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TABLE OF CASES

REPORTED AND NOTED IN THIS VOLUME.

TABLE OF CASES.

TABLE OF ELECTION CASES

REPORTED IN THIS VOLUME.

CANADA.

ONTARIO.

DIARY FOR JANUARY.

1. Fri..*Circumcision.* Master and Registrar in Chancery and Clerks and Dep. Clerks of Crown to make returns. Taxes computed from this date.
3. SUN..*2nd Sunday after Christmas.*
4. Mon..Heir and Dev. sit. beg., County Court begins. Municipal Elections.
6. Wed..Epiphany. Christmas Vac. in Chy. ends.
7. Thurs..Toronto Assizes begin.
9. Sat..Emperor Napoleon III. died, 1873. County Ct. Term ends.
10. SUN..*1st Sunday after Epiphany.*
11. Mon..Hamilton Assizes begin.
12. Tues..Sir Charles Bagot, Governor-General of Canada, 1842.
14. Thurs..Treas. to make ret. to P. Treas. under Mun. Act, s. 273.
15. Fri..Regs. to make ret. to Co. Treas. under 35 Vic., c. 27, s. 7.
16. Sat..Candidates for Atty. to leave articles with Sec. of Law Soc.. 28 Vic. c. 21, s. 5.
17. SUN..*2nd Sunday after Epiphany.*
18. Mon..First meeting of Mun. Council (Exc. Co. Council).
19. Tues..Heir and Dev. sits. ends, Prim. Ex. of Stud. & Art. Clerks.
20. Wed..Ann. Meet. Electoral Div. Soc. (35 Vic. c. 32. s. 3).
21. Thurs..Australia colonized, 1788.
24. SUN..*Septuagesima.*
26. Tues..Intermediate Exam. (written). 1st meet. Co. Council.
27. Wed..Intermediate Exam. (oral).
28. Thurs..Exam. for admis. as Atty. Candidates for call to pay fees.
29. Fri...Ex. for call. Last d. for non-res. to notify Ck. of Mun. 32 V c. 36, s. 6.
30. Sat..Examination for call with honours.
31. SUN..*Sexagesima.* Earl of Elgin, Gov-Gen., 1847.

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THE

Canada Law Journal.

Toronto, January, 1875.

The Sheet Almanac for 1875 is issued with this number. The Index for the last volume is in the printer's hands and will be issued with the next number.

By an Act of the last Session of the Ontario Legislature the judges may shorten the period of Easter or Michaelmas Term to two or three weeks, or may from time to time increase the length of Hilary or Trinity Term to three weeks. It also provides that the Courts shall not transact in Trinity Term any business before the full Court except in regard to matters arising subsequently to the previous Easter Term.

It takes a long time apparently to settle the meaning of the word "Trader" under the Insolvency Acts. The most recent decision is that in *Smart* v. *Duncan*, in which the judgment of the judge of the County Court of Middlesex was sustained by the Court of Queen's Bench. The question was whether a private banker and broker engaged in buying and selling American and other foreign money and dealing in stocks and current funds, is a trader within the Act, and it was decided in the affirmative.

We observe that it is stated in the English law papers that the long pending controversy among the English Common Law Courts, touching the meaning to be given to the words "cause of action," has been adjusted. The point arising on the construction of the 18th Sect. of the first Common Law Procedure Act (1852) was before the Court of Common Pleas in *Vaughan* v. *Weldon*, last January. Whereupon a

general conference of the judges was held and a majority determined in favour of the exposition given to these words by the judgment of the Common Pleas. All the judges adopted this conclusion so that now there is complete unanimity on the result, viz: that this expression means "the act on the part of the defendant which gives the plaintiff his cause of complaint."

Judge Stonar, of the County Court at Reading in England, has given an elaborate judgment on the liability of railway companies for the detention of passengers to their respective destinations within the certain fixed times specified in their time-tables. The Company in question had advertised that they did not undertake that the trains should start or arrive at the time specified in the bills, and that they would not be answerable for any loss, inconvenience, or injury which might arise from delays or detentions, unless upon proof that such loss, etc., arose in consequence of the wilful misconduct of the Company's servants. His Honour held that such a notice was practically invalid and did not limit the common law liability of the Company. An appeal from this decision to the Queen's Bench has already been lodged, and we may expect the law to be definitely settled by the Supreme Court upon this important subject. See *Bealle* v. *Great Western Railway Company*, 18 Sol. J. 972.

