or illegally expended, it was without his knowledge and contrary to his express directions.

The chairman and secretary of St. James's Ward, the most populous in the division, were examined. They expressly denied the payment of any moneys for any illegal or improper purpose; and the secretary, through whom all the

payments were made, said they were made on cheques and proper receipts and vouchers were taken therefor, and the same could be produced if desired. The explanation offered by the secretary seemed satisfactory.

No point seemed to be made of the expenditure by Mr. Scott, the secretary of St. James's Ward.

Mr. Warwick, the secretary of the Committee of St. David's Ward, was twice examined. On his first examination he stated he had prepared books from the roll; the books were supplied by the General Committee. There were fifteen or sixteen of the Committee, and they did the canvassing. He used no money; was not promised any. He saw some money paid for cards or bills by Mr. John Carruthers, chairman of the committee of that ward; saw money paid for posting bills; saw one Harrington paid by Carruthers; saw some other money paid by Carruthers for something connected with that work. Several persons were paid for carrying around cards; some fifteen or twenty dollars was thus paid. Parties were paid for going round to give notice of committee meetings and for carrying around cards; saw as much as $2 given to a messenger, and as many as sixteen employed to carry around cards. Half of the number may have got nothing. Was not paid for his services. He knew very well Mr. Cameron had never been in the habit of paying for such services, and he had very little hope of ever receiving any for his; never received anything from any one for his services. Mr. Cameron visited the committee room and told him to be sure and have no money promised or paid for votes, and to be very careful and do nothing wrong. He gave up his school during the whole canvass, about fifteen days; no bargain about being paid; would not say he had no hope of being paid. He was subsequently recalled, and a paper shewn him containing a list of names of about 47 persons under the heads "names," "services," $, cts. Under the head of "services" opposite most of these 47 names were entered "scrutineer," "canvasser," "scrutineer," &c. Opposite a few, "meetings scrutineer," "meeting canvasser." The largest sum opposite "scrutineer and canvasser" was $15 opposite the name of G. Morphy. Opposite the names of four persons $10 is put, and the remainder, $3, $4, $5, $2, and as high as $7, and half-a-dozen as low as $2. One name in pencil, Mitchell, has $20 opposite it. Joseph Duggan's name is put down, "use of room for committee 12 days, 2 meetings, &c., $30. Fred. Warmoll "12 day's constant attendance at committee room from 9 to 7, making out canvass books, including payment of two meals each day, $30." There is a pencil memorandum at the bottom of the page, $306. If that was intended to be the addition, some claims amounting to $18 were added afterwards. The three last items in the statement would make the amount. In relation to the memorandum he stated it was in his own handwriting, that the men mentioned in the list claimed those amounts as what they ought to have. He gave it to Mr. Carruthers after the election was over, with all the other papers. When he made up the paper he told them he thought there was no chance of their getting anything. The parties named came to him to put their names down. They abused him about it; said he and Carruthers had got the money between them. When Mr. Carruthers employed men to distribute the tickets, he told them they should not get more than a common day's work, that they should do a little for the cause without pay, as others did. When he put down their names he told them they might as well put down three times as much as it was worth, they had been engaged with the knowledge that Mr. Cameron or Mr. Carruthers would not pay for these services. They had been so warned in his presence before they went to work. The parties named came to his house, he did not go to them. He might have seen them in the committee room—they must have come to him. He never saw the paper since he gave it to Carruthers until then. He spoke to Carruthers about his own claim, and Carruthers said he had nothing to do with it.

Mr. Degrassi, the secretary of the central committee, said parties had applied to him for pay, but they were told there was no chance of their getting any.

Nineteen of the persons named on the list were called as witnesses. They almost all denied any knowledge of their names being on the list, or expecting any money, or having been promised any. Among the rest,

Thomas McDonald, whose name is on the list for $5. He borrowed two sums of $5 from Carruthers, who is his father-in-law, during the election. He says he received nothing, nor gave anything to any one to vote for Mr. Cameron. Carruthers in his evidence said he paid McDonald two dollars for distributing cards, &c

John Roddy, whose name is on the list for $5, says he never made any claim to Warwick; but Warwick told him he had heard from Carruthers that those who acted as scrutineers were going to get something, and his name was down for $5. He said he was never promised any money, and did not expect anything until Warwick mentioned it. He never went for any.

Joseph Duggan, whose name is on the list for $30 for use of rooms, said Carruthers asked him what his charge was. He told him he made no claim, and he had not made any claim.

John Fitzgerald, whose name is down for $10, said he got $5 from Mr. Carruthers for distributing tickets—two dollars at one time and three dollars at another—and he was about nine days and nights canvassing and distributing. He asked Carruthers at one time if anything more was to be got? He said he did not know anything about it. He asked Mr. Warwick how he was getting along, and he said the election was protested. Carruthers paid him the money not for his interest, but his labour. He did not promise him anything more.

Lewis Walker, whose name is down for $2, received $2 from Carruthers. He and some other men undertook to canvass in a certain section, and in doing so spent money for refreshments. He told Carruthers he could not afford to lose his time and spend money in going about. Carruthers told him he had got money from Mr. Gooderham to pay for printing, but nothing to give away. He told him he would pay him for his time out of his own pocket, and to go on. He gave him $2, and that was all he received.

The rest of those who were called whose names appear on the list denied having authorised any claim or application being made on their behalf. They did not claim anything and did not expect anything.

Besides the expenditure by Mr. Scott, Mr. Carruthers, Mr. Hamilton and Mr. Hynes appear to have been the parties who principally expended money in detail.

Mr. William Gooderham, the younger, seems to have placed in Mr. Carruther's hands for the purposes of the election about $150, and in the hands of Mr. William Hamilton, the younger, for a similar purpose $100. He states that when giving the money to Carruthers, it was mentioned the money was required for posting bills and other legitimate purposes of the election. He understood the payments were to be made for bill delivering, bill posting, and the proper expenses of the election. The money given to Mr. Hamilton was for St. Lawrence Ward, getting bills, tickets and cards printed, &c. He understood Mr. Carruthers was to do the necessary printing, the distributing tickets, and pay the other legitimate expenses. His impression was that some printing was done by the central and some by the ward committees. He supposed parties had to be paid for taking around tickets, and for rooms to hold meetings in, and other legitimate purposes. He told him to be careful and spend the money for legitimate purposes only.

Mr. Thomas C. Chisholm placed in the hands of Patrick Hynes about $80, and of John Reid, $80, and he spent about $40 himself; making his expenditure about $200. He gave the money to Messrs Hynes and Reid to expend in printing and distributing cards, paying for committee rooms, &c. He told them he did not want Mr. Cameron defeated and that they were not to expend the money for any purpose that was not legitimate. He believed it was so used. He thought it was to be used in the three wards. He gave it to them because he supposed they would use it to get canvassers and printing, and other legitimate purposes. Did not think the central committee printed all the cards; thinks there were other cards printed besides.

Mr. John Carruthers in his evidence, (which the learned judge in his judgment characterised as very vague and unsatisfactory in the commencement,) said there might be as high as $5 a-piece paid for carrying around cards. He said he had paid all the expenses that had been paid in St. David's Ward, as far as he knew. Could not say how much he paid in these matters. It might or might not be $100. It might or might not be $50, for anything he knew. He did not get the funds from any one for the purpose of paying the amounts in the statement. He did not know whose writing it was in, to the best of his knowledge; he never saw it before. He gave money to McDonald—a dollar or two. He gave no man $10; he did not spend $200. Won't swear he did not spend $100. He says he got money for election purposes from Mr. Gooderham. It was a small trifle to pay for posting up some bills. It was cash to pay some men they had going round posting bills. Mr. Gooderham said to him directly there was to be no money paid for votes. Thinks no one has asked him to pay for any services rendered during the election for Mr. Cameron. He might have given Lewis Walker a dollar or so. He kept no accounts of the payments; had no reason for not doing so. If he paid Walker any money, it was for delivering cards. No one received money for voting, nor did he ever give any one money to pay them for voting or for influencing their vote. He was strictly forbidden by Mr. Cameron to pay money. Heard him say if one dollar would secure his election, he would not give it. Was never authorised by Mr. Cameron to pay for distributing cards or anything else. If he did so, it was on his own account entirely. He was sure that in any money paid for distributing cards he did not allow each one more than at the rate of a dollar a day for what he did. The canvassing and committee meetings, off and on, lasted about two weeks. No person he employed as a canvasser or scrutineer was ever paid by him even at the rate of a dollar a day.

On his subsequent examination, he said people came themselves and volunteered to take a book and go and canvass for Mr. Cameron. There were arrangements as to certain parties taking certain districts. He would give each man a couple of streets, perhaps four or five; for two other streets, perhaps a dozen. Sometimes they would send men over the same ground. He thought some of the men made mistakes. Only paid parties for delivering cards. Might have had notices sent out for holding meetings—that was most of it. The persons so employed were generally voters. He spent all the money he received for those purposes. The services they rendered were not as well paid for as if they had been labouring men employed by the day. Most of his own men got double pay for the same time as these men got who delivered these tickets. He denied that Warwick had ever handed him the list or any paper connected with the last election, except two or three scrutineers' books and some bills for printing. There might have been some small memorandum books. He had destroyed or lost all of them.

