DIARY FOR SEPTEMBER.

1. Wed..Last Day for Jury Purposes for Assessors to return their Rolls.
3. Fri....Last Day for notice of trial in Superior Court cases for County Court of York.
4. Sat....Trinity Term ends. Last Day for giving notice of Call.
5. SUN..15th *Sunday after Trinity.*
7. Tues..Last Day for notice of trial for County Court of York.
9. Thur..Sebastopol taken, 1855.
12. SUN..16th *Sunday after Trinity.*
14. Tues..County Court and General Sessions in York. Duke of Wellington died, 1852.
17. Fri. ..First Upper Canada Parliament met at Niagara, 1792.
19. SUN..17th *Sunday after Trinity.*
26. SUN..18th *Sunday after Trinity.*

CONTENTS.

THE
Canada Law Journal.

Toronto, September, 1875.

We are pleased to see an alteration in the subjects prescribed for examination by the Committee on Legal Education of the Law Society. As will be seen by an advertisement in another place, Mr. Taylor's concise work on equity jurisprudence takes the place of the more voluminous treatise of Story; Taylor on Titles is substituted for Watkins on Conveyancing in the final examination for articled clerks, and Walkem on Wills for the same work on conveyancing in the final examination for call. The changes come into force next January.

The fourth Part of the new Digest, by Mr. Christopher Robinson, Q.C., and Mr. Frank Joseph, has been issued. So far, we have nothing even to suggest by way of improvement, and no fault to find, except that we have not the rest of it. It would be difficult to find a work that shows more careful arrangement and more thorough attention to details than does this Digest. We expected much, and have not been disappointed. We notice in this Part a heading new to Canadian Digests, viz. "Constitutional Law." Our responsibilities as an important part of a great nation grow apace, whilst an additional subject of study is being added to those which already require our attention as lawyers.

In pursuance of chap. 1 of 38 Vict., the first volume of the Statutes of 1875 contains a number of Orders in Council and Proclamations, some of which will be useful and some interesting to the public and to the profession. In addition will be found several of the extradition treaties of Great Britain with foreign powers,

and the commercial treaties with the French Republic. Much care will be required on the part of the compiler of the volume, so that it may not be overloaded by these additions, and, on the other hand, that valuable information may not be omitted. As the statutes are used almost solely by lawyers, magistrates, and municipal officers, information useful in their departments, rather than in the commercial world, should be preferred. The information thus given is a continuation of the volume already compiled and published at Ottawa, giving the Orders in Council having the force of law.

After a person comes to a peaceful end and is decently buried, his reappearance is annoying, and tends to discomfort and confusion. Now, no one can say but what Trinity Term had a decent burial; in fact, as we have shown in a previous number, his obsequies were rather elaborate; why then should his ghastly presence be allowed to annoy us again. He was always a nuisance, and his destruction was hailed with delight by a long-suffering profession. But here he is again, more feeble and objectionable than ever. Oh, that the Attorney-General and the Treasurer of the Province had been leaders at the common law bar instead of the equity bar! Of course no one is benefited by the change, no more business is in fact done; whilst the Judges have to rush back to town in the hottest weather to hear a few savage counsel move a few unimportant rules which the other side is not there to argue. The chiefs of the courts very sensibly stay away; one of the Judges declines further to waste the public time by uselessly donning the purple at 11.55 a.m. and doffing it at 12.05 p.m., and fixes the trial of an election case in the middle of the second week; and so on. Judges, counsel, and attorneys are unnecessarily worried, and the public receives no practical benefit.

THE SUPREME COURT.

"Whatever is supreme in a state ought to have, as much as possible, its judicial authority so constituted as not only not to depend upon it, but, in some sort, to balance it. It ought to give security to its justice, against its power. It ought to make its judicature, as it were, something exterior to the state."—*Edmund Burke, on the French Revolution. Works, vol. 3, p. 506.*

The establishment of a Supreme Court completes the third department of constitutional government in Canada—the judicial; the executive and legislative being usually the elder departments. This court will constitute a tribunal of constitutional jurisprudence, which must have an important influence in the administration of public justice and in legislation within the Dominion.

It has long been a rule of national policy that, for the security of private rights and the administration of the public laws, there should be a judicial department in every well organised government; but statesmen and jurists have differed as to the limit to which the functions of the national judiciary should extend. In England, where the legislative body is itself the constitutional power, Parliament is the supreme judge of the constitutional limit of its own jurisdiction. But where, by a written instrument, the functions of the legislative department of the government are divided between two classes of legislative bodies, each of which is supreme, *quoad* the subjects within its jurisdiction, there is danger, from the artificial or narrow line which divides cognate subjects of legislation, of the laws of one jurisdiction clashing with the laws of the other. This being so, a supreme constitutional authority becomes a necessity as a department of the public government of the nation; and for this, as a part of its high functions, the Supreme Court of Canada comes into existence.

The Supreme Court, as the tribunal of last resort, must occasionally review, either directly or indirectly—independently of the special jurisdiction herein-

after referred to—the legislative powers of the Dominion and Provincial Parliaments, and will thus be the means of building up a constitutional jurisprudence peculiar to the system of government in Canada. Part of its ordinary duty as an appellate court will be the interpretation of the laws enacted by the several legislative bodies, which will, in many cases, necessarily involve the determination whether the particular law to be construed is within the power of the enacting legislature. Questions common to all the provinces will be settled upon a principle of uniformity, which heretofore, amongst the seven co-ordinate and independent tribunals, could not have been expected to exist. It is alleged that in some instances a Provincial or the Dominion Legislature has passed laws which clash with the powers of the other, or are *ultra vires;* and the legal light of provincial courts, though luminous with judicial experience, has not altogether satisfied the legal or public mind, nor has it shone with a uniform light on the jurisdiction of the local legislatures.* Were this want of uniformity to be continued, the legal disorganisation of the federal and local powers under the Confederation Act, and of their parliamentary enactments, would soon land us in legislative chaos.

It is satisfactory to learn that, save in one or two instances, no very violent conflict of decision has appeared amongst the provincial courts. But although as yet "no bigger than a man's hand," this conflict of decision must increase, owing to the diversities of legal judgments, and the influence of local or peculiar institutions and habits of thought.

The Supreme Court will find a series of well-reasoned decisions on constitutional questions by the Supreme Courts in the United States, which will be useful as furnishing general principles of constitutional interpretation applicable in a great measure to the federal system of Canada. Two elementary principles governing the constitutional jurisprudence of that country may be referred to. One is that the ordinary rules for the interpretation of written instruments are not conclusive in defining the proper construction of a written constitution; but that a history and evidence, not recognized by ordinary case-lawyers, may be made auxiliary to the judicial materials used in construing the constitutional powers, as is thus in part stated by Mr. Justice Story in his learned Commentaries (vol. 1, sec. 405): "In examining the constitution, the antecedent situation of the country and its institutions; the existence and operation of the state (local) governments; the powers and operations of the confederation; in short, all the circumstances which had a tendency to produce or to obstruct its formation and ratification, deserve a careful attention. Much also may be gathered from contemporary history and contemporary interpretation to aid in just conclusions." Another principle is, that political decisions are recognised in the construction of treaties and the determination of individual rights thereunder, and may be illustrated by the following decisions: "It is the duty of the Courts in controversies between nations to decide upon individual rights according to the principles which the political departments of the government have established:" *Foster* v. *Neilson*, 2 Peters, U.S., 253. "However individual judges might construe the treaty, we think it is the province of the Court to conform its decisions to the will of the Legislature and Government, if that will has been clearly expressed:" *United States* v. *Arredondo*, 6 Peters, U.S., 691. Another peculiar rule

* See, for example, *Slavin* v. *Corporation of Orillia*, not yet reported, and *The Queen* v. *Taylor*, in our Court of Queen's Bench, the latter being now before the Court of Appeal, and *Regina* v. *Justices of King's County*, post p. 249.

of the United States Supreme Court, and which relates to ordinary local appeals, is that when the decision involves the construction of local statutes, it is usual to follow the construction put upon them by the local courts, where the decision has determined the rights of parties and has become a rule of property: *Green* v. *Neal*, 6 Peters, U.S., 291.

The jurisdiction of the Supreme and Exchequer Courts, as provided by the Act, may be divided into two parts—original and appellate. These parts may be subdivided as follows:

Part I.—Original Jurisdiction.

Exchequer Court.

1. Revenue cases.

2. Civil suits where the Crown for the Dominion is plaintiff.

3. Controversies between the Dominion and a Province, or between two Provinces.

Supreme Court.

4. Habeas Corpus in criminal and extradition cases.

5. Judicial opinions to the Crown.

6. Private bills and petitions therefor referred by the Senate or House of Commons.

7. Civil suits in which the validity of a Dominion or Provincial Act is questioned.

1. *Revenue Cases.* The Exchequer Court is to have "*concurrent* original jurisdiction" with the provincial courts in all cases in which it shall be sought to enforce the revenue laws of Canada; including actions, suits and proceedings by way of information to enforce penalties; and proceedings by way of information *in rem* and as well in *qui tam* suits for penalties or forfeitures, as where the suit is on behalf of the Crown alone. But it is to have "*exclusive* original jurisdiction" in all cases in which demand shall be made or relief sought in respect of any matter which might in England be the subject of a suit, or action in the Court of Exchequer on its revenue side against the Crown or any officer of the Crown (sec. 58).

2. *Dominion civil suits.* The Court is also to have "concurrent original jurisdiction" with the provincial courts in all other suits of a civil nature at common law or equity, in which the Crown in the interest of the Dominion is plaintiff or petitioner (sec. 59).

3. *Controversies between Governments.* A special jurisdiction, subject to legislative action in the several provinces, is to be exercised by the Exchequer Court in controversies in civil cases between the Dominion and a province, or between any two provinces which shall have passed acts agreeing and providing that such Court shall have jurisdiction in such cases. There is no limitation as to the value of the matter in dispute (secs. 54, 55 and 57).

The procedure in the Exchequer Court, unless otherwise provided for by general rules, is to be regulated by the practice and procedure of the Court of Exchequer at Westminster on its revenue side. For the transaction of business and the trials of issues of fact, the judges, subject to rules of court, are to sit and act at any time and at any place within Canada, that is, to go circuit. Issues of fact—except issues under the 58th section—are to be tried by a judge sitting alone, with without a jury, according to the laws of the province in which the cause originated, including the laws of evidence. But issues of fact under the 58th section are to be tried by a judge sitting alone, without a jury. The decision of a judge in any case shall be the judgment of the Court, but any party dissatisfied with the decision of the Court may appeal therefrom within 30 days.

4. *Habeas Corpus.* The jurisdiction in habeas corpus is to be exercised in the Supreme Court; and any judge of that court is to have concurrent jurisdiction with the provincial courts or judges

to issue writs of habeas corpus, for the purpose of an inquiry into the cause of commitment in any criminal case, under any Act of Canada, or in any case of demand for extradition under any treaty (secs. 51 and 49).

5. *Judicial Opinions to the Crown.* The Governor in Council may refer to the Supreme Court, for hearing and consideration, any matter whatsoever, and the Court shall thereupon hear and consider the same, and certify their opinion to the Governor. But any judge or judges who may differ from the majority may in like manner certify his or their opinion to the Governor (sec. 52). This provision, except as to the opinions of the minority, is similar to the 4th clause of the English Privy Council Act of 1833 (3 & 4 Wm. 4th, c. 41), and provides for the Supreme Court performing the delicate and important duties which in England appertain to the Judicial Committee of the Privy Council. There is no limit to the extent and variety of matters referable under this clause of the Act, and the Crown may thus obtain the judicial opinions of the judges in matters not falling within the range of ordinary legal jurisdiction. In England, it would appear from the reported cases, that in practice the jurisdiction has only extended to advising the Crown to grant leave to appeal in cases where appeals did not ordinarily lie, and to cases not strictly appealable grievances. The Supreme Court of the United States soon after its establishment announced that it could only be called upon to decide controversies brought before it as a legal tribunal, and that its judges were therefore bound to abstain from extra-judicial opinions on treaties or points of law, even though solemnly requested by the executive.