PROCEDURE BEFORE MAGISTRATES AND APPEALS FROM THEIR DECISIONS.

Two Acts passed during the session which has just closed places procedure before Magistrates for summary conviction and the practice of appeals from their decisions upon a very satisfactory footing.

Modern legislation has added vastly to the jurisdiction of Magistrates, already large, for the summary trial of petty offences and infringements of the Statute law. The saving of delay and expense in the enquiry and the power of dealing with cases upon the spot has tempted perhaps an excess of legislation in this direction. The increased range of subject matter and the enlarged powers for punishment given to Magistrates, are in the aggregate something exceedingly formidable, and could not exist without the power of appeal, and when it is remembered that this really vast jurisdiction is committed to men who have had no previous training, the importance of providing them with full and detailed instructions in their duties and all necessary forms can be easily understood.

This was done by an Act of the Dominion in respect to crimes, and an old Act of the late Province did the same to some extent for other matters within the cognizance of Magistrates. But it was embarrassing to Justices to be working under two codes of procedure, often in doubt as to which was applicable to the particular case, and liable from this circumstance at any time to commit errors, rendering the administration of justice uncertain and insecure, besides leaving the Magistrates open to the danger of actions for damages.

The subject has been very properly dealt with by Attorney-General Mowat in the brief but important Act respecting the operation of the Statutes of Ontario given on another page. This Act, amongst other things provides a path of safety for Magistrates by enacting one uniform procedure in cases before Magistrates—that is, in effect, that in cases other than for crimes, (all matters in fact which the Provincial Legislature has power to legislate upon,) the procedure shall be the same as under the Statute of the Dominion relating to summary proceedings. It is only those who have had some practical acquaintance with the

difficulties that beset Magistrates, who can understand the great value of this enactment and the confidence and vigor with which it will inspire the administration of "Magistrates' law."

In respect to appeals from summary convictions similar difficulties existed, a double procedure differing in many particulars, and this difficulty engendering much embarrassment and often failure of justice. Attorney-General Mowat's Act also remedies this by making the law uniform, and hereafter the practice and proceedings on appeal to the sessions and preliminary thereto, and otherwise in respect thereof, will be the same as the practice and proceedings under the statute of the Dominion on appeals to the General Sessions of the Peace, but when the appeal is under a statute passed by the Legislature of Ontario, the important provision is retained, that parties may submit evidence *in addition* to the evidence at the original hearing. There are several points in this valuable enactment which invite remark, but at present we must content ourselves by noticing generally the beneficial changes made.

In connection with this Act is another, which is given also on another page—the Act respecting procedure on appeals to the County Judge without a jury.

This new tribunal in appeal, first appeared on the statute book, we believe, in two Acts passed in the session before last. And, as in appeals to the Sessions, it was desirable that the law on the subject should be found in one statute, capable of being engrafted upon subsequent Acts by a simple reference.

"No doubt," said an experienced County Judge in a judgment reported some months ago, "the object of giving "the matter in appeal to a Judge without "a jury was designed to secure an im- "proved tribunal—one not likely to be "disturbed by irregular influences—from "which consistent and effective execu- "tion of the law might be expected." That such would be best secured by a tribunal of the kind we have long thought, and we are satisfied that when its value has been tested by experience, every case in which hereafter there is an appeal from a Magistrate's decision it will be given to the County Judge without a jury, as provided in the Act before us.

We will not at this time enter upon any detailed examination of this Act. We cannot, however, forbear remarking that it seems to have been carefully framed, full and complete in all its details, and the suitable forms appended add value to this excellent enactment, and it is a matter of congratulation, as we have already said, that procedure before Magistrates for summary conviction and the practice of appeals from their decisions, is *now* placed upon a satisfactory footing.