William Hamilton, jun., chairman of the committee in St. Lawrence Ward, said he paid some money for distributing cards and posters, and some other legitimate expenses, and for no other legitimate expenses that he knew. There were fourteen or fifteen employed to distribute cards or posters; most of them strangers to him. He paid them $5, $6, or $10 a-piece, according to the time they rendered. They did not render any account, and he got no receipts or vouchers. He could not recollect the names of any of them. Could not say if they were electors. At the ward meetings these persons came and rendered their accounts of the time they had been occupied in distributing the cards. In addition to these, there were two or three who canvassed. The persons to whom money was paid were those who went about posting bills and distributing cards. He employed fourteen or fifteen men. Thinks it would take four or five days to distribute the cards. They looked as if they were persons taking an interest in the election. He could not name any man he had paid money to. He spent from $80 to $100 in the election in this way. He kept no account of it. Got the money from Mr. Gooderham. He did not put down the names of persons to whom he paid

money; knew Mr. Gooderham had confidence in him, and he would take his word for it. The money was paid for distributing cards. The bills were posted by the printers. It was given to fourteen or fifteen persons; thinks it was all done in a week or ten days. He did not suppose it could be done for less; believes it was a reasonable sum to charge. He paid after the service was rendered. It was considered a fair sum, and he so believed it at the time, and it was not given for the purpose of inducing them to vote. He did not think any of them voted, because he did not know they voted. He did not bring any of them to vote, and did not see any of them vote. He was not aware of any one else paying any money in that ward.

Patrick Hynes said he received from $75 to $100 from Mr. Chisholm. It was given to men who were distributing cards. He gave it to them with a distinct understanding and belief that they were distributing cards. To some who said they were out three or four days he gave four or five dollars a-piece. Some might have worked in St. James' Ward. He understood they were generally working in St. David's Ward. Mr. Carruthers said he had got some money from Mr. Gooderham to pay for distributing cards—he mentioned $50—that he had paid out all he had got, and people were finding fault with him that he had not paid them. He said he could not get enough to pay them all. He did not canvass any of the men; he understood they were warm friends of Mr. Cameron and were anxious for his success, but were not able to spend their time in doing this work without being paid. He thought it was legitimate work. He believed they had done the work. He did not know if they had spent all their time in canvassing; they appeared not to be doing anything else. He saw them both in the day time and at night. He did not keep an account of those to whom he paid it. He, of course, treated parties; he did not consider it as done to induce them to vote. He thought it likely he spent from $75 to $100. He knew most of the men, but could not tell their names. If the parties came to him and said they had been out two or three days canvassing, he would pay them for it. They were labouring men or a poor class of mechanics. He did not ask when he paid them if they had worked all the day, or how many hours they had been out. He understood they had been employed and paid them accordingly. Mr. Chisholm gave him the money for legitimate purposes. He understood that distributing tickets, posting bills, and work of that kind was considered legitimate, and that was the purpose for which it was expended. Never was expended, that he was aware of, for the purpose of bribing the electors, and none used for the purpose of treating at any meeting of electors. None given for the purpose of bribing himself. None were paid a sum, he thought, equal to fair wages for what they did, supposing them to have worked as they said they did and as he believed they did. He did not think any man got over $5; some may have got more, others may have only got one or two dollars. He could not say if any of those mentioned in the list as entitled to money in St. David's ward were paid by him. Could not recollect that they were.

John Reid's evidence was not given at first in a very frank manner. He said he received money from Mr. Chisholm. He did not know how much; did not count it. Was certain it was not $1,000 or $200. It was under $100; he did not count it. It was over $25. He could not come any nearer than that. The money was spent in distributing cards through the ward. He had no idea how many were distributed. They were given to the men to distribute, two or three together distributing them. Knows the names of a good many who were employed distributing. Thinks G. Morphy was so employed. Did not give him any money. Does not remember giving money to any of those mentioned in the list. Does not remember the name of any one he did pay; is not aware that he paid anybody; can't name a single person to whom he paid any of it. Is quite sure he has not the money still. He gave it to persons for distributing cards at promiscuous meetings. He did not remember to whom he paid it. Did not give any cards to those who would vote for Medcalf. Thinks he spent some of his own money in that way. Can't tell how much. Thinks he spent of his own money less than $100 and over $25. He spent all the money he got from Mr. Chisholm. Did not think he had spent $80 of his own money. Will not swear he did not. Did not know of any but himself spending money at that election. The money that he spent of his own and Mr. Chisholm's was spent entirely in the distribution of cards. He thought the parties were friendly to Mr. Cameron. His impression was that some were electors and some were not. To most of them he paid a couple of dollars; he gave each man what he thought he was worth. Did not know if they asked him for payment. They were men in middling circumstances. Very few of the labouring class had votes. They seemed very anxious for their man before they got the $2. Thought there were about 1000 voters in St. David's ward. Did not know Mr. Hynes had any money to spend. Mr. Chisholm did not tell him so. Did not tell any of the committee he had funds for distributing cards. No particular arrangements were made by the committee for distributing cards, except that certain men had certain localities for distributing cards in. Some were paid and some not. He paid some not mentioned by the committee. He gave cards to men to distribute himself. The secretary of the committee in St. David's ward generally distributed them. He was not aware that the committee knew he was distributing them promiscuously. He told the men when he gave them the cards, the streets he wanted them distributed in. He could canvass on 300 in a day. Did not think that an unreasonable number; thought 500 not unreasonable. Some days he could not canvass over 20. Sometimes a man would require a longer time to persuade. He said three or four hundred would be a great many to canvass in a day—to go from house to house. If it were only necessary to throw the card into the house, three or five hundred cards could be distributed in a day. Did not think he spent $75 in distributing tickets. Mr. Chisholm did not pay anything to him for the purpose of influencing him: all he was worth would not influence him. He supported Mr. Cameron before Mr.

Cameron gave him the money. The money was not given for the purpose of influencing other voters, or bribing them. He did not use the money for the purpose of influencing the voters, or corrupting or bribing them; he used no money for corrupt purposes. He was well aware Mr. Cameron was opposed to spending money for the purpose of the election.

Richards, C. J.—It was conceded, and the evidence seems to establish beyond all doubt, that the respondent, in good faith, intended that the election should be conducted, not only according to the letter of the law, but according to its very spirit and intent. He subscribed no money, and paid none, except for some printing, the amount of which was not mentioned, and which there is no doubt it was proper for him to pay; and it did not appear that he even knew that any considerable amount of money was being expended.

When a man so situated is to be held liable for the acts of his agents, the observations of Martin, B., in the *Westminster Case*, 1 O'M. & H. 95, seem to me to enunciate opinions that will meet with general approbation: "The law is a stringent law, a harsh law, a hard law; it makes a man responsible who has directly forbidden a thing to be done, when that thing has been done by a subordinate agent. It is in point of fact making the relation between a candidate and his agent the relation of master and servant, and not the relation of principal and agent. But I think I am justified, when I am about to apply such a law, in requiring to be satisfied, beyond all reasonable doubt, that the act of bribery was done; and unless the proof is strong and cogent —I should say very strong and very cogent—it ought not to affect the seat of an honest and well-intentioned man by the act of a third person."

It was urged on behalf of the petitioner, that large sums of money were expended to aid in the election of respondent, and the responsibility was cast on him to show that it was spent in a legitimate manner.

In the *Bradford Case*, 1 O'M. & H. 30, the respondent opened an unlimited credit at his banker's in favor of his agent, who availed himself of it to the extent of upwards of £7,200; and the agent sent the returning officer a mere abstract of the totals of outlay, unaccompanied by vouchers; and this was knowingly done, contrary to the statute 26 & 27 Vic. cap. 29, sec. 4. It was shewn that large numbers of electors were influenced by corrupt practices committed by the agents of respondent. Martin, B., said as to this (p. 33 of the case), that his impression was, if petitioner's counsel had put in the account, and proved that no bills or vouchers had been delivered to the returning officer, he would have called on the respondent to prove the legality of every payment contained in the account from the beginning to the end of it. His impression was that that alone would have made a *primâ facie* case against any person, especially when he called attention to the amounts contained in that paper.

The Imperial statute referred to required that no election expenses should be paid except through an agent, whose name should be given to the returning officer, and it was to be published. The bills were to be sent in to the agent within a month. A detailed statement of expenditure, with vouchers, was to be furnished by the agent to the returning officer within two months after the election.

We have no such provision in our statutes, and we are now for the first time called upon to carry out the provisions of the law, which has been characterized by Baron Martin as a harsh law, and apply its principles to the conduct and actions of men, some of whom have never been accustomed to keep accounts of any kind, and certainly not accounts and vouchers relative to election expenses. I do not think I can be called upon, as against a person who neither knew nor desired this state of things, to infer bribery from the omission of these subordinate agents to keep an account of their expenditure, or to recollect the persons to whom the money by them expended was paid, as I would do if administering the law according to the enactments which prevail in England on the subject.