6. *Private Bills and Petitions therefor.* The Supreme Court, or any two judges thereof, are to examine and report upon any private bill, or petition for a private bill, when referred to the Court by the Senate or House of Commons (sec. 53). This duty is in some measure analogous to that under which the Ontario Judges are required by 34 Vict. c. 7, and 38 Vict. c. 7, Ont., to report in respect of any "Estate Bills" or petitions therefor, which may be referred to them by the Legislative Assembly. The experience of the Ontario Parliament is favourable to investigations by such independent judicial officers; and the Supreme Court in this department of its work will not only materially aid the legislative functions of Parliament, but may prevent the passing of private bills which clearly belong to the jurisdiction of the local houses. In England, the House of Lords, having the constitutional right to consult the judges and law officers of the Crown in matters of law, has a standing order under which "Estate Bills" are referred to any two judges to examine and report their opinion thereon, unless where the Estate Bill has been settled in the Court of Chancery. But bills affecting charity estates are referred to the Attorney-General, and no such bill can be read a second time until a report has been received by the House from that officer.

7. *Constitutional Interpretation.* A further jurisdiction—which must await confirmatory legislation by the Provincial Legislatures—relates to suits, actions or proceedings in which the parties by their pleadings have raised the question of the validity of a Dominion or a Provincial Act, when in the opinion of a judge of the court in which the same are pending such question is material; in which case, such judge shall order the case to be removed to the Supreme Court, where the question shall be decided; and after decision by the Supreme Court, the case shall be sent back with a copy of the judgment to the court or judge whence it came, to be then dealt with (secs. 54, 56 and 57). This provision allows all civil

cases, whatever may be the value of the matter in dispute, to go to the Supreme Court; but no further appeal is to be brought to the Supreme Court on any point decided by it in any such case; nor upon any other point in such case, unless the value of the matter in dispute exceeds $500 (sec. 57.) Possibly the same result may be arrived at in the ordinary course of an appeal, except in appeals from Quebec, which under sec. 17 are restricted to cases where the value of the matter in dispute does not amount to $2,000.

Part II.—Appellate Jurisdiction.

The Appellate Jurisdiction of the Supreme Court is its most important function, and necessarily embraces a wide range of subjects, which may be classed as follows:

1. Appeals from the Exchequer Court.
2. Appeals from the Provincial Courts.
3. Appeals in Habeas Corpus Cases.
4. Appeals in Election Cases.

1. *Exchequer Appeals* may be brought from the "decision" of the Exchequer Court in any of the cases within its jurisdiction, as above defined. The "decision" of a judge sitting alone shall be the "judgment" of the court. The appellant in any suit in the court, within 30 days from the day on which the judge has given his "decision," or within such further time as the judge may allow, must deposit $50 as security for costs, and thereupon the suit is to be set down for hearing at the next term of the Supreme Court. Notice, that the appeal which has been set down, is to be served within 3 days after the deposit; and the appellant may limit his appeal to any "special defined question or questions" (sec. 68).

2. *Appeals from the Provincial Courts* in civil cases lie to the Supreme Court "from all final judgments of the highest court of final resort, whether such court be a court of appeal or of original jurisdiction, now or hereafter established in any province of Canada, in cases where the court of original jurisdiction is a superior court. Provided that no appeal shall be allowed from the province of Quebec wherein the sum or value of the matter in dispute does not amount to $2,000. And the right of appeal in civil cases given by this Act shall be understood to be given in such cases only as are mentioned in this section—except Exchequer cases, and cases of mandamus, habeas corpus, or Municipal by-laws, as hereinafter provided" (sec. 17). By consent of parties an appeal may be brought directly from the court of original jurisdiction (sec. 27). An appeal shall also lie (1) upon a special case (sec. 18); (2) from a judgment upon any motion to enter a verdict or nonsuit upon a point reserved at the trial (sec. 19); (3) from a judgment upon a motion for a new trial upon the ground that the judge has not ruled according to law (sec. 20); but when the application for a new trial is upon matter of discretion only, as on the ground that the verdict is against the weight of evidence or otherwise, no appeal shall be allowed (sec. 22); (4) appeals also lie in any case of proceedings for or upon a writ of mandamus; (5) and in any case of a rule quashing or refusing to quash a by-law of a municipal corporation (sec. 23).

In criminal cases—treason, felony or misdemeanour—any person whose conviction has been affirmed by any court of last resort, may appeal to the Supreme Court, and the Court may either affirm the conviction or grant a new trial as the justice of the case requires; but no such appeal shall be allowed where the court below affirming the conviction is unanimous, nor unless notice of the appeal has been served upon the proper provincial attorney-general (sec. 49).

3. *Appeals in Habeas Corpus cases* lie (1) from the decision of a judge of the

Supreme Court in refusing the writ, or remanding the prisoner, in criminal cases under any act of Canada, or in extradition cases under any treaty (secs. 49 & 51); and (2) from any provincial court, in any case of proceedings for or upon a writ of habeas corpus, not arising out of a criminal charge (sec. 23); and such appeals are to be heard without security being given (sec. 31).

4. *Appeals in Election Cases* are regulated by the 48th section, which transfers to the Supreme Court all appeals from the decisions of the provincial judges under the Controverted Elections Act of 1874, and which section is to take effect "when the Supreme Court is organised and in the exercise of its appellate jurisdiction." The Court, on hearing such appeal, is either to finally decide the question, or "in case it appears to the Court that any evidence duly tendered at the trial was improperly rejected, the Court may cause the witness to be examined before the court or a judge thereof, or upon commission."

The Supreme Court is to hold two sessions yearly at Ottawa—one commencing on the third Monday in January, and the other on the first Monday in June, and each session is to be "continued until the business before the Court is disposed of;" but the Court may adjourn from time to time. Appeals are to be brought within 30 days after the decision in the court below. Barristers, advocates, attorneys, solicitors, or proctors in the provincial courts may practise in the Supreme or Exchequer Court, and while so practising, shall be officers of such court.

The Act contains other provisions as to procedure, which will doubtless be studied when the rules of the court are promulgated. Our purpose has been to give a general sketch of the functions of the new Supreme Court for Canada, to which most important questions affecting the constitutional and local jurisprudence of this country are about to be committed.

Its judges will have a great national trust committed to their keeping. This will require of them not only a constant exercise of technical legal knowledge in disposing of ordinary legal questions, but an exercise of high judicial skill in interpreting the constitutional intricacies of parliamentary jurisdiction, and in shaping their decisions not solely by technical or case law, but according to the more liberal rules of constitutional jurisprudence.

The observations of a learned Judge of the Supreme Court of the United States, in the case of *Osborne* v. *Bank of the United States*, 9 Wheat. 866, may fittingly be engraved on the desk of each judge of our new Court, as embodying the principles to guide him in the discharge of his judicial functions: "The judicial department of the Government has no will in any case. Judicial power, as contradistinguished from the power of the law, has no existence. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion it is a mere legal discretion, to be exercised in discerning the course prescribed by the law; and when that is discerned, it is the duty of the Court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge, but always for the purpose of giving effect to the will of the Legislature, or, in other words, to the will of the Law."

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

North Grey Election Petition.

Boardman v. Scott.

32 *Vict. cap.* 21, *secs.* 61-66 *(Ont.)—Treating during hours of polling—Political associations—Agency.*

The mere fact of a political association putting forward and supporting a particular candidate does not make every member of the Association his agent, though the candidate may so avail himself of their services as to make them his agents.

One M., the reeve of a township, exerted himself strongly in favour of the respondent, to whom he was politically opposed, and against the other candidate, and attended meetings where the respondent was, and spoke in his favour. The reason for his supporting the respondent and opposing the ministerial candidate, with whom he was politically in accord, was, that the ministry of the day had separated the township of which he was reeve from the riding He was much annoyed and indignant at this separation, and announced his intention of using all his influence against the ministerial candidate *Held*, that the question of agency being one of intent, the respondent never conferred, and M. never assumed the authority of an agent for the respondent.

Held, that the receiving of a treat by the respondent during the hours of polling, does not, under sec. 66 Vict. cap. 21, (Ont.,) which must be construed strictly, either avoid the election or render him liable to any penalty.

Semble, that as to the seller or giver of the treat, the only person liable to the penalty would be the tavern-keeper, as the statute does not authorise two penalties for the same act.

[Owen Sound, June 29, July 2, 1875—Gwynne, J.]

The trial of this petition took place at Owen Sound, before Mr. Justice Gwynne.

J. K. Kerr appeared for the petitioner.

M. C. Cameron for the respondent.

The points insisted upon by the counsel for the petitioner at the close of the evidence, as sufficient to invalidate the election of the respondent, were :

1st, Corrupt practices committed by Dr. McGregor who, as was contended, was an agent of the respondent, in treating at meetings at Desborough, Chatsworth and Williamsford, near a separate school-house, where a meeting had been convened.

2nd, Corrupt practices by one George Wright who, as was also contended, was an agent of the respondent, in treating at meetings of committees held at his own tavern.

3rd, Corrupt practices committed by respondent personally, in having, as was contended, given dinner to Roseburgh and Atkyns, and in conveying them to the polls, and in having paid or been a party to the payment of $1 to Atkyns to get him to go down to St. Vincent to vote for respondent ; and

4th, Corrupt practice in Robert Paterson, within the polling hours, upon the polling day, in treating the respondent to a glass of beer at the hotel of Thomas Spiers.

The facts and arguments fully appear in the judgment delivered by

Gwynne, J. I propose to deal with these heads of complaint, upon which, after hearing all the evidence, the petitioner, through his counsel, rests his case, in a different order from that in which they were taken, and I shall deal firstly with that thirdly above taken, as the most serious, involving a grave charge, affecting not only the conduct and character of the respondent, but his civil status for a period of at least eight years, if the charge is established.

No duty can be more painful, and sometimes more difficult, for a judge to discharge than that of estimating with discrimination and with due regard to the interest of the public on the one hand, and to that of the accused on the other, the proper weight to be given to evidence in support of, or in refutation of, charges of personal bribery. There are so many things to be considered. We must be careful not to be too hasty in rejecting the accusatory evidence as coming from a tainted source, for in cases of this kind it is frequently by the recipient of the bribe alone that the offence can be proved. Of the general character of the accuser we frequently know little. Although the recipient of a bribe, his truthfulness may be as reliable as that of the accused, who always has a strong interest to maintain his position, even at the expense of his veracity ; but again, the accuser may be a person of such a character and habits as to make it difficult to place implicit confidence in his statements, although it may be impossible to adduce evidence such as the law requires to impeach the witness as unworthy of belief. We must, therefore, in all these cases scan with care all the surrounding circumstances, for the purpose of determining upon which side the truth lies, namely, whether upon that of him who, while accusing another accuses himself also, or upon that of him who asserts only his own innocence. Every case must depend upon its own circumstances ; the manner of the witnesses as well as the matter of their evidence must be diligently noted ; and after all, all that a judge can do is to express the honest conviction which the whole evidence and bearing of the witnesses

have impressed upon his mind. The learned judge here reviewed the evidence on the third charge, deciding in favour of the respondent.]

As to the second charge, of corrupt practices committed by George Wright in treating at meetings of committees. That a candidate may so avail himself of the services of members of a political association, in canvassing for him and promoting his election, as to make them his agents, for whose acts he shall be responsible, there cannot I think be any doubt; but nothing could be more repugnant to common sense and justice than to hold that because a political association puts forward or supports a particular candidate, therefore every member of that association becomes *ipso facto* his agent. The meetings which took place at Wright's tavern were of members of an association called The Liberal Conservative Association. None of the members so meeting were members of the respondent's committee. A convention, as it is called, of that association had put forward the respondent as the person recommended to the support of the members of the Association. What was done at these meetings, or for what particular purpose they were assembled, did not very clearly appear; it may be admitted that the members of the association who assembled at Wright's were electors assembled to promote the election of the respondent within the 61st sec. of the Act of 1868 as amended by the Act of 1873, so as to make Wright himself guilty of corrupt practice in supplying drink to them at or immediately after their meetings; but they were not, that I can say, in any sense the agents of the respondent, or in any way authorised by him, nor does it appear from anything in the evidence that he had any knowledge of their meeting. The evidence shows that when the respondent had a meeting himself at Wright's, there was no treating within the meaning of the 61st section, and I can therefore arrive at no other conclusion upon this head than that it is not proven, in so far as the respondent is concerned, or so as to affect him; although, as affects Wright himself, he has sufficiently admitted the charge to subject him to being reported as having been guilty of a violation of the section referred to.

As to the corrupt practice charged as having been committed by Dr. McGregor at Desborough, Chatsworth and Williamsford (although whether or not there was treating by him at Chatsworth does not appear to be clearly established), there is I think sufficient established to subject *him* to all the consequences annexed to the violation of the 61st section of the Act; but whether or not the respondent is to be affected by his conduct depends upon whether Dr. McGregor was or was not an agent of the respondent, for whose conduct the latter is to be held responsible.