RECENT APPEALS BEFORE THE PRIVY COUNCIL.

Probably no cases have ever gone from this country to the final court of appeal of equal importance with those lately decided by the Judicial Committee of the Privy Council. We refer to the cases known as the Guibord case and the Fraser will case. In the former a question of vast importance to the Roman Catholic citizens of this country was before the court. As our readers will remember the point at issue was whether a priest and his churchwardens had power to refuse burial with the rites of religion and in consecrated ground, to a parishioner who had fallen under the displeasure of the church authorities by his connection with a society which the Pope had forbidden his children to belong to, but who had not been formally excommunicated according to the ritual of Quebec. The respondents to this appeal, the *curé* and church wardens, unable to prove such excommunication as the forms of their church demand in order to justify the refusal

of ecclesiastical burial, took the position that Joseph Guibord was in their view *un pecheur public*, and that on this ground their course of proceeding was justifiable. We are not surprised to find their Lordships denouncing such a position as one involving the recognition of the Inquisition. Their Lordships in the course of the judgment observed that, even regarding the Church of Rome in Canada as a private and voluntary religious society merely, resting only upon a consensual basis, courts of justice were still bound when due complaint was made that a member of the society had been injured as to his rights in any matter of a mixed spiritual and temporal character, to enquire into the laws or rules of the tribunal or authority which had inflicted the alleged injury. Admitting that forfeiture of the right to ecclesiastical burial, involving as it did degradation and infamy, might be legally incurred, the respondents had failed to shew that Guibord at the time of his death was under any such valid or ecclesiastical censure as would make the refusal of sepulture justifiable or legal, according to the Quebec ritual or any law binding on Roman Catholics in Quebec. The committee would advise her Majesty that the judgment of the Court of Revision and the Court of Queen's Bench in Quebec should be reversed, and that a mandamus should be issued to the respondents directing them to prepare a grave for the burial of Joseph Guibord in that part of the cemetery in which the remains of Roman Catholics who received ecclesiastical burial were usually interred.

In the Fraser will case the attempt of the heirs of the late Hugh Fraser to set aside the will by which he left the bulk of his property for a free library, museum and gallery in Montreal, has been happily defeated. The decision turned upon the effect of certain provisions in the Quebec code bearing upon the law of mortmain. The main question was whether an article in the edict of Louis XV of 1743 was still in force or not, and that matter was decided in the negative.

AN ANNUAL BAR DINNER.

We believe that the idea of having an annual Bar dinner at Osgoode Hall is not entirely a new one. We confess that it is an idea which, for many reasons, commends itself to us. As British subjects we share with our lay brethren an hereditary and deep-seated reverence for the public dinner as an essentially British institution, and we have a strong faith in it as a means of binding together the members of any association, and promoting and maintaining an excellent *esprit de corps*. What guild or profession in our social system fails to recognize the virtues of the public dinner? The doctors, the volunteers, the politicians, the tradesfolk—all dine together with cheerful regularity, while it may be said of us lawyers that we

> Still go on refining,
> And think but of convincing, while they think of dining.

There must be something wrong about this. In England legal banquets have been always looked upon as an important agency in legal education. Till quite lately, we believe, it was thought that a barrister was sufficiently qualified for his profession if he had "eaten" a certain number of terms in his Inn of Court, a place the very name of which has about it a savour of good cheer. We do not feel called upon to explain the mystic connection between the roast beef of Old England and the high character of the English bar, but it is a notable fact that the English bar is no less famed for its dinners than its learning and acumen. From the earliest days the law has set a noble example of the way to dine worthily, an example which we degenerate descendants treat with cold in-