Here the money was not furnished by the candidate, nor does it clearly appear that he was aware that any had been subscribed, or was being expended for the purposes of the election; but it is probable he may have thought that was the case, and it appears he impressed upon his friends the absolute necessity of obeying the law. If he had been aware that a lavish expenditure was going on, or if it was manifest that money was being ruthlessly used, he ought to have checked and prevented it; and although if I were satisfied the money had been used for corrupt purposes I would be compelled to avoid the election, yet I do not feel called upon to infer that it was so used from the mere absence of a satisfactory account of its expenditure, verified by vouchers.

There has been no evidence given to show that the expenditure, on the whole, was excessive, if the kind of expenditure referred to is allowable at all.

Mr. Scott expended say about $300 in St. James's Ward—no objection is offered to the expenditure or its details; Mr. Gooderham gave Carruthers say $150; Mr. Chisholm gave Hynes $80, and Reid for all the wards, $80; say, if all expended in St. David's Ward, $210; Mr. Gooderham gave Hamilton, for St. Lawrence Ward, say $100; making in all $610.

The number of votes on the roll, in St. James's Ward were 1,856; St. David's, 1,827; St. Lawrence, 986.

If the expenditure in St. James be considered a fair one at $300, the others do not seem unreasonable, though the St. James' committee may have paid for more of the printing than was paid for in the other Wards.

From the manner in which they gave their evidence, I was under the impression that Hamilton and Hynes had spent all the money placed in their hands for the purposes they mention—for the *bona fide* object of paying for services rendered, and not with a view of corrupting or unduly influencing votes.

As to Carruthers, I am by no means satisfied that he paid out all the money he received. The list, which the petitioner's counsel in some mysterious way obtained possession of, shewed the names of persons who had been employed in

taking around tickets, some five of whom had received small sums, and the larger portion had not received anything, and never asked or expected anything. Some of them, when applying to Carruthers, were told he had no money to expend for these purposes, but only for printing; yet he paid some small sum, as he said, out of his own pocket. If he was unwilling to pay these men for the services so rendered, and who were all friends of Mr. Cameron, out of the money he received, I do not think it likely he would pay over the money to induce others to vote for Mr. Cameron. Warwick, in his evidence, said that many of the parties who applied to him for their pay, stated that Carruthers and he had received money to pay these expenses, but had kept it themselves. Hynes said that Carruthers told him he had received some money from Mr. Gooderham to pay for printing, &c., but he understood it was only $50. It may have been he had only received $50 then, as Mr. Gooderham said he paid the money to him at different times.

The evidence of Reid was equally unsatisfactory, and did not impress me with the conviction he had spent all the money he received in paying expenses connected with the election, whether legitimate or otherwise.

It is contended that the decisions under the English statute are not applicable to the state of the law existing here.

Reference is made to the three clauses of the second section of the Imperial Statute, 17, 18 Vic., cap. 102, which enacts "That every person who shall directly or indirectly, by himself or any other person on his behalf, make any gift, loan, offer, promise, procurement or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavor to procure, the return of any person to serve in parliament, or the vote of any voter at any election," shall be guilty of bribery.

In the *Coventry Case*, 1 O'M & H. 100, Justice Willes, in referring to this section, says: "Therefore anything, great or small, which is given to procure a vote would be a bribe; and if given to another to purchase his influence at the election, it unquestionably would be a bribe, and would avoid the election." Our own statute, 32 Vic., cap. 21, sec. 67, 3rd paragraph, is in the same words.

At the conclusion of the second section of the Imperial Statute are the words, "Provided always that the aforesaid enactment shall not extend, or be construed to extend, to any money paid or agreed to be paid for or on account of any legal expense *bona fide* incurred at or concerning any election." The proviso at the end of the section in our Statute is, "Provided always that the *actual personal expenses of any candidate, his expenses for actual professional services performed, and bona fide payments for the fair cost of printing and advertising*, shall be held to be expenses lawfully incurred, and the payment thereof shall not be a contravention of this Act."

It is argued that the effect of our Statute is to restrict the candidate to the payment of his personal expenses—that is, for his own board, lodging, horse hire, travelling expenses, I suppose, and his expenses for actual professional services performed, meaning fees paid to lawyers for their services as such.

In this view, he could not hire a room to meet the electors in, or for his committee to meet in, unless he were then personally present; and none of his committee could hire a room for that purpose, (for that would not be for professional services,) if such room belonged to a voter, and none other could be conveniently obtained. I am not inclined to put this narrow construction on a Statute so highly penal as this is. The plain and reasonable meaning of the Statute seems to me to be what its words indicate, that when the prohibited things are done "in order to induce such person to procure or endeavor to procure the return of any person to serve in parliament, or the vote of any voter at any election," the person doing this shall be guilty of bribery.

In the *Coventry case*, the point was whether one candidate offering to pay the expenses of a co-candidate was guilty of bribery, and reference being made to the proviso in the section of the English Act, the learned judge (Willes) said, "It does not relate to the expenses of voters. To pay the expenses of voters on condition of their voting or abstaining from voting, is unquestionably bribery." He then proceeds, "But the candidate may pay his own expenses, and employ voters in a variety of ways; for instance, he may employ voters to take around advertising boards, to act as messengers as to the state of the poll, or to keep the polling booths clear. He may also adopt the course which appears to have been adopted in this city, that is to say, the city or borough is divided into districts, and committees are formed amongst the voters themselves, of selected persons, who go about and canvass certain portions of the district, and for their services these persons are sometimes paid and sometimes not paid. Now, unquestionably if the third clause of the second section was to be taken in its literal terms, the payment to canvassers under such circumstances, being, as it is, a payment to induce them to procure votes by means of their canvass, would come within the terms of this clause, and would avoid the election. We have, therefore, a test supplied of the meaning of the third clause of the second section, by means of which we see that it was not intended by this section to do away with every payment made by the candidate in the course of the election." After referring to the *Tamworth Case*, where reference is made to the cases, deciding that employing voters and paying them as canvassers was not colorable; he then refers to the *Lambeth Case*, in which voters employed as canvassers were paid, and it was not considered illegal. He adds, "It is hardly necessary to point out how exceedingly dangerous the adoption of that system is, both in respect to the payment of canvassers, and also in respect of that which has been held lawful, viz: the supply of fair refreshments to unpaid canvassers, whilst engaged actually and not colorably, upon this work; and in like manner, of refreshments to committee men. It is proper, when this system is referred to as not being unlawful in itself, to say that it exposes members to very great danger, and when it is merely colorable, it would avoid the election." He comes

to the conclusion that paying the expenses of a co-candidate is not bribery, and is not prohibited by the Statute. He further adds. "You must show an intention to do that which is against the law, before you bring the case within the highly penal clauses of the Statute."

From the evidence given, and the surrounding circumstances, I do not feel warranted in inferring that the sums really paid to electors for putting up placards, distributing cards, and similar services, were paid colorably and to influence votes.

The course pursued, as I understand, was that Mr. Cameron's friends formed themselves into committees in the several wards, and persons came forward and volunteered to distribute cards in the several localities. They were furnished with books showing the names and residences of the parties they were to call on, and they returned these names and the answers they gave as to whom they would vote for, to the Secretary of the committee; and in that way the information was conveyed to the scrutineers as to the parties who were on the list, whether they were in the city, whether they were dead, and for whom they were expected to vote. The parties entrusted with these books and tickets were, it may be presumed, those in whom the friends of Mr. Cameron had confidence, or they would not have had that position. When the parties commenced to distribute cards, &c, they often found the parties on whom they were to call at public houses, and when there, and speaking on the subject of the election, they, as seems to be the almost universal custom with the class of men whom they meet, asked them to drink, and if others were present they were also asked. The consequence was, the parties distributing tickets frequently spent their money, lost their time, and got no pay. When this was represented to the parties having funds to expend, they considered it a legitimate purpose to pay these parties for their services a reasonable sum, not at any time exceeding what would be paid to a person for working the same length of time in other employments. I cannot say that the evidence of these general payments, shows any such bribery as would justify me in setting aside the election.

On this particular feature of the case, I may as well remark that when a candidate or his friends expended large sums of money during an election, it is always more satisfactory to have such expenditure shewn by correct and proper vouchers; and if any money be paid to voters, or large sums paid out for refreshments, or teams used in any way, this will be open to attack and observation, and judges will be less inclined as the law becomes known and its provisions pointed out, to take a favorable view of acts and conduct that may bear two constructions, one favorable to the party elected, and the other against him.

As to $10 paid to Mr. McDonald, the son-in-law of Carruthers, Carruthers himself says he gave him a dollar or two. McDonald says he borrowed from him during this election, $5 at one time and $5 at another, and this had nothing to do with the election. He seemed to be a warm supporter of Mr. Cameron, and I am not inclined to think Carruthers gave him the $10 on account of his services during the election, or to bribe him.

The next point is that with intent of promoting Mr. Cameron's election, Mr. Chisholm spent money for supplying drink to a meeting of electors, assembled for the purpose of promoting such election.