It has been in different cases said that no one can lay down any precise rule as to what will constitute evidence of being an agent. Each case must depend upon its own circumstances. Definitions may be attempted, but none can be framed applicable to all cases. "It rests with the judge," as is said in the *Wakefield case*, 2 O'M. & H. 103, "not misapplying or straining the law, but applying the principles of law to changed state of facts, to form his opinion as to whether there has or has not been what constitutes agency in these election matters." We have, however, the opinions and sayings of some very learned judges to guide us in arriving at a just decision, and first I may place the observations approved by Keogh, J., in the *Sligo case*, 1 O'M. & H. 301, as a rule of general application, namely, that the evidence ought to be strong, very strong, clear and conclusive of agency before a judge allows himself to attach the penalties of the Corrupt Practice Act to any individual.

The language of Baron Channell in the *Shrewsbury case*, 2 O'M. & H. 36, and of Justice Mellor in the *Bolton case*, 2 O'M. & H. 140, is also instructive. The former says, "Canvassing will only afford premises from which a judge discharging the functions of a jury may conclude that agency is established;" and again he says, "I wish it to be understood how far, in my opinion, from mere canvassing those acts must be from which you may infer that kind of agency which is to fix the candidate with responsibility for the act of a person acting in his behalf." And Mr. Justice Mellor says, "the fact of a man having a canvass book is only a step in the evidence that he is a canvasser *authorised by the candidate's agent;* if you want to go further call the canvasser, because the mere fact of a man having a canvass book and canvassing, cannot affect the principal *unless I show by whom the man was employed.* There is nothing more difficult or more delicate than the question of agency; but if there be evidence which might satisfy a judge, and if he be conscientiously satisfied that the man *was employed to canvass*, then it must be held that his acts bind the principal. I should not, as at present advised, hold that the acts of a man who was known to be a volunteer canvasser, *without any authority* from the candidate or any of his agents, bound the principal."

The question, as it seems to me, may be said to be one of intent. Did the candidate depute and authorise the person to be his agent, and did the person so authorised accept the deputation? If so, to what extent? namely, was it for the performance of a special isolated act, or for a few special acts, or was the appointment as agent generally, but with powers confined to a limited district, constituting part only of the electoral division? or was the appointment as agent general, extendin over all parts of the electoral division? for upon the nature and extent of the authority conferred and accepted must depend the nature and extent of the liability of the principal. What the nature and extent of the agency is, may be established by direct positive evidence, or may be inferred from the acts and conduct of the parties; but all inference is excluded if the evidence ignores any intention upon the part of the parties, either to confer or accept authority, and at the same time shows with reasonable certainty that acts, which in certain events might be sufficient to warrant the drawing an inference of an authorised agency having been created, are attributable to or explicable by other influences affecting the mind and conduct of the party alleged to be an agent in the performance of the acts relied upon as establishing the agency. In such case there is no agency, and the party assumed to be a principal cannot be affected by the acts of the other.

Now, in the case of Dr. McGregor, the case may be briefly stated to be, that having heretofore been a member of the party to which the respondent has been always opposed, and being a public man of considerable importance and public influence in the township of Holland, recently by Act of Parliament separated from the North Riding of Grey, and being very much annoyed and indignant, upon public grounds or otherwise, with the separation of his township of which he had been just recently elected reeve from what he conceived to be its geographical connections, he resolved to use all his influence to oppose the ministerial candidate for this riding. He publicly announced his intention of so doing, as I gather from the evidence, at the close of the meeting at which the nomination took place, or I should say previously, for some of his former friends seem upon that occasion to have called him a turncoat, which led to some warm altercation. The respondent formed a committee to act as his agents to promote his election. Dr. McGregor was not one, nor does he appear to have been ever asked to be one. It is relied upon that upon one occasion he was in the respondent's committee room; but the evidence shows that this was for the purpose of consulting his local knowledge as to the most suitable places at which to call public meetings of electors in his neighbourhood, having regard to the then condition of the roads — the great depth of snow rendering most places inaccessible. He also was referred to in a printed circular as a person, with others, capable of refuting and proving to be untrue certain charges which had been made by the opposing candidate's friends, in a paper printed and circulated by them against the respondent, and he may perhaps have signed the paper for the purpose of testifying his willingness and his ability to refute the charges. He took also some of these circulars into the neighbourhood where he resided. An honourable man may surely express his willingness to refute, if in his power to do so, false charges made by one candidate or his friends against the other, without being held to be the agent of the latter. Upon one occasion the respondent, when passing through Chatsworth, where the Doctor resides, asked him to come to a public meeting convened at Desborough. True the Doctor was not an elector in the riding, but he was a public character in the adjoining township, and had, as the respondent no doubt knew, expressed his determination, as a public character, to take a very serious part in this election. The respondent does not appear to have asked the Doctor to come to the meeting to speak upon his behalf. He thought perhaps that it was very likely he would speak if he should come, and that if he should speak the subject of his oration would be the condemnation of the ministerial candidate, and the running sore which, for the present at least, had alienated him from his party. The respondent, indeed, very probably thought that the Doctor could not and would not stay away, and it may be conceded that he was not unwilling to derive whatever benefit should result to him as the natural consequence of this alienation. The evidence has satisfied my mind that the respondent's asking the Doctor to go to the meeting had very little influence upon him, for the Doctor confesses, I think beyond all doubt, at least this is the impression he conveyed to my mind, that he had mounted a hobby of his own which was very high mettled, and from which he had no intention to dismount until he should either fail or succeed in effecting the object for the time being nearest to his heart, namely, damaging as far as he could the ministry that had withdrawn his township from the riding by the defeat of the candidate who had been put forward in their interest; and I have no doubt,

at least such is the impression he left upon my mind, that he never entertained the idea of merging his own independent quarrel on behalf of the township of which he was reeve, and which he regarded as a matter of grave public moment, in the mere agency of an individual, nor do I think the respondent had any idea that he had enlisted the Doctor in the capacity of an agent. Such an idea, I have no doubt, never entered the mind of either the one or the other. It is said that at the Chatsworth meeting, which was held in the limits of the Doctor's own township of Holland, he, in the presence of the respondent, stated that he was acting there on the respondent's behalf. Now with respect to what actually took place there, there is much discrepancy of opinion. The gentlemen opposed to the Doctor do not themselves agree as to what did take place, one thinking the Doctor's remarks were confined to the particular act of insisting to know how many of Mr. McFayden's friends intended to speak, for they seemed to be numerous, before they should proceed further, and that he made this demand on behalf of the respondent, others attributing a wider signification to his words, namely, that he was there attending the meeting on the respondent's behalf. The Doctor himself says, that what he said was, that the meeting was being held in his own township of Holland, of which he was reeve, and that therefore he had a right to interfere. The respondent says that he was in and out of the room, and that he did not hear the Doctor make use of any such expression as that he was interfering upon (his) the respondent's behalf, or that he was there upon his behalf. All admit that there was great noise and confusion made upon the Doctor's interference, so that I can well conceive it very possible that no one can very accurately tell us what was in fact said; but assuming that the Doctor did make use of the language attributed to him, in the sense strongest against the respondent, I can well conceive that in view of the position in which the respondent found himself outnumbered by the friends of his opponent, he might well desire to avail himself of the powerful aid of the Doctor in that particular emergency to secure an equality of the number of speakers on either side without making the Doctor his agent generally, so as to be affected by his acts out of doors in the indulgence of a habit which is so strong upon him, as he says, of treating his friends upon all occasions when he meets them away from home, that he could not resist doing it even though at the peril of the penalties attending a plain violation of the law. Upon the occasion of this meeting at Chatsworth, the witnesses say that the Doctor claimed to be of more importance than the respondent. This view seems precisely to accord with what the Doctor himself gives us to understand, in virtue of his dignity as reeve in his own township, and I confess that the evidence has impressed my mind very strongly, as I should think it probably would every one who came in contact with the Doctor during the contest, that whatever he did was done in the carrying on his own independent battle, waged with the ministerial candidate for his own reasons and with his own objects. I mean of course public reasons and objects in connection with the particular matter which gave him offence, and not in any sense as the agent of the respondent, a position which I am satisfied the respondent never conferred upon him nor did the Doctor assume. The constitution of our municipal institutions is such, that it is not meet that public men should be fettered in the expression of their political sentiments, or in their right to address public meetings of electors during election contests, by any fear that, contrary to their intent, their public sentiments as expressed at those meetings should be attributed to mere advocacy as the agent of a candidate who may perhaps hold a few, and only a few, opinions in common with them. Nor is it meet that candidates should be exposed, against their will, to the peril of having persons presumed to be their agents whom they have not made and never intended to make such, merely because from their own public standpoint they declare themselves opposed to the election of the other candidate, and advocate, it may be perhaps as the lesser of two evils, the election of his opponent. Under these circumstances I cannot hold the respondent accountable for the corrupt practices of the Doctor, who himself must bear the consequences attendant upon his own violation of the law.

There remains to be considered the last ground relied upon, namely, that Mr. Paterson had treated Mr. Scott, and that this was in violation of the 66th section of the Act of 1868.

The facts relating to this charge are, that the respondent, between 3 and 4 o'clock in the afternoon of the polling day, when going down the stairs from one of the polling places in Owen Sound, in company with Robert Paterson, a supporter of the opposing candidate and one of the petitioner's sureties, not having had, as respondent says, any refreshment since 8 o'clock in the morning, and not having his sleigh at hand to take him home, expressed himself

to his friend Mr. Paterson in some such terms as follows: "Is not this a hard law; I have had nothing since 8 o'clock, and I should so like a drink;" whereupon Mr. Paterson very kindly, according to the respondent's version, said that he would give him a glass, not thinking this mode of giving refreshment to the respondent to be illegal, or, according to Mr. Paterson's version, the respondent asked Mr. Paterson to treat him, which Mr. Paterson agreed to do, both believing this to be legal. Accordingly they went over together to Spiers' hotel, where the bar being closed against the public, they procured Spiers to get them each a glass of ale, for which Mr. Paterson paid, and which they drank in the hall of the hotel.

The contention now is, that this conduct constitutes a violation of the 66th section, not only by Spiers, the tavernkeeper who sold the ale, but also by Paterson, who purchased it and gave a glass to Scott, and by Scott who drank the glass so given to him. Paterson, according to this contention, is liable in two capacities; 1st, as the giver of a glass to Scott; and 2nd, in drinking one himself; and lastly, Scott, as it is contended, is further liable, not merely as having drank the glass which Paterson gave him, but also for having asked Paterson to give him the glass, as he did if Paterson's version be accepted, and both of them, for having asked Spiers to sell the ale. And so it is contended that for this act the election is not only void, but that Scott is disqualified personally.

The argument is, that it is a violation of this clause of the Act, for any person, whether a tavernkeeeper or shopkeeper, or not, during polling hours, to sell or give any spirituous or fermented liquors whatever, and whether by retail or wholesale, to any person, whether an elector or a perfect stranger, and whether it be sold for consumption in a private house or for transportation abroad even to a foreign country. For example, if any person within the municipality takes a friend who does not live within the municipality, and is not an elector, home to dinner with him, and gives him at his dinner a glass of ale or wine within the polling hours; or if any person, within the same hours and within the municipality, sell to any person, though not an elector nor living within the municipality, a hhd. of brandy to be transported abroad, and ships it in the ordinary course, the statute, it is contended, is violated both in the giver and the receiver in the one case, and in the vendor and the vendee in the other. Whether or not this is the true construction of the Act I do not feel myself at present called upon to express an opinion, and therefore reserve my opinion until some such case shall arrive, if it ever shall. At present I am called upon to go further than either of the above cases, and to declare that to be a violation of the law which beyond all question is not within its letter, but which, as is contended, is within its spirit and intent.

The Act of 1873, which makes all violations of the 66th section which are committed within the polling hours to be corrupt practices, does not make anything to be a violation of that sec. which was not so before. The question, therefore, must be considered wholly irrespective of the Act of 1873, the simple question being, has there been a violation of the 66th section of the Act of 1868, and if so, by whom? Assuming for the sake of argument that the second branch of this 66th section has no connection whatever with the first, and is to be read without any light from the previous part, then what the section says is, that no spirituous or fermented liquors or drinks *shall be sold* or *given* within the limits of such municipality during the said period under a penalty of $100.

The question then resolves itself into this: Is the receiver or drinker of the liquor liable to a penalty under this section, and also the seller to another, and also the giver, if there be a person who buys and treats, to another.

The contention here is, that for every glass sold by the tavernkeeper he is liable to a separate penalty, and for each glass so sold to a person who treats others the treater is liable to a separate penalty as giver, and for each same glass the drinker is liable to a distinct penalty. In this view, assuming twenty persons to be treated by a person intervening to purchase and give, the penalties recoverable under the Act amount to $6,000.