difference. In the days of the Tudors, for instance, the appointment of a sergeant-at-law was the occasion of great festivities in Westminster Hall, and those who hoped for further advancement took care on such occasions to be profuse in their private contributions to the entertainment. One of the grandest displays chronicled was made when Sir Edward Montagu "put on the coif" in the reign of Henry VIII. Business was cast to the winds and five days were wholly devoted to banqueting and holiday-making. On one famous day the King himself, and his Queen—we may be pardoned for forgetting which—graced the banquet with their presence, as well as all the foreign ambassadors, all the judges, the Lord Mayor and Aldermen of London, all the King's Court and many of the nobility. "It were tedious," says the grave Dugdale, who narrates the proceedings with pardonable pride, "to set down the preparation of fish, flesh and other victuals spent in this feast, and would seem almost incredible, and wanted little of a feast at a coronation." Henry, who according to all orthodox notions was no contemptible judge of a dinner, declared that the entertainment was "much to his liking," and in due time made Sir Edward Montagu, to whose munificence the success of the affair was chiefly due, Chief Justice. In 1555 an equally splendid festival celebrated the call of seven barristers of different degrees of eminence to the honour of Sergeant-at-Law. This was shortly after Queen Mary's marriage, and it was desired to make a great impression upon Philip and his Spanish nobles of the riches and magnificence of England. It is a source of honest satisfaction to find that the English Bar was looked to as the body most fit to represent the splendour of England on this occasion. Each of the barristers about to be promoted voluntarily furnished a noble contingent to the banquet at which the royal party was entertained, which Dugdale has preserved for us in conscientious detail. He who would appreciate truly the dignity of the Law need only look into the *Origines Juridiciales* and study the princely bill of fare which the lawyers of that day set before the Spaniards.

Let us without aspiring to feast princes and ambassadors lay the tables of hospitality in the library at Osgoode Hall once a year and gather around them in the spirit of good fellowship, and endeavour for once to conquer the feeling that we have come there to tax an attendance. We trust the Benchers will give the matter the consideration it deserves. An annual Bar dinner might be held say on the last Friday in Michaelmas term. We suggest the *last* Friday because we have in remembrance a story clothed with the authority of Lord Eldon, which teaches a lesson not to be neglected in matters of this sort. At the assizes at Lancaster Dr. Johnson's friend, Jemmy Boswell, was once, as the story goes, found on the pavement by his brother lawyers—inebriated. A guinea was subscribed for him without delay, and was sent him in the morning with a brief with instructions to move for what the conspirators denominated the writ of *Quare adhæsit pavimento*, and observations duly calculated to induce the victim to think that it required great learning to explain the necessity of granting it to the judge, before whom he was to move. Boswell sent all round the town to attorneys for books that might enable him to distinguish himself, but in vain. He moved however for the writ, making the best use he could of the observations in the brief. The judge was perfectly astonished, the audience amazed! The judge said, "I never heard of such a writ; what can it be that adheres *pavimento*? Are any of you gentlemen **at**

the Bar able to explain this?" The Bar laughed. At last one of them said, "My Lord, last night Mr. Boswell *adhæsit parimento*. There was no moving him for some time. At last he was carried to bed and he has been dreaming about himself and the pavement!" The story is more remarkable for its age than its probability, but it contains a moral of sufficient value to make it bear repetition.

LAW SOCIETY.

Michaelmas Term—38 Victoria.

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

Monday, 16th November.

The several gentlemen whose names appear in the usual lists were called to the Bar, and received Certificates of Fitness.

The petition of W. D. Pollard, Esq., to be examined orally for call to the Bar, under Act of Ontario Legislature, 32 Victoria, cap. 85, was granted.

Tuesday, 17th November.

The abstract of balance sheet was laid on the table.

The salary of Mr. Joseph C. Cooper, the assistant in the Library, was fixed at three hundred and fifty dollars per annum.

The Report of the Examining Committee was received and adopted.

Mr. Evans was appointed Examiner for next Term, and the usual fee was directed to be paid him for his services this Term.

The wages of Cuthbert Lendall, the Engineer's assistant, were fixed at thirty dollars a month.

On the application of Mr. P. J. M. Anderson for a return of the fee paid by him on his passing the Articled Clerks' Primary Examination, he having since passed the Preliminary Examination of Students-at-Law, and paid the fee thereon. It was ordered that half the fee be returned to Mr. Anderson.

A committee was appointed to prepare a memorial to the Government on the subject of the appointment of Short-hand Reporters to the Courts, and to present the same to the Attorney-General.