Mr. Chisholm gives evidence on that point, and it is the only evidence given on the subject. He says his own expenses were, on the whole, for cab hire and money paid at ward meetings, about $40. He was ill before the election, and hired cabs to take him from one place to another. After the meetings were over he asked those present to drink, and all present drank. He said his object was to be friendly with them, and if, after that, they were friendly to his candidate he was glad of it. His largest expenditure in any evening was six or seven dollars, including cab hire. When he asked the people to drink the question of voting was never mentioned. He did it on his own account. In doing so he had no desire to influence the people's votes. The object I had in view was this: "When men take an interest in these matters, as I did, and exert themselves, if they don't treat people they think they are mean, and I did not wish to be considered mean." Without deciding that furnishing refreshment by an agent of a candidate, without his knowledge or consent, and against his will, will set aside the election, I think I may dispose of this point in the case, in deciding whether what was done was done corruptly, to influence votes. The lengthened exposition of the cases, as to furnishing refreshments, in the judgment of Chief Justice Hagarty, in the *Glengary Case*, makes it unnecessary for me to refer to them at length.

In the *Tamworth Case*, where men were employed to keep the peace on the polling day by an agent of one of the respondents, amongst whom were some 29 voters, at 10s. a-head, Mr. Justice Willes had to consider why the agent employed those men, and he said, "I believe he employed them because he desired to gain popularity for himself, and because he desired to make a handle of their employment to gain favor for himself amongst the class to which the men belonged. * * * * Upon the whole, however, I come to the conclusion, that it was an unauthorised act, done by Baraclough for the purpose of obtaining popularity for himself, and that it was not, either in respect of the question of Law, or upon the established facts, an act which I can designate as having been bribery. It is an act which, so far as I judicially can, I reprehend and condemn; and if I thought it had been done by him with any view of advancing the interest of his employers, so that I had to impute the intention to do that which was the natural consequence of the act, I must have held the election to be void."

Looking then at this as an unauthorised act against the wishes of the candidate, I think the fairest and most reasonable conclusion to arrive at is what Mr. Chisholm himself says, viz.: that he treated because people would have thought him mean if he did not, and without any corrupt intent.

The next class of cases to which my attention was directed was that of those to whom offers of

bribes were made to induce them to vote for respondent.

The first is John Fulton. He stated that Leonard Hewit asked him to vote for Mr. Cameron. He said he could not. Hewit asked if he was not going to build a house; he said he was. Hewit said he would give him two thousand feet of lumber if he would vote for Cameron. He said he could not do it. Hewit said he would send him some more if that was not enough. He said he voted for Medcalf. Mr. Cameron's scrutineer swore him, and that was the way his name came here. On another occasion, just to try him, he asked Hewit what he would give him to vote for Cameron. Hewit said $20, just to try him; he said he wanted more. Hewit finally decided he would give him $25, and gave his word of honor he would make it all right. Hewit asked, would he not take his word and honour until after the election. He said he supposed he must, and he was to vote for Mr. Cameron.

On cross-examination he said he did not promise to vote for Mr. Cameron. He said he wanted to get a hold on Hewit, he thought he was too officious, and he wanted to get hold of him. He said he never promised to vote for Mr. Cameron. He would travel from here to Cooksville on his bare feet to vote for Medcalf rather than for Cameron. He said there were plenty of men present when the conversation about the lumber took place, but he could not name any of them. The first time he thought Hewit was in earnest, and he was so himself when he refused him. The men could not hear them. He could not tell a single man present when Hewit made the offer.

Hewit was called and denied ever offering him any lumber to vote for Mr. Cameron. He said in conversation (they worked in the same shop with other men) about the candidates, that Fulton said when he last voted he got lumber enough to build a house, and he would not vote for either of the candidates unless they came down. He asked him if he thought Metcalf would come down, Fulton said he did not think he would. He (Hewit) said if that was the matter he was foolish for voting for him, that the Government had plenty of money and lumber too; that was about the substance of his conversation. He did not offer to send up 2000 feet, or any lumber. He did not offer him $25 to vote for Cameron. He must be labouring under a mistake, he never offered him a copper. Hewit contradicts Fulton's statements as to offering to give him $20 or anything. He never understood from beginning to end he was to vote for Mr. Cameron; always understood he was to vote for Medcalf. He canvassed for him. He did not know Fulton had a vacant lot. He said that what he did say to Fulton was in the way of chaffing, and as a joke. He said he was foolish for voting for Medcalf; that the Government had plenty of money and lumber too. Nothing was said from which any person could seriously infer that he intended to offer Fulton anything to vote for Mr. Cameron. He did not think 2000 feet of lumber or $25 in cash would have induced him to vote against Medcalf. From the manner in which these men gave their evidence, I was not satisfied that any serious offer to bribe Fulton had been made by Hewit.

The other persons to whom offers were made were George Smith, James Agnew, and Samuel Nisbet.

George Smith said that one of the Gooderhams, he did not know which, said if we would vote for Mr. Cameron—if we all supported him down there, they would give the right to have South Park street through. He believed they surveyed it out the day before the election. He believed Gooderham owned a small lawn.

I understand by this that Mr. Gooderham would consent to a street being continued through the lawn. Whether this gentleman was an agent of Mr. Cameron's or not does not appear. I think we cannot on this vague kind of statement unseat the sitting member.

George Smith also stated that Carruthers told him he had bets on the election, and he could make more bets if he (Smith) would vote for Mr. Cameron. He said he would give him $20 if he would vote for Mr. Cameron against the old man (meaning Mr. Medcalf). Smith said he would not take $100 and vote against him. He said he could make up bets, he had one made with Victor Thomas at the same time. Carruthers said he would win the bet if he voted against the old man. This was on the nomination day, the speaking was going on, it was a little damp, and he wanted to get away.

John Agnew said that on the night of the meeting at the Dutch Farm, Carruthers said to him, "You always did go for me." He replied, "But I can't now." He would do all he could for Mr. Cameron only for Mr. Medcalf. Carruthers said, "You had better have a couple of dollars. You will have your mind made up before the election comes on." He said he had his mind already made up.

Samuel Nisbet was a scrutineer for Medcalf. He said he met Carruthers at Duggan's Tavern, McDermott and McDonald were there. Carruthers said if he would go with them, he had a nice inside job for him to-morrow. Nisbet said he could not promise. Carruthers said if he went with him he would not rue it, that there was lots of money going. He (Carruthers) said before Wednesday or Thursday night at the outside, he should be recompensed. McDermott and McDonald pressed him to go with them—said there was lots of money. He asked how money could be used. They said they would make that all right, saying, before Wednesday or Thursday night he would find out. On the day of the polling McDermott and McDonald came in, they were surprised to see him there acting as scrutineer for Medcalf, they began to abuse him and call him names. He threatened them if they did not keep quiet at the polling booth, he would use their own words against them. They told him if he had got the two dollars the night before, he would have been for Cameron.

On cross-examination, he said he told Macdonald the day of election he would use the words against him. He first told it to the petitioner's solicitor that day. It was not known, before the conversation at Duggan's, that he was going to support Medcalf. He did say something to Mr. Cameron at Lynch's; found fault with him, and showed a preference for Medcalf; and

that was before the conversation at Duggan's. He fell in at the end of a meeting in favor of Medcalf at Duggan's; was also at a meeting at Hamilton's, and said something to two of Cameron's supporters there.

Mr. Carruthers was called, and said he never offered Smith a cent to vote for Mr. Cameron. Smith said no money would induce him to vote against Medcalf. He never gave or offered Agnew two dollars to vote, or make up his mind about voting. He knew very well he would vote for Medcalf, whatever might have been given to him. He denied speaking to Nesbit at Duggan's; he had observed him at Foley's tavern before that, and he would not speak to him, and did not all that night. He never hinted to him that the Government had plenty of money, and could pay election bills. Nesbit was trying to prevent Mr. Cameron from speaking at Lynch's, by making a noise and shouting, before seeing him at Duggan's. He saw Agnew at the lager beer saloon, and he was drunk.

McDermott said he saw Nesbit at Duggan's, and asked him who he was going for. He said he did not know. He offered him nothing to vote for anybody, nor did Macdonald. He and Macdonald did not take Nesbit aside to speak about the election, nor offer him anything to vote. He denied having the conversation with Nesbit which Nesbit said he had had with him. The quarrel at the poll began from Nesbit swearing McDermott as to his vote; and the latter then said if he had got two dollars the night before, he would have been for Cameron. He said he thought he wanted to be bought, coming round a committee room the night before the election, not knowing who he was going to vote for.

In the *Cheltenham Case*, 1 O'M. & H. 64–65, when the question came up as to evidence in the case of an offer to bribe, Baron Martin said, "When the evidence as to bribery consists merely of offers or proposals to bribe, the evidence required should be stronger than that with respect to bribery itself, * * * it ought to be made out beyond all doubt, because when two people are talking of a thing which is not carried out, it may be that they honestly give their evidence; but one person understands what is said by another, differently from what he intends it."

Looking at the whole evidence as applicable to the offer to bribe said to have been made by Carruthers to Smith, Agnew and Nesbit, I do not think such a clear case is made out as would justify me in setting aside this election on the ground of an offer to bribe these three persons. They received nothing, they did not alter their votes, and I fail to see that clear and distinct offers to bribe, which I think the rules laid down in these cases require, to justify me in finding that they were made as alleged.

During the proceedings there were some other cases referred to, which at some stage of the proceedings seemed to require further explanation, but the further progress of the enquiry served to afford a satisfactory answer, and I have only referred to those cases which were specially adverted to by the petitioner's counsel at the summing up at the close of the case.