The simple answer to this contention, it appears to me, in so far as the respondent is concerned, is that no judge has any jurisdiction to extend a penal statute so as to create a penalty which the statute itself has not in express terms created. The statute in its terms imposes no penalty upon one who receives and drinks; it is said that it should be construed as doing so, because that morally the receiver is as culpable as the seller and giver, and that if there were no one to receive and drink, there would be no one to sell or give. Grant this to the fullest extent. With the ethics of the case I am not at present concerned. The same may be and often is said of the receiver of stolen goods, yet a receiver was never for that reason liable to be indicted for the larceny, nor could he have been indicted with-

out a special Act constituting the act of receiving a distinct offence. Then again, it is said that the person who procures an act to be done by another is himself a principal and so liable. That, no doubt, is a rule of law and a very good one in its place, but it is not of universal application. A man who procures another to sell his farm and to lend him the money, is not himself the vendor, nor is the rule of universal application in the case of crime. A man who procures another to commit bigamy is not himself guilty of bigamy.

These and like suggestions are all lost in the consideration that it is impossible for a judge to pronounce that to be criminal or penal which, without an Act of Parliament, is neither the one nor the other, unless he has the authority of the Legislature unqualifiedly conveyed in express terms for doing so. He cannot proceed upon a suggestion of constructive guilt. This seems to afford a complete answer to the point, in so far as the respondent is concerned. In so far as Mr. Paterson as a giver is affected, I shall content myself at present with saying that I do not think the statute authorises two penalties in the case, and therefore for this act of treating I shall not report him as guilty of a corrupt practice within the Act. Whether or not the Legislature contemplated, when passing the 66th section, to impose a penalty upon the tavern-keeper for such a single act as is proved here may perhaps be open to doubt; but as he comes within the express terms of the section, even though we should read the second branch as dependent upon and connected with the first, I feel compelled to report him as guilty.

The result is, that I adjudge, declare and determine, that the said Thomas Scott, the above respondent, was duly elected as member of the North Riding of Grey, and that the petition against his return be and is hereby dismissed with costs, to be paid by the petitioner to the respondent; and I shall have to report as guilty of a violation of the 61st section of the Act of 1868, the following persons, viz.: Dr. Duncan McGregor, George Wright, John Hill and Edmund Haynes. Some evidence was also given against one Hutton, but as he was not called himself, and his first name did not appear in the evidence, I am unable to report him. I shall have also to report Thomas Spiers as guilty of a violation of the 66th section of the same Act.

*Petition dismissed.**

* See the next case and the decision of Draper, C. J., E. & A., in the *North Wentworth case*, *ante* p. 196.—Ens. L. J.

South Essex Election Petition.

Samuel McGee, *Petitioner*, v. Lewis Wigle, *Respondent*.

32 *Vict. cap.* 21, *sec.* 66, *Ont.*—36 *Vict. cap.* 2, *sec.* 1—*Treating during hours of polling—Agency.*

Held, that, if an agent partakes of a treat during the hours of polling, the election is thereby avoided.

[Sandwich, July 6-10, and Toronto, July 13, 1875. Spragge, C.]

The petition was in the usual form. The case was tried at Sandwich, before the Chancellor of Ontario.

The only point that need here be referred to came up on the evidence of one James McQueen, who stated as follows: "I know Alfred Wigle, brother of respondent, and I know the respondent. Saw the respondent at the hall and on the street between nomination and polling days, and at a meeting he was holding. Had a conversation with him. He asked me if I could vote for him. Told him I did not know that I would vote for any one. He told me I might throw the party aside and come out and give him a vote. Saw Alfred Wigle at Lovelace's hotel while polling was going on. Saw drinking at both hotels. There was some drinking going on all day. Alfred Wigle treated at Taylor's and I treated at Lovelace's hotel. Went to Taylor's about nine a.m. about the time of the opening of the poll. Was told that the poll was open before we went into Taylor's. Think it must have been after nine a.m. when we went into the hotel. It was about this time Alfred Wigle treated. Myself, J. Ainslie and G. Ainslie, and one of the Ryall boys were there at the time. Went into the sitting-room adjoining the bar. Went in by the front door. The entrance to the bar was open part of the day. The front door of the bar-room was not open. The drinks came through the side-door leading from the bar-room into the sitting-room. No canvassing was done in the sitting-room. Went to Lovelace's about noon. No canvassing was done while at Lovelace's. Alfred Wigle proposed the first treat. Think he knew I was not going to vote for respondent."

Alfred Wigle stated: "I heard McQueen's evidence. I saw him on polling day. I treated him on polling day. It was pretty early; I don't know whether it was before or after the polling hours; it was pretty early, and before the opening of the poll, I think.

Cross-examined.—I was not agent of my brother at the poll; I did not act as scrutineer for respondent; I did not come and ask to be

sworn in as agent; I was bringing in voters. Albert Ryall, Jas. Ainsly, Alexander Reed and Fin were present when McQueen proposed a drink. We went to Taylor's and sat in the sitting room. I don't know whether the inside bar door was open; we went to the privat room. The reason I think the polls were not open is that it was early in the morning, and I had just come up town; I went to Lovelace's hotel in the middle of the day and had a drink; I and McQueen tossed for the treat; he lost, and we went in and had a drink. There were five or six of us. I was bringing up voters to the poll during the day. I know Stock well; I never asked him how he was going to vote. I took a pretty active part in the election ever since my brother came into the field; I used my own horse and cutter in bringing voters to the poll. I attended a meeting about the middle of the week before the nomination. I thought it well to form a little committee at Ruthven, and I spoke to several men about it. We formed ourselves into a little committee to work up the locality; I was chairman and Robert Shanks was secretary. We only met once; we went over the lists together and marked off the names. I did not canvass unless people came to the store. My father did not come down to see me. I reported to my father as to how I thought we would stand. I told him I was doing all I could. My father did not ask me to work; he knew I would work without being asked. I saw respondent twice during election, and told him I thought we could give him pretty good support. I told Dr. Allworth we would give pretty good support where we were. I appointed Harry Smith as scrutineer for respondent, and got him to act as such on the polling day.

Re-examined.—I had no authority from the respondent to form a committee; what I did was on my own responsibility. When McQueen and I drank nothing was said about election."

Alex. Cameron for the petitioner, claimed that the treating Alfred Wigle during the hours of polling avoided the election under section 66 of 32 Vict. cap. 21.

S. White and *C. R. Horne* for the respondent, *contra.*

The learned Chancellor took time to consider, and gave judgment in Toronto on July 13.

Spragge, C. At the close of the argument on Saturday last, I gave my views upon the several points of law and of fact presented in the case. One point only I did not decide finally, viz: whether the partaking by Alfred Wigle, whom I find to be an agent of the respondent, of a treat given by James McQueen during polling hours in Lovelace's tavern, was a corrupt act within the statute, which would avoid the election. I could see no escape from the conclusion that this act, prohibited by the 66th sec. of the act 32 Vict. cap. 21, and declared to be —being within polling hours—a corrupt act by 36 Vict. cap. 21, and being an act participated in by one for whose acts the respondent was responsible, must avoid the election.

I have since had an opportunity of conferring with three of the other judges, and they all concur in the view which I expressed at the conclusion of the argument. The result is that I must declare the election void, by reason of a corrupt practice by an agent.

As to costs, I think the petitioner is entitled to the general costs of the inquiry; but the costs have been greatly increased by the calling of witnesses to charges which the petitioners have failed to prove; and the costs, so far as they have been so increased, are to be disallowed. No costs to be taxed in respect to the evidence except such as have been incurred by proof of the fact upon which my judgment proceeds.

In the searching and protracted inquiry which has been had before me, I find no personal wrong proved against the respondent. The expenses of the election have been very moderate, and the evidence leads me to believe that the respondent desired and endeavoured that the election should be a pure one.

Election set aside.

COMMON LAW CHAMBERS.

Municipal Election Case.

Regina ex rel. Thompson v. Medcalf.

Municipal Election—Agency—Hiring teams.

The respondent on the polling day was invited by K., a supporter of his, to take a drive in his sleigh. When passing a cab-stand (after respondent had left the sleigh), K. called out to the cabmen, "Boys, follow me;" and some six of the cabs did so and were said to have been employed during the remainder of the day in taking voters to the poll. They never received anything, and respondent denied Kelly's agency, and disavowed any knowledge of his act.

Held, that there was not sufficient evidence of agency on the part of K. to affect respondent with his acts.

[Com. Law Cham.—Mr. Dalton, June 8, 1875.]

Proceedings in the nature of *quo warranto* were commenced herein to evict Mr. Medcalf from his office as Mayor of Toronto. Various reasons were stated in the petition why he should be unseated, but after an examination of

the respondent and others before the Judge of the County Court, the relator decided to abandon all his charges of illegality in the election, except one, viz., that of hiring vehicles for the purpose of conveying electors to and from the polls.

The evidence in support of this charge was in substance as follows: The respondent on the polling day met one Kelly—a supporter of his—driving in a sleigh. Kelly invited respondent to get in and have a ride. He did so, and they drove together a short distance, when respondent left the sleigh. Shortly after, as Kelly was passing the cab-stand, he called out to the cabmen, "Boys, follow me," and drove on. Six of the cabmen immediately went after him and were said to have been employed during the remainder of the day in taking electors to the polls. In Mr. Medcalf's deposition, he stated "that he never hired teams nor authorised Kelly or any person else to do so for him. He did not know of Kelly's having hired any cabs. He had not paid any of the cabmen for conveying electors on polling day. Some of them had applied to him for payment, but he had refused to give them anything because he had not employed them."

R. A. Harrison, Q.C., for the respondent, shewed cause. To enable the relator to succeed, he must show: (1.) That the hiring of the cabs was for a corrupt purpose connected with the election. (2.) That Kelly was the agent of the respondent. And (3.) That these illegal acts were done with the knowledge, consent, or privity of the respondent. The principle applicable to bribery by agents is different in municipal election from what it is in Parliamentary; for in the former it must be shown that the agent acted with the *knowledge, consent, or privity* of the candidate, to affect the latter by the illegal acts of the former. Section 157 of the Municipal Act does not alter this, because the knowledge, &c., of the agent is that of the principal. Kelly's evidence merely shows a *request*, and no contract. As to the effect of such evidence, see the *Westminster case*, 1 O'M. & H. 89; *Taunton case*, 2 O'M. & H. 75. These cases show that the evidence must be as explicit as in criminal cases. This rule was observed in the *East Toronto case*, *West Toronto case*, and *Kingston case*. The *Dungarvan case*, 2 P. R. & D. 302, shows that the oath of the respondent must be taken. It was stated that Kelly had paid some of the cabmen after the election, but upon the authority of the *Brockville case*, 32 U.C.Q.B. 87, he submitted that that was not an act of an agent within the meaning of the law. Kelly cannot be considered an agent of the candidate. See *The Bridgewater case*, 1 O'M. & H. 112; *The Taunton case*, 2 O'M. & H. 66; *The Bolton case*, 2 O'M. & H. 140.

Fenton, contra. Contended that the act was done with Medcalf's approbation, and therefore was equivalent to his doing it himself.

Mr. Dalton—Held that the evidence was not sufficient to prove agency on the part of Kelly. He therefore discharged the summons.

NEW BRUNSWICK REPORTS.

Regina v. The Justices of the Peace of the County of Kings. *Ex parte* McManus.

Spirituous Liquors—Right of local legislatures to prohibit sale of, under British North America Act, 1867—Trade and Commerce—Regulation of—Revenue—Ultra vires.

A local legislature has no power, since the British North America Act, 1867, to pass a law directly or indirectly prohibiting the manufacture or sale, or limiting the use of spirituous liquors, and an Act passed with this object in view was held *ultra vires* and void.

[Pugsley's Rep. II. 535—Feb. 1875.]

In Trinity Term, 1874, *S. R. Thomson*, Q.C., on behalf of Montgomery McManus, obtained a rule *nisi* for a mandamus to compel the Sessions of King's County to grant him a license to sell liquor. An affidavit was read, shewing that McManus had tendered the money for a license, which had been refused, the Justices absolutely declining to grant licenses to any person. The grounds on which the rule was granted were: 1st, That under the Act 36 Vict., c. 10, the Justices have the right to discriminate as to the persons to whom they will grant licenses, but no power absolutely to refuse them to all persons. 2nd, Assuming the Act to give them this power, it is *ultra vires* the local legislature, under the British North America Act, 1867, (*a*) because it professes to deal with the criminal law; (*b*) because it interferes with trade and commerce.