The same Committee was charged with the arrangement with the Attorney-General of the payment of the expense incurred in the construction of the new boilers lately placed in the boiler house, and with the negotiation of all matters connected with heating and lighting Osgoode Hall.

Æmilius Irving, Esq., Q.C., was elected a Bencher in the place of the Hon. John Crawford, Q.C., resigned.

On motion made it was ordered that the Common Law Courts be requested to have a peremptory list of all new trial cases during Term.

Instructions were given the Secretary as to the course to be taken in cases when the Annual Attorney's Certificates are not taken out.

Mr. Martin was elected a member of the Finance and Reporting Committees.

November 21st.

Mr. Elliott received a Certificate of Fitness.

The Chairman of the Committee on Rules laid on the table the Report of the Committee, containing the rules not already printed.

The Petition of Mr. Hall to be allowed twelve months on his examination in the Law School in Easter Term last, was refused.

The Rules to be suggested to the Common Law Courts were submitted by the Treasurer and adopted.

The Memorial of the Law Society to the Legislature of Ontario was submitted by the Treasurer and adopted.

Friday, December 4th.

On petition of Mr. Gamon for examination for call to the Bar, under a special Act: Ordered, that Mr. Gamon do come before convocation for examination on the first day of next Term.

The petition of Mr. Murdoch for the consent of the Society to an application on his part to the Legislature for a Bill authorizing his call to the Bar, was refused; the Society declining to interfere.

The petition of Mr. Hughes was not granted on the grounds on which his application was made, but he was to be informed that he may apply for examination in Easter Term.

On motion made it was

Resolved: "That the Benchers in Convocation deeply deplore the sudden death of their fellow Bencher, Matthew R. VanKoughnet, Esquire, during this Term, and with heartfelt feelings of remembrance, sympathize with his family in their affliction."

Resolved: "That a copy of the above resolution be sent by the Treasurer to Mrs. VanKoughnet."

Ordered, that a call of the Benchers be made for the first Tuesday of next Term for the election of a Bencher in the room of M. R. VanKoughnet, Esq., deceased.

REPORT OF COMMISSIONERS FOR CONSOLIDATING STATUTES.

The following is the report of the Commissioners for consolidating the Statutes. As the subject is one of much general interest, we publish the report in full:

To His Excellency the Hon. John Crawford, *Lieutenant-Governor of the Province of Ontario*:

The Commissioners appointed for the Consolidation and Revision of the Statutes affecting the Province of Ontario, have the honor to report as follows:

By commission under the great seal of the Province of Ontario, bearing date the 24th day of June, A. D. 1874, the undersigned were appointed by your Excellency Commissioners for—

"Examining, revising, classifying and consolidating such of the Public General Statutes which have been passed by the Parliament of the late Province of Canada, and which apply to the Province of Ontario, as the Legislature of the Province of Ontario has jurisdiction over; and also the Statutes passed by the Legislature of Ontario; and also, for examining and arranging in the manner most convenient for reference, the Public General Statutes which are in force in the Province of Ontario, and which the Legislature of Ontario has not jurisdiction over; including the statutes of the Imperial Parliament, printed with the Consolidated Statutes, as well as all statutes which have since been passed by the Imperial Parliament, and which affect Ontario; and also the statutes passed by the Parliament of the late Province of Canada, and by the Parliament of the Dominion of Canada."

We understand that the expected result of the work of the Commissioners is a collection in a form as compendious as possible of all the Public General Statutes in force in Ontario.

Owing to differences in the character and sources of these Statutes, our duties in regard to them are of a two-fold nature.

One class of Acts, namely, those over the subjects of which the Legislature of Ontario has no jurisdiction, we have no authority to alter, either as respects the language of the enactments themselves, or their division or subdivision into chapters or sections. These Acts are to be printed as they stand, omitting, however, such portions as appear to be *effete* or inapplicable to Ontario, or to have been by later enactments superseded or repealed, and arranging the remaining portions in such order and under such titles as we may consider "most convenient for reference." The addition of notes explanatory of our method of arrangement and of the omission of particular sections, or for the purpose of directing attention to other and cognate enactments, the Commissioners consider essential to "convenience of reference."