I do not think I can better express many of the views that I entertain in relation to this case than by quoting the language of Baron Martin in the *Wigan Case*, 1 O'M. & H. 192, as to the principle on which a judge should act in trying a petition alleging corrupt practices. He says:

"If I am satisfied that the candidates honestly intended to comply with the law and meant to obey it, and that they themselves did no act contrary to the law, and *bona fide* intended that no person employed in the election should do any act contrary to the law, I will not unseat such a person upon the supposed act of an agent, unless the act is established to my entire satisfaction. Things may have been done at an election of which I do not approve—for instance, having committees at public houses, hiring a number of carriages (which now in borough elections is prohibited), or hiring "roughs"—but which do not of themselves avoid an election. They are ingredients which may be taken into consideration, and they may tend to show what was the real quality and meaning of an ambiguous act, which may have one effect or another, according as the judge's mind is satisfied that it was honestly or dishonestly done. It may be that in an election certain acts have taken place which the judge disapproves of, but which do not satisfy him that another act on which the validity of the election depends, was corruptly done. But if upon a future petition ensuing upon another election in the same place, acts similar to those of which the judge had expressed his disapproval, were proved to have been repeated, the judge who tried the second petition might well take them into consideration to aid his conclusion, that the act upon which the validity of the election depended was a corrupt and dishonest act."

I am satisfied that the respondent honestly intended to comply with the law, and meant to obey it, and has done no act contrary to the law, and *bona fide* intended that no person employed in the election should do any act contrary to the law. I have not that clear and satisfactory evidence of acts contrary to law, done by his agents, which will, in my opinion, justify me in declaring the election of the respondent void, and it therefore becomes my duty to declare that the respondent was duly elected.

As to costs, there were no grounds whatever for charging the respondent personally with acts of bribery or other corrupt practices, and the scrutiny was abandoned after some attempts were made to go on with it. The costs as to these parts of the case, I direct shall be paid by the petitioner to the respondent.

As to the other parts of the case, though the respondent is successful, I think the matters were proper to be inquired into in the interest of the public, and as to them I give costs to neither party.

CHANCERY CHAMBERS.

Re Dolsen.

Quieting Titles Act—Statutes—Con. Stat. U. C., c. 83—Effect of a mortgage in fee by a tenant in tail.

It is at least doubtful whether a mortgage in fee by a tenant in tail in possession bars the entail, and whether upon a discharge being executed the mortgagor does not take back his original estate.

[February, 1872.—Mr. Taylor.]

Mr. Taylor, Referee of Titles.—The petitioner is under his father's will tenant in tail in possession of the land in question. He asks, however, a certificate of title as owner in fee simple, subject to a mortgage in fee to one Scane, claiming that the effect of this mortgage is to bar the entail. (Con. Stat. U. C., c. 83, s. 10).

Mr. Leith, in his Real Property Statutes (page 338), respecting a mortgage in fee made by a tenant in tail, says: "On a mortgage in fee the equity of redemption will belong to the mortgagor, not as tenant in tail, but freed of the entail, and descend to the heirs general instead of to the heirs in tail." No authority is cited in support of this statement. Mr. Shelford, when treating of the corresponding clause in the English Statute (Shelford Real Prop. Stat. 350), does not consider this as quite clear. He accordingly says that, "in mortgages in fee, whether of freeholds or copyholds, when it is intended that the equity of redemption shall be discharged from the entail without any further assurance, it will be proper to frame the proviso of the redemption, not so as to make the estate of the mortgagee void on payment of the money, but to direct that he shall re-convey it to the uses intended; for if the condition in the former case should be performed, it might be contended that the tenant in tail became seized of his former estate in tail."

The mortgage in the present case is in the short form under the Statute, 27 and 28 Vict., c. 31; the proviso being that upon payment the mortgage shall be void. The best course for the petitioner to adopt will be to execute a disentailing deed, and thus remove any doubt on the subject.

It may be remarked that even in any case it is doubtful if taking on payment a certificate of discharge under the statute will have the effect of giving the mortgagor an estate in fee simple, the statute saying that such a certificate when registered shall be as valid and effectual "as a conveyance to the mortgagor, &c. of the original estate of the mortgagor."

Scane—Solicitor for the petitioner.

QUEBEC.

Ex parte Papin.

Petitioner for a Writ of Habeas Corpus.

Held—1st. That the powers conferred by the Local Act of the Province of Quebec, contained in section 17 of the 32 Vict., ch. 70, on the Corporation of Montreal for cumulative punishments therein enacted, are unconstitutional.

2nd. That the By-Law of the Corporation of the City of Montreal, *imposing a fine and* imprisonment for the infraction of its provisions against gambling, made under the provisions of the Statute 32 Vict., chap. 70, section 17, passed by the Legislature of Quebec in 1869, is null and void, inasmuch as by the British North America Act, 1867, section 92, sub-section 15, the punishment imposed by Local Legislatures for an offence against its own laws, cannot be cumulative.

[Montreal, 24th Nov., 1871.—In Chambers.
Drummond, J.]

In the Recorder's Court for the City of Montreal, the petitioner was convicted of gambling in a tavern in the city, contrary to the By-Law in such case made and provided, and was condemned to pay a fine of $20 *and* to be imprisoned for two months, and was, in consequence, committed to the common gaol about the 2nd November, 1871. A writ of *Habeas Corpus* was issued, and the case was argued in Chambers. The Counsel for the petitioner, amongst other objections to the conviction and commitment, contended that the Legislature of Quebec exceeded its authority in granting to the Corporation of Montreal, by the Act 32 Vict., ch. 70, sec 17, the powers of punishment for infraction of by-laws more extensive than it possessed itself with respect to offenders against its own laws. By that Local Act the Corporation is vested with the right of imposing a cumulative punishment, fine and imprisonment, whereas the Local Legislature does not possess that right, under the British North America Act, 1867, 30 and 31 Vict., ch. 3, sec. 92, sub-sec. 15.

Drummond, J.—The most important point to be considered is the extent to which the Local Legislature can empower the Corporation to punish by fines, imprisonment or both, parties detected in the infraction of the by-laws. The Local Legislature, under the 32 Vict., ch. 70, 1869, cannot endow Municipal Corporations with powers of punishment for infraction of their by-laws more extensive than it possesses itself. The enactments of the British North America Act, 1867, 30 and 31 Vict., ch. 3, sec. 92, sub-sec. 15, are as follows: "The imposition of punishment by fine, penalty or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section." Therefore the punishment imposed by Local Legislatures cannot be cumulative; it must be either fine, penalty or imprisonment; it cannot be fine *and* imprisonment. This provision, therefore, limits the whole of the powers of imposing punishment by Provincial Legislatures, and they cannot grant to Corporations any greater powers of punishment than they possess themselves, so that the 32 Vict., ch. 70, sec. 17, is clearly *unconstitutional* in so far as it assumes to authorize the imposition of punishment by fine and imprisonment for infraction of a by-law of the City of Montreal. This section 17, of the 32 Vict., ch. 70, being the clause relied on to maintain the commitment and conviction in this matter, Papin having been condemned to pay $20 and to be imprisoned for two months, it is clear that both conviction and commitment are null and void. The petitioner must therefore be discharged.

Order for his discharge granted.

ENGLISH REPORTS.

COURT OF EXCHEQUER.

Jones v. Brassey and Ballard.

(Concluded from page 44.)

Channell, B.—I am of opinion that this rule should be discharged. There were three states or conditions of things arising out of the original action; one was the claim of a sum of money, as to which the plaintiff admitted he was satisfied by means of payment, and the credit he gave was proof of payment, so as to dispense on the part of the defendant with the necessity of proving it. There was then another claim, as to which, except as to £65, parcel of it, the defendant pleaded payment, which, if true in point of fact, afforded a defence in point of law. Then there was a third claim with respect to that matter of the £65, which was excepted by the pleadings. The defendant by his pleas denied the whole cause of action except as to £65, and as to £65 there is what is called a *nil dicit*, which is a plea amounting to confession. The plaintiff signed judgment as to the part not pleaded to, and entered a *nolle prosequi* as to that part of the demand which was pleaded to and affected by the two pleas. Now, the plaintiff having brought his second action, the question would arise upon the pleadings, whether or not the sum of money sought to be recovered in the present action, was disposed of by means of the judgment recovered in the first action. It is not unimportant to observe that the entry of a judgment is always considered, (although, in point of fact, it takes place by the action of the attorney,) as the act of the court. The *nolle prosequi* is an entry of the parties; the court cannot, as a general rule, prevent the plaintiff, if he chooses to enter a *nolle prosequi*, from taking that course. Upon the pleadings, as originally framed in this action, the question, I think, would be this: The plaintiff by his replication would have admitted that some judgment, in point of fact, had been recovered between the present plaintiff and the present defendant, whether the causes of action in respect of which that judgment was recovered be the same causes of action or not. There must not only be an identity of particulars, and identity of matter, but it must be matter which was in each case the subject of a judgment; and supposing that the amount for which the *nolle prosequi* was entered can be identified, as upon the evidence here it can be, with the amount sought to be recovered, the case upon the original pleadings would fail in this, that though there was an identity in the subject matter of the claim, there was not an identity in this, viz., that the one subject matter was not identified with the other, because the entry by the plaintiff in the first action of a *nolle prosequi* was not the case of a judgment recovered. Now, taking, as far as we can, a just and equitable view of the case, we relieve the parties from the pleadings, and give them an opportunity of setting up a defence, if they can, without pleadings; and the case then must be looked at as if it was a case stated for the opinion of the court without pleadings. But then we must look at the facts, and see whether, even though there had been no pleas, the facts of the case were such as entitled the plaintiff or the defendant to our judgment. Now, when we dispense with and discard the pleadings altogether, we have no doubt, in point of fact, because it is admitted (and no question arises as to all that was not admitted by the plea of payment), there was a denial as to £65, but as to all beyond £65 there was no denial, and, therefore, discarding the pleadings, it raises the question whether or not a *nolle prosequi* disentitles the plaintiff to recover in a subsequent action in respect of that amount which was the subject of the *nolle prosequi*. I have put two or three instances in the course of the argument, and many others might be cited. A nonsuit does not disentitle the plaintiff to sue in respect of the same matter; and there is another case which is analogous—the case of a *stet processus*, which resembles, in some respects, an entry of *nolle prosequi*, although the *stet processus* is an act of consent between the parties, and the *nolle prosequi* may be, and is, in fact, the act of one of the parties. A *stet processus* does not disentitle the plaintiff to sue in respect of the same cause of action as to which it was entered, unless it can be shown that it was entered under such circumstances as to raise an inference to the contrary. As a matter of evidence it shows no actual bar in point of law. For these reasons I am of opinion that this rule should be discharged, and the verdict must stand for the plaintiff, conditionally, subject to a reference.