Oct. 14. *Dr. Tuck*, Q.C., shewed cause. The second section of the 36 Vict, c. 10, provides, that "the General Sessions of the Peace for the several counties in this province are hereby empowered to grant wholesale and tavern licenses to such and so many persons of good character as they in their discretion shall think proper, to sell liquor by wholesale, or keep a tavern within their respective counties, demanding and receiving for every such license a sum

not exceeding one hundred dollars, nor less than twenty dollars." To support the contention of the other side, it must be held that the word "empowered" is equivalent to "shall;" but it has no such meaning: it leaves the matter entirely in the discretion of the Justices. [RITCHIE, C.J. How do you read the word "discretion?" Must it not be a legal discretion?] It is an absolute, arbitrary discretion, left by the legislature advisedly in the hands of the Sessions. [ALLEN, J. Would not the provision in a previous Act, that where two-thirds of the ratepayers petition the Sessions they must refuse, rather seem to imply that, where there is no such petition, they should exercise a discretion as to the persons, but not altogether refuse?] No, because, if there is a petition, they have no discretion at all. The Sessions have the power within themselves to grant licenses, or not, as they please. Then it is said this Act interferes with the powers of the Dominion Parliament, as relating to the criminal law. The same question came up in the case of *The Queen* v. *McMillan*, which expressly decided that for all matters on which the local legislatures had a right to legislate, they had also a right to legislate for the purpose of carrying them out. [RITCHIE, C.J. The British America Act, in one section says, the local legislature shall have the right to legislate as to tavern licenses for the purposes of revenue. Is not the inference from that rather that they have no right to legislate against the raising of a revenue?] The third and perhaps the most important objection is, that the Act 36 Vict., c. 10, has reference to trade and commerce, and that all matters relating thereto are, by the British America Act, given exclusively to the Federal Parliament. I presume it will be contended that the Sessions, by refusing to grant licenses, and so preventing the sale of articles from which a revenue can be collected, are interfering with the trade and commerce of the country. My answer is, that the "trade and commerce" there referred to mean trade and commerce with foreign countries. [RITCHIE, C.J. Take the case of a vessel coming from France to this country laden with liquors. She is a foreign vessel, owned by foreigners; she comes to St. John, the consignee pays the duty, and the vessel goes to Rothesay, where he finds he cannot by law sell his goods. Why might not the same provision be applied to tobacco, sugar, silks and satins? What would be the result? This man is told by the Dominion Government he has a right to sell, by taking his money for duties, and yet he finds he cannot dispose of his goods.] Then, how can the Sessions regulate the licenses, as they may thereby restrict the sale, by making the charges so high that the dealers could not pay them? [RITCHIE, C.J. In such a case they would come to this Court, and it might inquire whether the charge was made so high for the purpose of revenue, or to prohibit it, and, without discussing that point now, it is possible this Court might interpose. Take the case of wholesale licenses, the same thing could be done as has been done here with the retail.) I admit it is an interference with trade, but not such an interference as is meant or contemplated by the Act. [ALLEN, J. What do you say is?] If there was a restriction on the importation, before it gets into the country, that would be. [ALLEN, J. Does not the prevention of the sale effectually prevent its importation?] That might be the result, but the legislature does not directly legislate to that end. [RITCHIE, C.J. There is another word in the British America Act besides "Commerce"—"Trade," which is defined as being the "exchange of goods for other goods, or for money; the business of buying and selling," &c.; while "Commerce," on the other hand, is defined as "an interchange of goods, wares, productions, or property of any kind, between *nations* or individuals." If the signification of the term "trade" is extended to that of "commerce," there is redundancy of words.] I think the words are used as synonymous. [RITCHIE, C.J. Can we believe that the legislature would use two words—each having a distinct meaning—as synonymous? Is there not an authority that there is nothing more dangerous than to say that two words are to bear an equivalent meaning, when ordinarily they have distinct meanings?] If the word "trade" in the British America Act means all internal trade, our legislature could not in any way touch or affect trade between even St. John and Fredericton. [RITCHIE, C.J. I should doubt if it could; and reasonably not, because the other provinces might be materially interested in the local trade between different parts of the same province.] Counsel cited 1 *Kent Com.* 488-492.

S. R. Thomson, Q.C., in support of the rule. The word "empowered" means a power, coupled with a trust. [RITCHIE, C.J. In other words, you say that "empowered to grant" does not give power to withhold.] If a man is empowered to do anything for the benefit of another, he is bound to do it: he has no power to refuse. This was a power accompanied with a duty, which the Sessions must not abuse: they are bound to grant licenses to decent per-

sons. It was, in other words, a public trust granted to the Sessions for the benefit of the people. They were to exercise their "discretion," which by the Imperial Dictionary is defined to mean "Prudence, or knowledge and prudence; that discernment which enables a person to judge critically of what is correct and proper, united with caution." Had the word been "caprice," the contention of the counsel on the other side would be applicable. Where was the caution here—the discernment? It must be done with a sound discretion, exercised according to law. The legislature clearly—from the wording of the Act—intended the Sessions could not arbitrarily withhold licenses unless there was a petition. The Imperial Dictionary also defines the meaning of the word "empower" thus: it says, "The Sessions of Scotland are empowered to try causes." Could they refuse? The County Courts in this province are empowered to try causes up to $200; and could the judge refuse to try such a cause? I do not contend the 36 Vict., c. 10, with my construction, is *ultra vires;* but if it is as contended for by the other side, it is so. Does my learned friend say the local legislature could provide that no one should exercise the business of an auctioneer? [*Per Cur.* If *Dr. Tuck's* contention is correct, that, as a general proposition, the local legislatures have the right to prohibit the sale of liquors, where was the necessity of specially allowing them to regulate licenses, as they would have that right any way?] The Act in this particular merely excepts out of trade what would otherwise have gone to the Federal Parliament. But the power to control is only given in a limited way—only to enable them to raise a revenue. The local legislatures have the right, and only the right, to regulate the licenses in order to raise a revenue. Where do they get it for the purpose of destroying the revenue? Wherever there is a doubt, the subject shall be held to come within the jurisdiction of the Federal Parliament.

Cur. adv. vult.

The judgment of the Court was now delivered by

RITCHIE, C.J. This was an application for a mandamus to the Justices of King's County to compel them to grant a tavern license to one Montgomery McManus. Application had been made by McManus to the Sessions for a license in February, 1874, and the usual fee tendered. The Sessions refused to grant a license, alleging as a reason that they did not intend to grant any licenses to sell spirituous liquors for that year. McManus was shortly afterwards fined for selling liquor without a license.

In shewing cause against the application it was objected: 1st, That the power given to the Parliament of Canada, by "The British North America Act, 1867," Sec. 91, to regulate trade and commerce, meant trade and commerce with foreign countries, and that the power to make laws respecting tavern licenses belonged exclusively to the Provincial Legislature, by the 92nd section of the Act. 2nd, That by the Act of Assembly 36 Vict. c. 10, sec. 2, it was entirely in the discretion of the Sessions whether they granted licenses or not; that it was an arbitrary discretion which could not be questioned.

To the Dominion Parliament of Canada is given the power to legislate exclusively on "the regulation of trade and commerce," and the power of "raising money by any mode or system of taxation." The regulation of trade and commerce must involve full power over the matter to be regulated, and must necessarily exclude the interference of all other bodies that would attempt to intermeddle with the same thing. The power thus given to the Dominion Parliament is general, without limitation or restriction, and therefore must include traffic in articles of merchandise, not only in connection with foreign countries, but also that which is internal between different provinces of the Dominion, as well as that which is carried on within the limits of an individual province.

As a matter of trade and commerce, the right to sell is inseparably connected with the law permitting importation.

If, then, the Dominion Parliament authorise the importation of any article of merchandise into the Dominion, and places no restriction on its being dealt with in due course of trade and commerce, or on its consumption, but exacts and receives duties thereon on such importation, it would be in direct conflict with such legislation and with the right to raise money by any mode or system of taxation if the local legislature of the province into which the article was so legally imported, and on which a revenue was sought to be raised, could so legislate as to prohibit its being bought or sold, and to prevent trade or traffic therein, and thus destroy its commercial value, and with all its trade and commerce in the article so prohibited, and thus render it practically valueless as an article of commerce on which a revenue could be levied. Again, how can the local legislature prohibit or authorise the Sessions to prohibit (by arbitrarily refusing to grant any licenses) the sale of spirit-

uous liquors of all kinds without coming in direct conflict with the Dominion Legislature on the subject of inland revenue, involving the right of manufacturing and distilling or making of spirits, &c., as regulated by the Act 31 Vict. chap. 8, and the subsequent Acts in amendment thereof, and the excise duties leviable thereby, and the licenses authorised to be granted thereunder. Cases from the United States Courts were cited as bearing on this question; but there is a very clear distinction between the powers of Congress and the powers of the Dominion Parliament. In the United States Congress has not the same full power of regulating trade and commerce that belongs to the Dominion Parliament. The power of Congress, as we understand it, is confined to "regulating commerce with foreign nations and among the several states," giving no right to interfere with the internal commerce of an individual state, that it does not extend to that commerce which was completely internal, carried on within the particular state, and which did not extend to, or affect other states, but is restricted to that commerce which concerns more states than one, reserving the completely internal commerce of a state for the state itself, and therefore state license laws have been held constitutional and valid. But even there, as we understand the cases, it has been held that the sale of the imported liquors by the importer in the original casks would seem not to be affected; but when the importer parts with the goods imported and changes their condition, his rights and all rights respecting the sale claimed under the laws of the United States are gone, that is, so soon as they become mixed with or incorporated into the general mass of the property of the state, they become subject and liable to state legislation.

Under the British North America Act, 1867, the local legislatures have no powers except those expressly given to them, and with respect to the granting of licenses affecting trade they are expressly confined to "shop, saloon, tavern, auctioneer and other licenses, *in order to the raising of a revenue* for provincial, local or municipal purposes," a provision under which a revenue may be derived from the sale and traffic, but which the prohibition of the sale or traffic would entirely destroy, and which would be in direct antagonism with the privilege thereby conceded.

We by no means wish it to be understood that the Local Legislatures have not the power of making such regulations for the government of saloons, licensed taverns, &c., and the sale of spirituous liquors in public places, as would tend to the preservation of good order and prevention of disorderly conduct, rioting or breaches of the peace. In such cases, and possibly others of a similar character, the regulations would have nothing to do with trade or commerce, but with good order and local government, matters of municipal police and not of commerce, and which municipal institutions are peculiarly competent to manage and regulate; but if, outside of this, and beyond the granting of the licenses before referred to, in order to raise a revenue for the purposes mentioned, the legislature undertakes directly or indirectly to prohibit the manufacture or sale, or limit the use of any article of trade or commerce, whether it be spirituous liquors, flour or other articles of merchandise, so as to actually and absolutely to interfere with the traffic in such articles, and thereby prevent trade and commerce being carried on with respect to them, we are clearly of opinion they assume to exercise a legislative power which pertains exclusively to the Parliament of Canada, and in our opinion the Act of the Local Legislature (34 Vict. c. 6), declaring that "no license for the sale of spirituous liquors shall be granted or issued within any parish or municipality in the province when a majority of the ratepayers resident in such parish or municipality shall petition the Sessions or Municipal Council against issuing any license within such parish or municipality," is *ultra vires* the local legislature of this province.

Rule absolute for mandamus.

INSOLVENCY CASES.

Rowan v. Harrison.—The Same v. Turner.

Insolvent Act of 1869—Contingent liability—Whether barred by discharge of Insolvent—Policy of Marine Insurance—Claim under.

A contingent liability, which may never become a debt, is not provable against the estate of an insolvent under the Insolvent Act of 1869, and is not barred by his discharge.

Defendant underwrote in favour of plaintiff a policy of insurance on a ship, of which plaintiff was part owner, loss, if any, to be paid in sixty days after proof of loss and adjustment and proof of interest, and the ship was beached in a gale on the 18th October, 1872. Efforts were made between 18th and 30th October to get her off, and she was finally hove off and towed to an anchorage on the 31st October, where she remained until 9th November. On the 14th she was hauled into a dry dock, and on the 16th examined by surveyors, who reported what damage was done, and recommended repairs. On December 3 she was hauled out of the dock, and on December 12 the surveyors reported that all

damage had been made good, &c., and on 18th Jan., 1873, the adjustment of loss, with proof, &c., were furnished to the broker for the underwriters.

On 28th October, 1872, defendant made a voluntary assignment under the Insolvent Act of 1869, and obtained his discharge under section 105 on 19th January, 1874. The schedule prepared at first meeting of creditors did not include plaintiff's name, nor was his claim included in any supplementary schedule furnished the assignee until about 10th March, 1874, when plaintiff's name was furnished to assignee in time to entitle plaintiff to obtain same dividend as those in original list. Plaintiff was notified to file his claim, but declined to do so, and sued defendant for the full amount.