With regard to the other class of Acts, whic relate to matters now placed by the British North America Act within the control of the Provincial Legislature, our duty is of a much more extensive character, and appears to involve the following particulars:

1. To ascertain which of such Statutes or what portions thereof are still in force;

2. To classify and arrange these and their several clauses in such manner as may seem

best, retaining, as a rule, the original wording, But wherever it may be necessary,

3. To abbreviate and improve the language as far as may be advisable for the purpose of consolidation, but not so as to change the law.

With reference also to the latter class of Acts, we are to report to your Excellency any suggestions as to amendment or repeal which may seem to us requisite or desirable. This, however, we regard as an independent branch of our work, to be kept distinct from the work of consolidation ; and in this respect our duties are less extensive than those entrusted to the Commissioners appointed in some other countries for the revision or consolidation of the statute law. For instance, the Commissioners in New Brunswick in 1854 were directed "to consolidate, simplify in their language, revise, and arrange in one uniform code the Acts of the Assembly, incorporating therein all such alterations and amendments as they should deem necessary." The Commissioners in Nova Scotia were empowered to consolidate, simplify in their language, and publish the statutes in one uniform code.

The combination of powers of consolidation and amendment has in England been carried out in several instances with considerable success in relation to detached portions of the law, notably in the measures known as "Peel's Acts" relating to the criminal law passed in 1826 and 1831 ; but whenever, as in Lord Brougham's scheme in 1833, for the improvement of the statute book, an attempt has been made to apply this system to the consolidation of the whole of the statute law, the very extensiveness of their powers has proved a source of embarrassment to the Commissioners, and rendered nugatory the whole scheme. The task of emendation once embarked upon, the Commissioners found themselves imperceptibly gliding into codification, a task the impossibility of which, in relation to the statute law alone (the office of which is merely to supply the defects of the common law) has more than once been demonstrated by experiments conducted under the most favorable auspices.

Were even a mere collection made of the various Acts or parts of Acts in force, without more alteration in their language than is rendered absolutely necessary by the re-arrangement of the selected enactments, the Legislature would have to rely to a great extent upon the fidelity and accuracy of the Commissioners for the extraction from the whole mass of the statute law, of all the enactments bearing upon each particular subject ; but if, in addition amendments are embodied in the revision, and the whole law again submitted to the Legislature, the danger of error is increased, and the labor imposed upon the Legislature greatly augmented ; for, unless the amendments of the Commissioners were taken indiscriminately upon trust, it would be necessary that the Legislature should enter into a minute investigation of the probable effect of every alteration proposed, until a task, already one of no small labor, would become impracticable from the length of time necessary for its due execution.

The plan pursued by the Royal Commissioners in England, appointed in 1854, for the purpose "of consolidating the statutes of the realm, or such parts of them as they might find capable of being usefully and conveniently consolidated," was to take up first the Acts relating to some particular branch of the law, and when these were consolidated, to proceed with another tolerably extensive division, and so *seriatim*, until the whole consolidation should be completed.

This method of proceeding was strongly condemned by several members of the Commission, amongst others by Sir A. J. E. Cockburn and Sir Richard Bethell, the Attorney-General and Solicitor-General of the day, who advocated as a preliminary proceeding, the preparation of an analytical outline of the whole subject. The former plan, however, prevailed, and the consolidation of the criminal law was actually accomplished. Specimen bills for the consolidation of the law relative to Marriages, Registration of Marriages, Bills of Exchange, Aliens and Executors and Administrators, were also prepared and submitted by Lord Cranworth to the House of Lords, but they never passed into law.

The system adopted by the Royal Commissioners possesses some advantages, where, as in England, the mass of the statute law is very large. Important branches such as Commercial, Criminal, or Real Property Law, can thus, in a comparatively short time, be presented to the public in a compact form, instead of their production being delayed until the completion of the other portions embraced in the general scheme. Where, however, as in Ontario, the number of the statutes to be revised is comparatively small, and a consolidation of the whole within a moderate period is feasible, there would seem to be no sufficient reason for proceeding otherwise than upon a general analytical outline comprehending the whole of the subjects to be dealt with. A greater degree of perspicuity may thus be attained and, provided the outline arrangement is properly planned,

the consolidation should not be open to the objection that cognate portions of the law are placed under several heads, or matters relating to property under heads relating to personal duties.