Pigott, B.—I am quite of the same opinion. When we get rid of these pleadings the question is, what is the effect of a *nolle prosequi?* As long ago as the year 1789, the court decided that matter in the case of *Cooper* v. *Tiffin*, in which, after action brought and declaration delivered, the plaintiff, on discovering that the defendant was an infant, had entered a *nolle prosequi*, and the defendant thereupon moved to be allowed his costs under the statute of 8 Eliz. c. 2, s. 2, which gives the defendant costs, "if after declaration the plaintiff shall suffer the suit to be discontinued, or otherwise shall be nonsuit in the same," and he contended that the case came within the reason of the statute, and that in practice such costs were always allowed, to which it was answered by the plaintiff, in showing cause, that the case neither came within the words or the reason of the Act of Parliament; the words being only "discontinuance" and "nonsuit," and that there was good reason for not extending the statute to a *retraxit* or *nolle prosequi*, because, by taking three steps, which were active, the parties could not afterwards commence another action for the same cause: whereas, on discontinuing or becoming nonsuit, which are negative, the party is at liberty to bring another action for the same cause, to prevent which the statute was passed. But the court said that the case of a *nolle prosequi* could not be distinguished in reason from a *discontinuance*, for in this as well as that the party might afterwards commence another action for the same cause, and that the practice had been to give costs in such cases: (3 T. 511.) And in the forms given in our books of practice, a judgment upon *nolle prosequi* is the same as it

is upon nonsuit; and, as my brother Channell has just observed, the judgment must be understood to be the act of the court. Then there is another effect which no doubt a *nolle prosequi* may in some cases have, as pointed out by Tindal, C. J., in the case of *Bowden* v. *Horne*, (7 Bing. 716,) namely, where the plaintiff, having accepied a less sum than he originally sued for, and obtained judgment, afterwards enters a *nolle prosequi* as to that for which he did not obtain judgment, and then brings another action—there, as the Lord Chief Justice points out, a *nolle prosequi* as to part, entered up after judgment for the whole, is oquivalent to a *retraxit*, and a bar to any future action for the same cause. What, then, is the defendant's answer to the present action? Mr. Powell has cited the case nf *Lord Bagot* v. *Williams* (3 B. & C. 275); but, if he had read the judgment of Bayley, J. in that case, he would have found that the facts amounted there, not to a *nolle prosequi* of a part of the plaintiff's claim, but to a mode of taking the judgment of the court, or of the person to whom it was delegated by the court to ascertain what the plaintiff was entitled to, in respect of that for which his action was brought, That was done in this way. The steward who succeeded to the defendant, was called as a witness; the accounts were invectigated; and then, upon that investigation, an action was directed to be brought for 4000*l.*, and judgment having passed by default, the plaintiff verified for 400*l.* only, because the defendant had not any property in value exceeding that sum. Upon the mode of verifying, Bayley, J. says this: "It was held that the judgment in that action was no bar to his recovering is a subsequent action for goods sold. In this case Lord Bagot, at the time when the first action was commenced, had a demand on the defendant, not for one specific sum of money, but for different sums of money received by the defendant on his account, from different persons, and at different times. His agent knew that he had claims in respect of all the sums now claimed, except 46*l*, and, having that knowledge, he formed an opinion that 3400*l*, was the whole sum which Lord Bagot ought to claim; and if he acted upon that opinion, it is much the same thing as a plaintiff, in a cause at *Nisi Prius*, having a demand of 60*l.*, consisting of three sums of 20*l.*, which became due to him at different times, consented to take a verdict for 40*l.* If the jury, in such a case, at the suggestion of the plaintiff, reduced the verdict to 40*l.*, he would be bound by it, and could not afterwards bring a second action for the other 20*l.* It seems to me thot he is equally bound by his own act in this case as he would have been by the verdict of a jury in the other, and that, having chosen to abandon his claim once, he has done it for ever." Bayley, J. also says that the case of *Seddon and others* v. *Tutop* in 6 Term Rep. 607, which had been cited in argument, was distinguishable from the case of *Bagot* v. *Williams*, and he adds that "The ground of the decision in that case was, that no evidence had been given, in the first action, on the count for goods sold and delivered, but that the plaintiff recovered a verdict merely on the count for the promissory note; and it was held that the judgmeat in that action was no bar to his recovering in a subsequent action for goods sold," The case of *Lord Bagot* v. *Williams* is in fact against the present defendant. Upon the whole matter, it seems to me that the ease is plain, ood that the rule should be discharged.

Rule discharged.

UNITED STATES REPORTS.

McClure v. The Philadelphia, Wilmington, and Baltimore Railroad Co.*

Contract between Railroad Company and Passenger—Right of Conductor to put off a Passenger refusing to pay his fare—Agency.

M. on the first of May, purchased a through ticket from N. Y. to B. over the P. W. & B. R. R., and on that day took the through train. The conductor of the train took up the ticket and gave M. a "conductor's check," with the words "good for this day and train only," and with the numerals 5 and 1, showing the month and day, punched out of the "check." M. desiring to leave the train at a way station inquired of some one at the window of the company's ticket office at the station, if the "check" would take him to B. on another train and day, and was told that it "was good till taken up." On the 6th of May, M. entered another train going to B., and being called upon for his ticket, offered the "check." The conductor refused to receive the "check," and M. having refused to pay fare, the train was stopped at a point intermediate between two stations, and, by direction of the conductor, M. left the train.

Held: 1. That M. had no right to leave the train at the way-station, and afteward to enter another train and proceed to his original point of destination without procuring another ticket, or paying his fare.

2 That on the refusal of M. to pay his fare, the conductor had the right to put him off the train, using no more force than was necessary to affect his removal, and was under no obligation to put him off at a station.

3. That even if the person by whom M. was told that the "check" was good until taken up was an agent of the company, the presumption is, that a ticket agent at a way-station has no authority to change or modify contracts between the company and through passengers, and the *onus* of rebutting this presumption rested on M.

Appeal from the superior court of Baltimore city.

The facts are given in the opinion of the court.

At the trial below, the plaintiff ordered the following prayers:

1. Even should the jury find from the evidence that the conductor of the train in question had a right, under the regulations of the company and the contract made with the plaintiff, should they find such contract, to put the plaintiff off the train in question, the plaintiff is entitled to recover, if they find that in so doing, he acted in an unwarrantable manner, as to time or place or mode thereof.

2. That even should the jury find from the evidence that the plaintiff would have been confined, by the terms of his ticket, to the particular train on which he then was, still, if they further find that before leaving said train, the plaintiff as a matter of precaution, inquired of an authorized agent of the company whether he would be permitted to lie over under the check he then held, and was informed that "he would be," that said check was good until taken up, then the fact of his ticket or check having contained any such instruction would not, of itself, prevent the plaintiff from recovering.

3. Even should the jury find from the evidence that the conductor of the train in question had a

* Court of Appeals of Maryland, to appear in 34 Maryland.

right to put the plaintiff off, the plaintiff is entitled to recover if they find from the evidence that in so doing the conductor required him to leave while the train was in motion, or put him off at a place where there was no station.

4. Even if the jury should find from the evidence that the conductor of the train in question had a right to put the plaintiff off, the plaintiff is entitled to recover, if they find from the evidence that in so doing the said conductor put him off at a place where there was no station or house near at hand, or any adjacent place for shelter or food, or at any unusual place.