Held, That at the time of defendant's assignment, the liability to plaintiff was not a debt payable upon a contingency, but a mere contingent liability which was not capable of being proved, and therefore that the discharge was no bar to the plaintiff's action.

[Pugsley's Rep. II. 503.—Feb. 1875.]

Special case :—

The defendants underwrote in favour of plaintiff a policy of insurance upon the ship "Virginia" (of which plaintiff was part owner), on a voyage from Antwerp to a port in the United States; the loss, if any, to be paid in sixty days after proof of loss and adjustment, and proof of interest being presented at the office of the broker of the underwriters; but no partial loss or particular average to be paid unless it should amount to five per cent. on the valuation, $20,000.

In a gale on the 18th October, 1872, at 11 p.m., while on the voyage, the ship "was beached" for the general safety. Efforts were made between the 18th and 30th October to get her off. She was finally hove off and brought to anchor in Brixham Roads on the 30th October. On the 31st October they succeeded in towing her to an anchorage inside Torquay Breakwater. She remained there from 1st to 9th November, during nearly all of which time the gale continued. On the 9th November she was towed to Plymouth and placed in the Great Western Dock, and her bottom examined by a diver. On the 14th November she was hauled into dry dock. On the 16th surveyors proceeded on board, and reported that the vessel had beaten heavily, particularly at the ends: the false keel was gone, and the entire main keel was more or less beaten away; the dove-plates at the after end of the keel were broken, and part of the fore gripe was gone; the metal sheathing was wrinkled and in folds; and much was gone from the starboard bilges; the bottom in general was strained and shaken; the windlass was damaged, and great injury was done to the warps, being overstrained and parted, and much of the running rigging was cut and destroyed; various screw eye bolts had been fixed to the side to assist in floating the vessel from her position, and sundry cordage had been expended for the same purpose. The captain reported that 130 fathoms 1 7-8 inch chain, and a bower anchor, were lost at the time of the accident. The surveyors recommended that the metal sheathing should be stripped; that the entire main keel should be replaced, and in addition to repairing and replacing all the other damages and losses, that the vessel should be caulked from the keel to the wales, and metalled in felt. On the 3rd December the vessel was hauled out of the dry dock.

On the 12th December the surveyors reported all the damages and losses enumerated in the previous survey had been made good, and that the anchor and chains had been saved.

The adjustment of the loss was made up on the 27th December, at Liverpool, G. B., and was furnished with proof of interest, and all other necessary preliminary proofs to the broker for the underwriters on the 18th January, 1873.

On the 28th October, 1872, the defendant Harrison made a voluntary assignment under the Insolvent Act of 1869.

All necessary notices having been given, meetings held, and steps taken to wind up the estate, and the assignee having sold all the estate of the insolvent, he, on the 19th January, 1874, obtained his discharge under the 105th section of the Act. The defendant Turner assigned on the 26th October, and subsequently obtained a deed of composition and discharge.

The schedule prepared under section 3, exhibited at the first meeting of creditors, did not include the name of the plaintiff.

The plaintiff's claims were not included in any supplementary schedule furnished the assignees until on or about the 10th March, 1874, after the writs in these cases were issued, when the plaintiff's name, with those of other creditors, was furnished to the assignees, in time to entitle the plaintiff and the other creditors named in the supplementary list, to obtain the same dividend as those in the original list, if the assignees were authorised under the Acts after one dividend declared and paid, to make a dividend to those subsequently coming in equal, there being still sufficient assets in the hands of the assignees for that purpose.

On receipt of the supplementary list, the assignees notified the plaintiff to file his claims, in order that he might participate in the dividends of the estates; but the plaintiff did not do so. In Turner's case the dividend was offered to the plaintiff by the insolvent prior

to the confirmation of his discharge, which he refused to accept.

The question for the Court was, whether or not the said certificate and confirmation of discharge, which it was admitted had been regularly obtained, were, under the circumstances stated, an answer to these actions.

April 21, 1874. *Duff*, Q.C., for the plaintiff in both cases. These claims were not, at the time of the assignments, *debts* under the meaning of the Insolvent Act, provable against the defendants' estates. The word "debts" received a judicial construction in England, as far back as *Hammond* v. *Toulman*, 7 T. R. 6 12, in which case Grose, J., says, speaking of the Statute 5 Geo. 2, c. 30, "the word in that Act is 'debt;' but this is not the demand of a debt, but of uncertain (un) liquidated damages." And in the same case, Ashurst, J., says, that he had always understood that, where the plaintiff's demand rested in damages, and could not be ascertained without the intervention of a jury, it could not be proved under the defendant's commission. *Green* v. *Bicknell*, 8 Ad. & E. 701, is to the same effect, as are also *Bourman* v. *Nash*, 9 B. & C. 145, and a number of modern cases. In *Skelton* v. *Mott*, 5 Exch. 231, it was held under the Insolvent Act, 1 & 2 Vict., that the words "debts growing due," meant debts ascertained and payable *in futuro*. In the present cases, at the time of the assignments no adjustment had been made; but even after the adjustment it was not conclusive, every item of damages being open to inquiry before a jury: *Luckie* v. *Bushby*, 13 C. B. 878. The whole claim throughout was for unliquidated damages. It is submitted: 1st, That the claims were not provable against the estates. 2nd, They were not furnished in the first schedule, nor any subsequent one within the time required by the Act, which provides that it must be done, not only previous to the discharge, but also in time to enable him to receive the same dividend as the other creditors. The copulative conjunction "and" shows this. The discharge is, therefore, no bar. §§ 3, 5, 35, 41, 45, 56, 57, 94, 96, 98, and 127, were referred to.

McLeod, for the defendant Harrison. The defendant is not obliged to furnish a full list at the first meeting, but may complete it at a subsequent time. The claim, at the time of the assignment, was a contingent claim, which the plaintiff could prove on when ascertained: he has the right to prove at any time, therefore it is a claim *provable* against the estate. To entitle a claimant to prove, it is not necessary that the damages should be liquidated, as, if the claim is wrong, the assignee may try it out and determine its correctness. In *Ex parte Sutton*, 11 Ves. 163, it was held an attorney's bill of costs, though it had not been signed and delivered under the statute, was a debt sufficient to enable him to put the debtor into bankruptcy. [Allen, J. That was like a note running, a debt not due.] *Utterson* v. *Vernon*, 3 T. R. 539, is a similar case. The damage here actually occurred on the 18th October, and everything done afterwards was for the purpose of saving the ship. This, therefore, formed a liability from which the defendant is discharged by the 105th section, which discharges him from all liabilities except those mentioned in sections 99 and 100. Sections 69 and 143 were also referred to.

A. A. Stockton, for the defendant Turner. There are three questions to be considered in this case: 1st, the loss; 2nd, the nature of the claim; 3rd, the nature of the discharge and what is granted by it. To constitute a provable claim, it is not necessary that the amount should be actually ascertained, though it must not be merely sounding in damages: *Arch. Bank., Pr.* 100. But, to constitute a case of unliquidated damages, the intervention of a jury is necessary: *Luckie* v. *Bushby*, 13 C. B. 875, which was not so here. The word "debt" is, under the Act, intended to cover all liabilities, the 98th section providing for discharge from "all liabilities whatsoever." It is not necessary that a claim "subsequently furnished to the assignee," as provided by that section, should be by the creditor, but it may be by the insolvent. The spirit and intention of the Act is to distribute the property rateably among all the creditors.

Duff, Q.C., in reply. It would be impossibe to consider the plaintiff's claim as liquidated damages, because they were running on from day to day. If the claim was not provable at the time of the assignment, it never could become so afterwards.

Cur. adv. vult.

The judgment of the Court was now delivered by

Ritchie, C.J. By the third section of the Insolvent Act, the assignee is directed to exhibit at the meeting of the creditors a statement showing the position of the insolvent's affairs, with a schedule "containing the names and residences of all the insolvent's creditors, and the amount due to each, distinguishing between those amounts which are then actually overdue, or for which he is directly liable, and those for which he is only liable indirectly, as endorser, surety, or otherwise, and which have

not become due at the date of such meeting; the particulars of any negotiable paper bearing his name, the holders of which the interim assignee shall be unable to ascertain, the amount due to each creditor, *and also any contingent liabilities, describing the same.*" The insolvent is to assist in the preparation of this statement, and to make a declaration, under oath, stating whether such statement and schedule are correct, and, if incorrect, in what particulars.

The 56th section declares what claims shall rank on the estate of an insolvent, viz.: "All debts due and payable by the insolvent at the time of the execution of the deed of assignment, or of the issue of the writ of attachment, and all debts due, but not then actually payable, subject to rebate of interest, shall have the right to rank upon the estate of the insolvent."

By section 57, "If any creditor of the insolvent claims upon a contract dependent upon a condition or contingency which does not happen previous to the declaration of the first dividend, a dividend shall be reserved upon the amount of such conditional or contingent claim, until the condition or contingency is determined; but if it be made to appear to the judge that such reserve will probably retain the estate open for an undue length of time, he may, unless an estimate of the value thereof be agreed to between the claimant and the assignee, order the assignee to make an award upon the value of such contingent or conditional claim; and thereupon the assignee shall make an award, &c., and in every such case, the value so established or agreed to, shall be ranked upon as a debt payable absolutely."

By the 69th section, the assignee is authorised, if it appears to him that the insolvent has creditors who have not taken the proceedings requisite to entitle them to be collocated, to reserve dividends for such creditors according to the nature of their claims, and to notify them of such reserve; and if they do not file their claims and apply for such dividends before the declaration of the last dividend of the estate, the dividends reserved shall form part of such last dividend.

The 98th section declares what liabilities the insolvent shall be discharged from by the deed of composition. It shall absolutely free and discharge him "from all liabilities whatsoever (except such as are hereinafter specially excepted), existing against him and provable against his estate, which are mentioned or set forth in the statement of his affairs exhibited at the first meeting of his creditors, or which are shown by any supplementary list of creditors furnished by the insolvent previous to such discharge, and in time to permit of the creditors therein mentioned obtaining the same dividend as other creditors upon his estate, or which appear by any claim subsequently furnished to the assignee, whether such debts be exigible or not at the time of his insolvency, and whether the liability for them be direct or indirect." The liabilities referred to in this section as being specially excepted, are those mentioned in the 100th section, and do not affect the present case.

The question is, whether the liability of an underwriter, before a loss takes place, is such a contingent liability as is contemplated by the Act; whether it is such a liability as the assignee was bound to include in the statement which he exhibited to the creditors. It certainly does not come within the description of a debt due, but not actually payable, which, by the 56th section, is entitled to rank on the estate of the insolvent. Neither does it come within the 57th section, for, until a loss happens, there is no person entitled to claim anything—it is uncertain whether there ever will be any liability; and therefore it would be impossible for the assignee to estimate the value of such a contingent liability under that section. For the same reason, the 69th section is inapplicable; because, until there is a loss, there cannot be a creditor, and consequently nothing on which the assignee can base the reservation of a dividend.

The cases arising under the English Bankrupt Acts, as to the discharge of a bankrupt from contingent liabilities, are numerous; and they all go to establish the point contended for by the plaintiff here, namely, that a liability which may perhaps never attach, cannot be proved under a commission of bankruptcy, and, of course, is not discharged by the certificate; because debts provable under the commission and debts to be discharged by the certificate are convertible terms: *Bamford* v. *Burrell*, 2 B. & P. 1.

In *Alsop* v. *Price*, 1 Doug. 160, which was an action against a surety on a bond, which was not forfeited till after the bankruptcy of the defendant, Lord Mansfield, delivering the judgment of the Court, said: "We think this was not a debt which could have been proved under the commission; for the defendant was not originally the debtor. It was not a debt to be paid by him *in futuro*, at all events, but depended on the acts of the principal, viz., whether he did or did not comply with the stipulations in the condition of the bond."

In *Utterson* v. *Vernon*, 4 T. R. 571, Lord KENYON said, "The question in this case depends on a simple principle of law, which cannot be doubted. It is clear that where one person, previous to his bankruptcy, is indebted to another in a precise sum which is ascertained, the latter may prove his debt under the commission; but it is as clear, that where there is only a cause of action existing, where the debt is to arise on a stipulation which has not been broken previous to the time of the bankruptcy, and where the debt remains to be inquired into, there the creditor cannot prove his debt under the commission, and the demand will remain undischarged by the certificate."

In *Ex parte Hunter*, 6 Ves. 97, Lord ELDON says, "Nothing is more clear than that unliquidated damages cannot be proved: (under a commission of bankruptcy), that was determined in *Utterson* v. *Vernon*." In *Ex parte Barker*, 9 Ves. 110, it was held that a debt payable at a future, uncertain period, as within three months after the decease of two obligors in a bond, or the survivor, was not provable in bankruptcy. Lord ELDON, referring to a case of *Ex parte Mitford*, says, "That case is against my opinion upon this petition, which turns upon this, that the mode of settling what is to be proved, necessarily connects itself with the supposition that the debt is to be paid at some day certain; that where it is to become payable at some future, contingent, uncertain time, you cannot apply the medium of proof, and it is not capable of valuation; and therefore this debt is not capable of proof."

In *Attwood* v. *Partridge*, 4 Bing. 209, the defendant covenanted for the payment by A. B of a premium on a policy of insurance effected to secure a debt due from A. B. to the plaintiff. The premium became due the 17th June, and being unpaid by A. B. or the defendant, was paid by the plaintiff. On the 20th June the defendant obtained his certificate under a commission of bankruptcy; and it was held that the certificate did not discharge him from liability for the premium. BEST, C.J., said, that it was clear it was not a debt within the 56th section of the Bankrupt Act, 6 Geo. 4, c. 16; that there was no debt due from the defendant to the plaintiff, contingent or otherwise; that upon A. B. failing to pay the premium, the plaintiff was entitled to recover from the defendant unliquidated damages, the amount of which might have varied according to circumstances. If A. B. continued alive, the amount would have been the premium paid by the plaintiff; but if A. B. died, it might have been the whole sum insured. How was it possible then to say, that it was a debt due from the defendant?

In *Wilmer* v. *White*, 6 Bing. 291, the question was whether the defendant was discharged under the Insolvent Debtors Act, 7 Geo. 4, c. 57, from a judgment obtained against him for damages after his discharge from imprisonment, in an action of replevin commenced prior to his imprisonment. TINDAL, C.J., said, "The question is, whether the plaintiff's claim be a debt or sum of money, in respect of which an insolvent is entitled to the benefit of the Act. Now, the Act is confined in terms to debts due from the insolvent at the time of his first imprisonment. But at that time no debt was due from this insolvent to the plaintiff: a liability only existed to a claim for unascertained damages. There are no words in the Act which can be applied to such a liability under a suit pending at the time of the insolvent's first imprisonment; on the contrary, he is required to insert in his schedule the precise sum due from him to his creditor; a thing impossible where the damages are unascertained."

In *Boorman* v. *Nash*, 9 B. & C. 145, it was held, that a person who had contracted for a quantity of oil, to be delivered to him at a future day, and who, before that day, had become bankrupt and obtained his certificate, was nevertheless liable in an action for not accepting and paying for the oil. Lord TENTERDEN, delivering the judgment of the Court, said, "The right of the plaintiff to maintain this action depended upon the question, whether he could or could not have proved his demand under the commission of bankruptcy issued against the defendant? It appears to us impossible that he should so prove it; for at the time when the commission issued, *it was uncertain not only what amount of damage, but whether any damage would be sustained.* And therefore, unless we can say that the bankruptcy of the defendant rescinded the contract, he must remain liable to it." The same principle was adopted in *Green* v. *Bicknell*, 8 A. & E. 701, where it was held that a sum claimed for a breach of a contract to purchase oil from the plaintiff, was not a debt, but damages, which could not be proved under a commission of bankruptcy. It was argued in that case that a loss on a policy of assurance could be proved under the statute 19 Geo. 2. c. 32, and also, debts arising on guarantees. To which PATTERSON, J., answered, "By express provision." See the Bankrupt Act, 6 Geo. 4, c. 16, secs. 52, 53, 56, and also *Hoffham* v. *Foudrinier*, 5 M. & S. 21, before that statute.

In *Abbott* v. *Hicks*, 5 Bing. N.C. 578, the question was whether the defendant, in an action by the assignees of a bankrupt, could set off a demand which the bankrupt had undertaken to pay, and to indemnify the defendant against the payment of; and it was held that, as the defendant had not paid this demand, there was no debt due to him from the bankrupt. ERSKINE, J., said, "It is no debt at all; and as the defendant may never be called on to pay it, it would be impossible to put a value on it. * * * This is not a debt payable on a contingency, but a mere liability which may or may not become a debt hereafter."

So, the instalments of an annuity for the payment of which a bankrupt was surety only, and which he covenanted to pay in case of default of the grantor, are not provable under a fiat against the surety, where they become due after his bankruptcy: *Thompson* v. *Thompson*, 2 Bing. N. C. 168. See also *In re Foster*, 9 C. B. 422.

In *Wooley* v. *Smith*, 3 C. B. 610, an action for not providing a cargo pursuant to a charter-party, the action had been brought in April, a fiat in bankruptcy issued against the defendant in May, and he obtained his certificate in August 1845, and in December following final judgment was signed against him in the suit. It was held, that the demand was for unliquidated damages which could not be proved under the fiat, and consequently the defendant was not protected by his certificate. COLTMAN, J., delivering the judgment of the Court, said, "Where a contract has been broken, and the demand thereupon arising is not a debt, but damages, the amount of which may depend on various circumstances and which it is necessary that a jury should estimate, unless they are ascertained before the issuing of a fiat, they cannot be proved. That point was very fully discussed and considered in the recent case of *Green* v. *Bicknell*."

In *Ex parte Bateman*, 2 Jur. N. S. 265, where several of the previous cases were considered, the only question was, whether the value of certain timber which was claimed to be proved against the estate of a bankrupt, was a claim for unliquidated damages; or, whether its value could be fixed with certainty so as to be provable.

It is unnecessary to cite any further cases on the subject, as the same distinction will be found in the whole of them, except where the law has been altered by statute. Thus, it is said in *Park on Insurance*, 371, that formerly, if an underwriter became a bankrupt after he had subscribed a policy, and before a loss happened, the insured was not entitled to a dividend out of the bankrupt's estate; but this being found a great inconvenience and discouragement to trade, Parliament was obliged to interfere, and alter the law in this respect by the Act 19 Geo. 2, c. 32. And see *Graham* v. *Russell*, 5 M. & S. 498.

The 57th section of the Insolvent Act, which refers to claims of creditors upon contracts, "dependent upon a condition or contingency," is somewhat similar to the provisions of the 56th section of the English Bankrupt Act, 6 Geo. 4, c. 16. But the construction given to that section was, that it only applied to debts payable on a contingency, and not to mere contingent liabilities which might never become debts: *Hinton* v. *Acraman*, 2 C. B. 409.

The 153rd section of the Bankruptcy Act of 1861, which authorised proof to be made against a bankrupt's estate in certain cases where the damages were unliquidated, was held to apply to such demands only, in the nature of damages, as were capable of being enforced against the bankrupt at the time of the adjudication, where the cause of action, at that time, was complete: *Ex parte Mendel*, 10 Jur. N. S. 189; *Ex parte Kempson*, 11 Jur. N. S. 165.

The distinction between contingent liabilities and debts payable upon a contingency is well established.

In 3 *Parsons on Contr.*, 505, it is said that provisions relating to the proof of contingent claims occur in the English Statute of Bankruptcy, 12 and 13 Vict. c. 106, in the late Bankruptcy Act, and in most of the statutes of the States on insolvency. The distinction on this subject is well settled between subsisting debts which are payable on a contingency, and contingent liabilities, which may never become debts; and it is held that the former only can be proved under a commission in bankruptcy. In *Ex parte Marshall*, 3 Dea. & C. 120, ERSKINE, C.J., said, "In my judgment in *Ex parte Myers*, I have not sufficiently marked the distinction between contingent liabilities which may never become debts, and contingent debts that may never become payable. Upon the fullest consideration of all the reported decisions, I am satisfied that claims under the first class, upon which no debt has arisen till after the bankruptcy, cannot be proved under the 56th section; but that all claims falling within the latter class, that are either capable of valuation before the contingency happens, or have become payable by the happening of the contingency after the bankruptcy, and before proof is tendered, may be admitted." The case of *Ex parte Thompson*, 2 Dea. & C. 126, is an example of the first class. Here there was no debt due from any one till

after the bankruptcy. *Ex parte Myers*, 2 Dea. & C. 251, is an example of the last class.

The distinction between contingent debts and contingent liabilities is also clearly admitted in the cases of *Hawkin* v. *Bennett*, 8 Exch. 107, and *Warburg* v. *Tucker*, E. B. & E. 914.

In the present case, at the time of the defendant's insolvency, it was uncertain whether there ever would be any liability on the policy. It was a liability which could not become a debt unless a loss happened: it was therefore not a debt payable upon a contingency, but a mere contingent liability which was not capable of being proved. It is the *debts* due by the insolvent that are entitled to rank upon his estate; and it is only the debts and liabilities "existing against him, and *provable* against his estate," that he is discharged from under the 98th section of the Act. It follows, therefore, that if this was not a debt, provable against his estate, he still remains liable. How could the contingent liability of the defendant in this case upon the policy, be provable before the assignee? For what amount could the plaintiff have claimed to rank upon the defendant's estate? And what amount of dividend could have been reserved under the 57th section until the contingency of the loss of the vessel should happen, or how could the assignee make an award upon the value of such a claim? Such a contingency is not susceptible of valuation; and therefore such a claim is not provable. It is a mere contingent liability which may never become a debt, and not a debt dependent on a contingency, and therefore the 57th section of the Act does not apply to it.

For these reasons, we think the defendant's certificate of discharge is no answer to this action, and that the plaintiff is entitled to judgment.

Judgment for plaintiff.

FAIRWEATHER, ASSIGNEE OF HANEY, AN INSOLVENT UNDER INSOLVENT ACT OF 1869 v. NEVERS.

Insolvent Act of 1869—*Replevin—Where Writ directed to Sheriff who was an Inspector of Insolvent's estate—Whether will be set aside—Interest.*

Plaintiff as Assignee of the estate of H. an insolvent, brought replevin, the writ being directed to and served by the Sheriff, who was also an inspector of the estate;

Held, That the Sheriff, as inspector, was interested in the suit, and the writ of replevin was set aside.

[PUGSLEY'S REP. II. 524—Feb. 1875.]

This was an application made on behalf of the defendant to set aside a writ of replevin issued in this cause, referred to the Court by ALLEN, J. The ground of the application was that the Sheriff of Sunbury County, to whom the writ was directed, and who had served it on the defendant, was one of the inspectors of the insolvent's estate, and therefore an interested party in the cause.

C. H. B. Fisher, in support of the motion, contended that, as the inspector controlled the assignee, he was virtually the plaintiff. He could scarcely avoid being prejudiced, and it would be very dangerous if he should have the power of summoning the jury in case a writ *de proprietate probanda* should issue, and presiding upon the trial.

Harrison, contra. The inspector is not personally interested. Here it is not shewn that he was a creditor. [RITCHIE, C.J. The creditors having power to appoint one of their number an inspector, is not the burthen on you to show he is not a creditor? WELDON, J. The defendant could not show the sheriff was a creditor. WETMORE, J. Ought not the presumption to be that the sheriff, being a public officer, acts properly? and is not the burthen on the other side to show the disqualification?] We might send the writ *de prop. prob.* to the coroner. [RITCHIE, C.J. How could that be done? How could the coroner hand over the goods to the successful party, as the sheriff would have them? Can you show any authority for that?] No. But the application is made too soon, as no writ *de prop. prob.* is yet issued. [ALLEN, J. Unless you can show the writ went properly to the sheriff, you cannot make anything of your position.] Suppose the sheriff were interested, would that prevent his serving a writ? [RITCHIE, C.J. That is not the question, but I take it, if the sheriff issued a writ at his own instance and served it, it would be bad.] It is submitted, however, that the inspector had no interest: his office is simply one of skill. *Crane* v. *Adams*, 4 All. 59, was cited.

Rainsford, in reply.

Cur. adv. vult.

The judgment of the Court was now delivered by

RITCHIE, C.J. The 34th section of the Insolvent Act of 1869 defines the powers and duties of inspectors as follows: "They shall superintend and direct the assignee in the performance of all his duties under this Act." The 72nd section provides further that it shall be their duty, and that of the assignee under their direction, to examine all claims filed before them, &c. From these sections it appears that the inspector really stands in very much the

same position as the debtor would have been in if no assignment had been made; and, as it is one of the fundamental principles of the administration of justice that those who are called upon to administer the law and decide the rights of parties should be entirely free from interest, we do not think the inspector of this estate was a proper person to preside as sheriff. The proceedings are irregular in the writ being directed to him, and it must be set aside.