The following instruction was asked by the defendant:

If the jury shall find from the evidence that the plaintiff, on the 1st day of May, 1867, purchased at New York, a through ticket from that place to Baltimore, over the New Jersey Railroad and P. W. & B. Railroad, and on that day proceeded on his journey as far as Perryville, on the last-named road, where he left the train; and if the jury shall further find that after passing Philadelphia, the then conductor of the train took up said through ticket and gave plaintiff the check in lieu thereof, which has been offered in evidence; and if the jury shall further find that the plaintiff, on the 6th day of said May, got upon the defendant's train for Baltimore at Havre-de-Grace, and the then conductor refused to take said check, but informed the plaintiff that he must pay his fare to Baltimore, or he would be obliged to stop the cars and put him off, and that the plaintiff refused to pay said fare, and the said plaintiff was then put off, then the plaintiff is not entitled to recover in this case, provided the jury shall find that no more force than was necessary was used in putting said plaintiff off the train, even if the jury shall further find, that on arriving at Perryville on the train, on the said 1st day of May, the plaintiff inquired from a man at the window of the ticket-office of the defendant at that place, whether said check would be good to take him on to Baltimore another day, and was told by said man that it would.

The court rejected the first, second and third prayers of the plaintiff, and granted the fourth, as also the prayer of the defendant. The plaintiff excepted to the ruling of the court in rejecting his prayers, and granting the prayer of the defendant, and the verdict and judgment being against him, he appealed.

The cause was argued before Bartol, C.J., Stewart, Maulsby, Grason, Miller and Alvey, JJ.

Albert Ritchie for the appellant, cited the following authorities: *Balt & O R. R.* v. *Blocker*, 27 Md. 277; *Goddard* v. *Grand Trunk R. R*, 10 A. L. R. 17; *Terre Haute A. & St. L. R. R.* v. *Vanatta*, 21 Ill. 188; *Du Laurans* v. *St. P. & P. R. R*, 15 Minn. 49; *Holmes* v. *Wakefield*. 12 Allen 580; *Sanford* v. *8th Av. R. R.*, 23 N. Y. 343.

Thomas Donaldson, for the appellee, referred to *Balt. C. Pass. R.* v. *Wilkinson*, 30 Md. 224; 2 Redf. on R. 219; *C. C. & C. R. R.* v. *Bartram*, 11 Ohio 457; *Cheney* v. *B. & M. R. R. Co.*, 11 Metc. 121; *Beebe* v. *Ayres*, 28 Barb. 275; *Johnson* v. *Concord R. R.*, 46 N. H. 213; *State* v. *Overton*, 4 Zab. 435.

Grason, J., delivered the opinion of the court.

At the trial of this case in the court below the plaintiff offered four prayers, the last of which was granted and the others were rejected; and the defendants offered one prayer which was granted. The plaintiff excepted to the rejection of his first three prayers and to the granting of the defendants' prayer, and the judgment being against him, he has taken his appeal.

The first question to be considered is, whether a person who has purchased a through ticket from New York to Baltimore, taken his place in a train, and entered upon his journey, has the right to leave the train at a way-station on the route, and afterward to enter another train and proceed to his original point of destination without procuring another ticket or paying his fare from the station at which he again enters the car. We think it clear that he cannot.

The contract between the parties is, that upon the payment of the fare the company undertakes to carry the passenger to the point named, and he is furnished with a ticket as evidence that he has paid the required fare, and is entitled to be carried to the place named. When the passenger has once elected the train on which he is to be transported, and entered upon his journey, he has no right, unless the contract has been modified by competent authority, to leave the train at a way-station and then take another train on which to complete his journey, but is bound by the contract to proceed directly to the place to which the contract entitled him to be taken. Having once made his election of the train and entered upon the journey, he cannot leave that train, while it is in a reasonable manner in the undertaking of the carrier, and enter another train without violating the contract he has entered into with the company. "A contrary doctrine would necessarily impose the carrier additional duties, the removal of the passenger and his baggage from one train to another, and the consequent additional attention on the part of the company; also an increased risk of accidents, and a hindrance and delay, not contemplated by a reasonable interpretation of their undertaking." *C. C. & C. R. R. Co.* v. *Bartram*, 11 Ohio, 463; *State* v. *Overton*, 4 Zab. 438; 2 Redf. on Railways, 219.

In the case now under consideration the appellant, on the 1st day of May, 1867, purchased a through ticket from New York to Baltimore, and on that morning took his place in the through train and entered upon his journey, and some miles south of Philadelphia his ticket was taken up, according to custom, by the conductor of the appellees' train, who gave him in its stead what is called a "conductor's check," with the words "*good for this day and train only*," printed upon one side, and a list of stations and numerals on the other; the numerals indicating the months and days of the month. The numerals 5 and 1 were punched, showing that the conductor's check had been used on the appellees' train, on the 1st day of May. It is clear, therefore, that the appellant had notice that the check, thus delivered to him in the place of his ticket, could be used only on that day and train. When the train arrived at

Perryville, the appellant, desiring to go to Port Deposit to remain a few days, sought the conductor for the purpose of ascertaining from him whether the conductor's check which he held would take him to Baltimore on another day and train. Not finding the conductor, he asked a person whom he saw standing at the window inside the ticket office of the appellee at that place, and was informed by him that it "was good till taken up." The appellant entered another train of the appellee on the 6th day of May, at Havre-de-Grace, having a Mrs. Taylor in his company, and after proceeding some distance was called upon by the conductor for his ticket. He handed him Mrs. Taylor's ticket, procured before entering the train, and the conductor's check which he had received from the other conductor on the 1st day of the month. He was told by the conductor that the check was not good, and that he must give a ticket or pay the fare. The appellant then explained to the conductor what had occured at Perryville five days before, and that the agent there had informed him that the check was good until it was taken up. The conductor again said that it was not good, and that the appellant must give him a ticket or pay his fare or be put off the train. The appellant still declining to pay, the conductor rang the bell to stop the train, and either after the train had stopped, or when it had nearly stopped, and was moving very slowly, the conductor either beckoned or nodded his head to the appellant, who immediately left his seat, went to the platform of the car and stepped off the train. He then walked to Aberdeen, two and a half or three miles off, purchased a ticket and took another train of the appellees three or four hours afterward, and went to Baltimore. The appellant and Mrs. Taylor both testified that the conductor seemed to be very angry and excited; that they thought so from the violence with which he pulled the bell-rope to stop the train. The conductor testified that he controlled the train by the bell-rope, and that it was always necessary to pull it violently to insure the ringing of the bell, and, in long trains, to take up the slack of the rope. There is no proof of any anger or excitement whatever, except as regards the manner of pulling the bell-rope. There is some conflict in the evidence as to the fact whether the train had stopped when the appellant left it; but be this as it may, it is certain that it was moving very slowly at the time. The bell had been rung to stop the train; it would no doubt, have come to a full stop, if the appellant had waited a moment longer before getting off. The conductor used no force whatever to put him off; did not require him to get off while the train was in motion, and did not touch or say a word to him. It therefore appears that if the appellant did leave the train while it was in motion, that he did so voluntarily and without injury to himself. Upon the refusal of the appellant to pay his fare to the conductor he had the undoubted right to put him off the train, using no more force than was necessary to effect his removal, and the proof shows that he used none whatever. We cannot concur in the doctrine contended for by the counsel of the appellant, that a passenger, having no ticket and refusing to pay his fare, can only be put off at some *station* on the road. The establishment of such a principal would result in compelling railroad companies to carry a passenger to the station next to the one at which he entered the train, which might, and doubtless would, often turn out to be the very point to which he desired to be taken, and if the passenger were unknown to the conductor the company would be without remedy.

It is claimed, however, that the appellant was authorized by the information received from the agent of the appellees at Perryville, to use the conductor's check received by him on the 1st day of May, and, therefore, that it was unlawful to compel him to leave the train. There is no evidence to prove that the person from whom the appellant received the information was an agent of the appellee. But even if there were proof to establish that fact, the presumption is, that a ticket agent at a way-station has no authority to change or modify contracts between the company and its through passengers, and the *onus* of rebutting such presumption rests upon the appellant; but upon this point he offered no proof whatever. The check held by the appellant showed upon its face that it was good on the 1st day of May only, and upon but one train on that day, and the prescribed numerals showed to the conductor to whom it was offered that it had been used on that day; the conductor had, therefore, the right to reject it, and to require the appellant to furnish a ticket or pay his fare, and, upon his failure to do either, to compel him to leave the train.

There was no evidence to show that any violence whatever was used in effecting his removal from the train, or that he was compelled to leave it at an improper time, and the first three prayers of the appellant were properly rejected; the fourth, which was granted, having left it to the jury to find whether his removal from the train was at an unusual or improper place. The appellee's prayer fairly presented the law of the case to the jury, and it was properly granted. There being no error in the rulings of the court below, its judgment will be affirmed. *Judgment affirmed.*

Maulsby, J., dissenting.

REVIEWS.

The Canadian Monthly. Adam, Stevenson & Co.: Toronto.