Judgment accordingly.

REVIEWS.

The Insolvent Act of 1875, including Full Notes to each Section, Tariff of Costs, Index, and List of Cases. By Hugh MacMahon, Esq., of Osgoode Hall, Barrister-at-law (London, Ontario). Toronto: Willing & Williamson. 1875.

It is a somewhat unusual circumstance to have placed before the profession an annotated edition of an act before the act itself comes into force. Editors and publishers usually content themselves by announcing with many flourishes that such and such a work is "in the press and will be issued shortly," meaning thereby that it will in the course of some months be in the hands of the printers, who will some months afterwards give it to the binder, &c., and in the meantime solicit orders for a book of unknown value. But here the first thing is to announce that the work is already done, and that, several weeks before the book is actually required; so that purchasers can judge for themselves of the value of the work before ordering it. This is the true business-like way of doing things, and shews as well great industry on the part of the editor, and that he has not taken up a subject with which he is unfamiliar merely for the purpose of writing a book, as energy on the part of the publishers, and a confidence on their part that the work will sell on its own merits after examination.

We fully believe that it will stand the test; for although in some particulars it shows the speed with which of necessity the work was done, the matter of it is so good and the arrangement of the information given so practical, that these minor matters might not occur to any one but a critic familiar with the niceties of the difficult art of bookmaking.

The Act itself has been so voluminously discussed both in Parliament, where both political parties united in an endeavour to make it as perfect as possible, and by the lay press, that we do not propose to speak further on the subject. One thing is manifest, and that is, that it is more of a creditor's measure than a debtor's. The "poor creditor" proposes now to take his innings, the "poor debtor" having had, to use a slang expression, "a good time of it" for many years past. A little less recklessness on the part of small traders in buying and selling will be at the foundation of a more healthful state of things; and this act will, in that respect at least, make them a little more careful to lay their troubles before their creditors at an early day, and before they have entirely dissipated the property which is in truth no longer their own.

Mr. MacMahon shews himself to be no superficial student of insolvency law. Over a thousand cases are referred to in the notes, and these are taken from a variety of sources, English and Ontario cases of course predominating, but there is also a careful selection from the Lower Canada and United States Reports. We should have been glad to have seen a few more of the authorities cited from the courts of the Maritime Provinces, as they often throw much valuable light on this law, and a few more decisions as to who are traders would have been desirable for those who cannot refer to the English authorities.

We strongly object to the practice of praising books by wholesale, which is so common in this country. Every *bona fide* effort to give valuable information to the public, or to collect and print information in a useful and convenient form, should be encouraged; and this Mr. MacMahon has succeeded in doing with a promptitude that doubles the value of his work in one way, though in another way this promptitude has been prejudicial in causing some minor faults, which will doubtless be put right in a subsequent edition, which will in all probability be called for. For example: an occasional misapplication of *shall* and *will* (so common, by the way, that it is seldom noticed by the general reader);

a want of uniformity in the references to authorities, which a critical eye would notice at once, though it is of no practical importance; and in some other respects, as in the construction of some sentences, in the punctuation, &c., the proof-reading is not equal to the matter. We question whether there is not more room for doubt as to the duty of an official assignee, when called upon to give up an estate under section 30, than the editor in his note would seem to think. In the first note to section 61, it would be well to refer, in addition to the case there cited, to *Re Thomas*, 16 Gr. 196, *In re Smith*, 4 P. R. 89, *Thomas* v. *Hall*, 6 P. R. 172, and to the remarks in this journal in vol. 8, p. 206.

We have no hesitation in recommending this work as a valuable addition to a lawyer's library, whilst the merchants will doubtless largely avail themselves of the information it contains. The general appearance of the book is in every way creditable to the publishers, who, with the editor, must have exercised great energy in getting it out so well and so promptly.

CORRESPONDENCE.

Naturalisation—Right to Vote.

To the Editors of the Law Journal.

Dear Sirs,—Will you kindly answer the following queries in the next number of the Law Journal?

A emigrated many years ago from Ireland to the United States, became naturalised, and voted there. While he was thus an American citizen, his son B was born, became of age, and voted as an American citizen. In 1870 A and B removed to Canada, and have since taken no steps to divest themselves of their American citizenship. At a late parliamentary election here, both A and B voted, having both been sworn. Had either or both a right to vote, and are they not both American citizens?—I am, &c.,

Inquirer.

[The English Alien Act of 1870, (33 Vict. cap. 14, sec. 6) provides that any British subject who has at any time before, or may at any time after the passing of the Act, when in any foreign state, voluntarily become naturalised in such state, he shall from and after the time of his so having become naturalised in such state, be deemed to have ceased to be a British subject, and be regarded as an alien, unless, within two years after the passing of the Act, such person makes a declaration that he is desirous of remaining a British subject. This Act was held to apply to John Mitchell, the member for Tipperary, who, being a British subject, became naturalised in the United States in 1853, and did not make the necessary declaration within two years after the passing of the Act of 1870. He was held to be an alien. See *Tipperary case*, 3 O'M. & H. 19. By section 10 clause 3 of the same Act, the child of a British subject so becoming an alien, who during infancy becomes a resident of such foreign state, and has according to its laws become naturalised therein, shall be deemed an alien. We think, therefore, that both A and B were aliens, unless re-naturalised under the Canada Acts, and had no right to vote.—Eds. L. J.]

Dower.

To the Editor of The Law Journal.

A gave to B, his son, 100 acres. A died, leaving his son B executor. B died, leaving wife (C) and two small children, aged two and four, and no will; C administered, and therefore became administratrix to A's executor. One of B's children died, and a week or two after the other died, the widow being in possession.

Can C (widow) claim to hold by descent from last of B's children, the land having come to her husband as gift from B's father, A? If not, would she have anything more than her one-third dower since B's death? B died about fifteen years ago; would C then have to account to B's legal representatives (three brothers and two sisters) for the overplus, annual two-third profits of estate?

If C has only dower, can B's brothers and sisters dispose legally of their interest after setting off C's one-third as required by law? Finally, what claim has B upon the estate?—I am, &c., S.

[It is not within our province to answer questions of no general interest; but we follow the example of legal journals in England in publishing the questions, to be answered through our columns by such person as may desire to do so.—Ed. L.J.]

FLOTSAM AND JETSAM.

TRIAL BY JURY.—The time-honoured institution, Trial by Jury, is occasionally playful, often stupid, but its antics are never so funny as when it gives way to rage and a frantic desire to "do justice (not only) between the parties" *to the action*, but between all other persons interested. Probably the jurors in the case that we report below had heard something of the fusion of law and equity, and thought they would act upon the equity theory of settling the rights of all the parties, and so avoid circuity of action. The result was not happy, though the effort to help the widow at the expense of the railway company was praiseworthy. The case was tried at Gloucester, before Mr. Justice Grove, and will be found in *The Times* of Aug. 13th.

MALLAM V. ATTREE.

Mr. Matthews, Q.C., and *Mr. Bosanquet* were for the plaintiff; *Mr. A. S. Hill, Q.C.*, and *Mr. Jelf* for the defendant.

This was a claim arising out of the terrible accident that occurred on the Great Western Railway at Shipton on the 24th of December last.

It appeared that the defendant, a widow lady, and sister-in-law of Mr. Whalley, was a passenger in the train that night, and that she was one of those who received considerable injury. She was taken in the first instance to the house of Dr. Hitchings, at Oxford, and afterwards, at his suggestion, was removed to the King's Arms Hotel. She remained there seven weeks with her daughter, who was also a sufferer by the accident; and the present action was brought by the landlord of the hotel to recover £117 for the use of the hotel and for necessaries prescribed for the defendant during her stay in the hotel.

It was not disputed for the defendant that this charge was extravagent, except as to £4, which was paid into court, that everything that was furnished was not necessary as well as reasonable; but it was contended that if anybody was liable for the hotel bill it was the Great Western Railway Company, and not Mrs. Attree. It appeared that a Dr. Cooper had come to the hotel while the defendant was there on the part of the railway company, and had directed that everything should be done for her which the circumstances of the case required; and it also appeared that the company had been applied to for the payment of the bill, but had refused on the ground that they were not liable.

The learned judge summed up the case at considerable length. He directed the jury that if a person be in an absolutely helpless state, and anybody else chooses from charity to take the person, being unconscious, into his house, and then to assist him from kind motives with food and shelter, there is no implied contract on the part of the person so befriended to pay for the benefits received, because he was unconscious, and could not therefore have a contracting mind. But though this was the law, it would only have a partial application in the present case, as there was no pretence that the defendant had been unconscious all the time. The question then would remain, whether, after the defendant had regained consciousness, there was any ratification on her part, expressed or implied, of her liability with regard to the plaintiff. As to this the jury would have to look at her conduct, and if they found that she received the hotel bills from time to time without complaint, that would be evidence from which they might imply ratification. Coming, then, to the main question, his Lordship said the jury would have to say whether there was the ordinary implied contract between the plaintiff and the defendant, or whether the plaintiff expressly did not treat the defendant as liable, but intended exclusively to give credit to the Great Western. If the application to the defendant was a mere afterthought, the defendant would not be liable, but if, on the other hand, the plaintiff never gave up looking to the defendant as ultimately liable, and only applied to the company as an experiment or test, then the defendant would be liable.

The jury retired to consider their verdict. After an absence of nearly an hour, they returned into court, and said that the verdict was against the Great Western Railway for £100.

The learned judge reminded them that the Great Western had nothing to do with the action, and that they must find either for the plaintiff or the defendant.

The jury considered a few minutes, and then announced that the verdict they meant was one for the defendant for £100.

This second and reconsidered finding was received with loud laughter in the court, and the jury were again sent back.

The foreman then said that the jury were agreed upon a verdict for the plaintiff for £75, or as much less as his Lordship pleased.

His Lordship said that what he pleased was not what they had to consider, and the jury then repeated the verdict without that qualification.

His Lordship said he could only enter a verdict for £17, but he should be obliged to tell the Court that it was an unsatisfactory verdict.

The jury were then asked whether their verdict was to include the £4 paid into court, and upon their answering in the affirmative, a verdict accordingly was entered for the plaintiff for the amount.

His Lordship stayed execution, and said he would consider till to-morrow morning whether he certified the costs.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Easter Term, 38th Victoria.

DURING this Term, the following gentlemen were called to the Degree of Barrister-at-Law, (the names are given in the order in which the Candidates entered the Society, and not in the order of merit):

No. 1321—Alfred Howell.
Henry Carscallen.
John Butterfield.
John Alexander Macdonnell.
William F. Ellis.
Mortimer Augustus Ball.
John Turnbull Small.
Oliver Aiken Howland.
Alexander Mansel Greig.
Adam Rutherford Creelman.
John Gunn Robinson.
J. Stewart Tupper.
John Highett Thom.
John Davison Lawson.
Charles James Fuller, under special act.
No. 1336—Edward Stonehouse, " " "

The following gentlemen received Certificates of Fitness, (the names are given in order of merit):

John Turnbull Small.
Alexander Mansel Greig.
Harry Symons,
Hugh O'Leary.
Edwin Hamilton Dickson.
John Highett Thom.
Oliver A. Howland.
Michael Kew.
J. Stewart Tupper.
George A. Radenhurst.
John D. Lawson.
J. Boomer Walkem.
Snelling Roper Crickmore.
Henry Auber Mackelcan.
John A. Macdonnell.
William Hall Kingston.
Edward Ellis Wade.
John Boultbee.
George Bruce Jackson.

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

Junior Class.

No. 2537—William Hodgins Biggar.
George Anderson Somerville.
William Barton Northrop.
Arthur Oheir.
Robert Hodge.
William H. Pope Clement.
Elgin Shoff.
Horace Edgar Crawford.
Earnest Joseph Beaumont.
John Philpott Curran.
James Henderson Scott.
William Berry.
Eugene de Beauvoir Carey.
Gideon Delahey.
Skeffington Connor Elliott.
Gerald Francis Brophy.
John Lawrence Dowlin.
Wm. J. McKay.
William Henry Deacon.
John Woodcock Gibson.
John Baptiste O'Flynn.
Allan McNab.
Ivor David Evans.
Reginald Boultbee.
George W. Baker.
James Craigie Boyd.
Archibald Stewart.

No. 2563—Charles Henry Cogan, as an Articled Clerk.

A change has been made in some of the books contained in the list published with this notice, which will come into effect for the first time at the examinations held immediately before Hilary Term, 1876. Circulars can be obtained from the Secretary containing a list of the changed books.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. HILLYARD CAMERON,
Treasurer.