We are glad to find in this periodical a steady improvement as regards the character and variety of its contents, and rejoice to be informed by the publisher that its continuance is no longer experimental, and "that its permanent establishment is now assured." In the April number now before us, we find something like a style of its own, such as pertains to all magazines which have a recognized place in the literary world. The principal topics of the day are treated of in an impartial and judicial spirit, which con-

trasts most favourably with the heated and acrimonious partizanship of the daily Press. An article on "The Late Session" of the Ontario Parliament, by "a Bystander," is politically fair, historically instructive, and is evidently the production of one who has studied political and constitutional questions in a higher school than we regret to say is afforded by the proceedings of any Colonial Legislature. In his opening remarks, "a Bystander" pleads for the incognito of writers for the Press. Would that all writers for the Canadian Press refrained as punctiliously as he does from "all abuse of the privileges of an anonymous writer." We should like to know why the principle here laid down as most conducive "to the moral influence of the Press" is not adopted by all the writers for *The Canadian Monthly*. It is well for a writer to be known by his style, but not so well for his article to be known by his name being attached to it. The former is a distinction won by the intrinsic merits of the writing, the latter is very likely to cause the writing to be estimated according to our preconceived ideas of the personal character of the writer. "A Bystander" suggests the evils likely to arise in our Provincial Legislatures from the existence of party government not based upon party principles, and his observations on this point are worthy of consideration. The evil already exists in a palpable degree, but the remedy is not so easily pointed out.

The legal interpretation of the Treaty of Washington is given in very clear terms by a Barrister of Ontario. The more this matter is discussed, the more arrogant and grasping does the conduct of the American Government appear. The most ardent philo-Americans will see what waste of good material it is to treat with the public men of Yankeedom as though they were gentlemen.

"The Romance of the Wilderness Missions" and "Old Colonial Currencies" are well written historical sketches relating to "old times," though on very different subjects. We hope to see the first of these subjects continued in some future number.

The departments of poetry and fiction in this number are fairly filled, though the poetry is not equal to the other matter. As we have had occasion to remark before, the Book Reviews form a most valuable part of the contents.

The Relation and Duty of the Lawyer to the State: Baker & Godwin, New York, 1872.

This forms the subject of a lecture delivered by Henry D. Sedgwick, before the Law School of the University of the City of New York. The theme was no doubt suggested by the scandalous mismanagement of public affairs in that city, although the lecturer profits by the occasion to give his audience the benefit of a wide extent of reading and much thoughtful observation upon the proper functions of a lawyer among the community in which he lives. In our judgment he does not attach sufficient importance to the legal element in English affairs. He speaks as if the whole profession were in a state of subservience to the Lord Chancellor, and as if the people were without appeal from that high functionary, who technically keeps the conscience of the state. But at the present day the Lord Chancellor is controlled, as well by the force of legal as by that of public opinion. The time will be remembered when Lord Chelmsford was constrained to change some appointments he had made by reason of the unpopularity of his nominees. There was again the time when Lord Campbell was taken to task in the House of Lords for his appointment of the *quondam* reporter, Mr. Blackburn, to the judicial office which he has so ably filled. A similar occurrence has taken place with respect to the appointment of Sir Robert Collier to the Judicial Committee within the last few month; which we refer to at length in another place, while the constrained resignation of Lord Westbury proves the force of a public morality that will be looked for in vain among any of the United States. Again, it is often overlooked that the Lord Chancellor cannot claim the highest legal patronage in the realm. The disposal of the Chief Justiceship of the Queen's Bench belongs to the Premier of England, while the Attorney-General, at the time of vacancy, can claim for himself the dignity of Chief in the Common Pleas.

The lawyer has as important a work to do in this country as devolves upon him in the adjoining republic. From the ranks of lawyers our greatest men are draw; our ablest statesmen; our best parliamentarians, and law-makers. In all public matters the lawyers are relied on as the men to speak, and act, and write. These lawyers hands and heads

are all needed for the general service of the community. It is for them to know that it is their duty to render such service in the best and honestest way, feeling with Sir Edward Coke, that they are owe the debt, not to their profession only, but also to their country.

This *brochure* will, in this view, be of value to the Canadian lawyers. The author has done his work well, and casts no discredit on the name of Sedgwick, already illustrious in legal literature.

Ewart's Index of the Statutes.

We noticed the receipt of this Index some time ago, but had not space then to do more. It is, however, worthy of more than a passing notice, seeing that it is becoming of daily reference in lawyers' offices.

The title page declares it to be an alphabetical index of all the public statutes passed by the legislatures of the late Province of Canada, the Dominion of Canada, and the Province of Ontario, subsequent to the consolidation, and down to and inclusive of the year 1871. That such an index was wanted is not likely to be disputed; nor can it be denied that Mr. Ewart has most successfully come to the rescue. His work has been well done and on an intelligent plan. We trust the encouragement given to him will be sufficient to induce the editor to republish the index yearly, or every two years at least. The startling rapidity with which our laws are changed now makes everything which assists us in keeping track of the alterations most acceptable.

The *Albany Law Journal* in speaking of the Alabama Claims remarks that "The beauties of pleading under the old system are finely illustrated in the proceedings thus far under the so-called Alabama treaty. The United States have prepared, for use before the joint high commission, what is analogous to a declaration in common-law practice. For fear that they will be thrown out of court, or something else, they complain of every imaginable matter, whether they hope anything from it or not. In a multitude of counts there is safety, seems to be the motto of the American pleaders. Of course the defence pleads the general issue, and this is as the parties can get before the trial comes on. All persons familiar with the ways of the common-law lawyers measure the cases published at their true value. The great misfortune is that the public on both sides of the water, not being familiar with legal fictions outside of the courts, are misled, and this misfortune is aggravated by partizans who are anxious to embarrass government action, both in the United States and England."—*Law Times.*

APPOINTMENTS TO OFFICE.

SHERIFF.

JAMES GILLESPIE, of the Town of Picton, Esquire, to be Sheriff of and for the County of Prince Edward, in the room and stead of Absolom Greeley, Esquire, resigned. (Gazetted March 23rd, 1872.)

ASSOCIATE CORONERS.

JOHN SOMERVILLE TENNANT, Esquire, M.D., for the County of Huron. (Gazetted Jan. 27th, 1872.)

JAMES A. SIREWRIGHT, Esquire, M.D., for the County of Essex. (Gazetted Feb. 17th, 1872.)

THOMAS KIEMAN, Esquire, M.D., for the County of Simcoe.

DONALD McDIARMID, Esquire, M.D., for the United Counties of Stormont, Dundas and Glengarry.

HERMAN L. COOK, Esquire, M.D., for the United Counties of Lennox and Addington.

WILLIAM HIGINBOTHAM, Esquire, M.D., for the County of Peterborough. (Gazetted Feb. 24th, 1872.)

GEORGE CARSON McMANUS, Esquire, M.D., for the County of York.

JAMES KENNEDY, Esquire, M.D., for the County of Gray. (Gazetted March 9th, 1872.)

JAMES W. SMITH, Esquire, M.D., for the County of Ontario.

JAMES RAE PATERSON, Esquire, M.D., for the County of Bruce.

GEORGE MITCHELL, Esquire, M.D., for the County of Kent. (Gazetted March 16th, 1872.)

THOMAS HENRY THORNTON, Esquire, M.D., for the County of Prince Edward. (Gazetted March 23rd, 1872.)

HAWTRY BREDIN, Esquire, M.D., for the County of Prince Edward.

ALEXANDER HECTOR BEATOK, Esquire, M.D., for the County of Simcoe.

JAMES ACLAND DE LA HOODE, Esquire, M.D., for the County of York. (Gazetted March 30th, 1872.)

PETER McDONALD, Esquire, M.D., for the County of Norfolk. (Gazetted April 6th, 1872.)

SYLVESTER LLOYD FREEL, Esquire, M.D., for the County of York. (Gazetted April 13th, 1872.)

SAMUEL BLYTH SMALL, Esquire, M.D. for the County of Huron. (Gazetted April 20th, 1872.)

NOTARIES PUBLIC FOR ONTARIO.

WILLIAM A. FOSTER, and ARTHUR H. SYDERE, and WILLIAM McDONALD, of the City of Toronto, Esquires, Barrister-at-Law. (Gazetted Jan. 13th, 1872.)

FRANCIS S. SEVENSON, of the Village of Dunnville, Gentleman, Attorney-at-Law. (Gazetted Feb. 24th, 1872.)

GEORGE A. CONSITT, of the Town of Perth, Gentleman, Attorney-at-Law. (Gazetted March 9th, 1872.)

DANIEL HENRY MOONEY, of the Town of Prescott, Gentleman, Attorney-at-Law. (Gazetted March 16th, 1872.)

WILLAM P. LAIRD, of the Village of Strathroy; RICHARD AUSTIN BRADLEY, of the City of Ottawa; CHARLES JOHN FULLER, of the Town of Simcoe, and BEVERLEY JONES, of the City of Toronto, Attorneys-at-Law. (Gazetted March 23rd, 1872.)

JOHN O'DONOHOE, of the City of Toronto, Esquire, Barrister-at-Law. (Gazetted March 30th, 1872.)

COUNTY ATTORNEY.

RUPERT MEARE WELLS, of the city of Toronto, Esquire, Barrister-at-Law, to be County Attorney in and for the County of York, in the room and stead of John McNab, Esquire, deceased. (Gazetted March 30th, 1872.)

CLERK OF THE PEACE.

THOMAS HENRY BULL, of the City of Toronto, Esquire, Barrister-at-Law, to be Clerk of the Peace in and for the County of York, in the room and stead of John McNab, Esquire, deceased. (Gazetted March 30th, 1872.)