After a consideration of the plans pursued by other Commissions having similar objects, we proceeded to discharge the duties entrusted to us in the following manner:

As preliminary to the actual work of consolidation it was obviously necessary,

1. To determine what Acts or parts of Acts, within the purview of the Commission, are in force in Ontario.

2. To arrange these under the various heads and titles of an appropriate classification.

In order properly to perform these duties, a thorough examination in detail of the whole of the Statutes had to be made. It was found most convenient, first of all commencing with the Acts of the last Session, to trace back to the Consolidated Statutes of Canada and Upper Canada, noting, in the margin of the Acts affected, repeals, amendments and further provisions; and then beginning with the Consolidated Statutes, to proceed in chronological order, making, in respect to each Act the following inquiries:

(*a*) Whether the Act was of a public general character?

(*b*) Whether it was one having only occasional or temporary operation?

(*c*) Whether (if the Act was passed subsequently to Confederation) it was in its nature or from its scope applicable to Ontario, or,

(*d*) Whether (if it was an Act of the late Province of Canada) it was originally applicable to Upper Canada?

(*e*) If so, whether it is now applicable to Ontario?

(*f*) Whether it was *effete* or had expired?

(*g*) Whether it was subject to the Legislative authority of the Dominion Parliament or of the Ontario Legislature?

(*h*) Whether it had been repealed or superseded by any subsequent enactment of the Legislature now having legislative authority over the subject matter?

(*i*) Whether, if repealed or superseded, the abrogation was total, or only effectual so far as related to the subjects over which the repealing Legislature had jurisdiction?

(*j*) What was the effect of the amendments which had been made (if any)?

The result of this examination has been embodied in two tables.

The first is a chronological index of the statute law as it stands. It shows, by means of a short note to each Act, which of the statutes are in force, which of them have been superseded or repealed, either partially or entirely, and which of them have expired, become *effete*, or been disallowed; distinguishing public general from local, occasional, temporary or private Acts; and also indicating which Acts are subject to the Legislative authority of the Dominion Parliament, and which to that of the Ontario Legislature.

The second table is in two parts, corresponding to the division of the statutes caused by the two different sources of legislation in Canada. It shows the classification at present proposed to be adopted in the completed form of the work; and under the particular heads are arranged, in a general way, the various Acts which appear by the first table to be in force. With regard to the classification proposed—as that adopted by the Commissioners in 1859, besides being excellent in itself is one with which the readers of the Statutes are comparatively familiar, we have taken it as the basis for the new classification, making only such alterations as are necessary, and are naturally suggested by secs. 91 and 92 of the British North America Act.

The preparation of these tables has been a task of considerable difficulty. The total number of statutes to be examined amounted to 2,707, of which about 1,100 were of a public general character, and the questions which arose were both numerous and perplexing.

Many of these questions were such as must be expected in all revisions of statutes. For instance, whether an Act is of such a public general character as to make it proper to be consolidated is not always a question of easy solution. Again, the mode of procedure which seems to be necessary in all parliamentary legislation, has always constituted a fertile source of difficulties—subsequent Acts repeat sections of former Acts upon the same subject, repeal portions or contain provisions more or less at variance with the prior enactments without expressly repealing them, and many instances are to be found of repealing statutes having been themselves repealed without the use of any words indicating an intention to prevent the revival of the original Act; but embarrassment and delay proceeding from this source have chiefly arisen from the employment of repealing clauses in the form "so much of any Acts heretofore passed as relates to" a particular subject, or "all Acts or parts of Acts inconsistent with

this Act, are hereby repealed"—forms which are as troublesome to the interpreter of an Act as they are convenient to the draftsman, and have necessitated such a minute examination of many of the longest Acts as very seriously to retard the progress of the Commissioners.

Besides difficulties which are common to all revisions of Statutes, we have had to contend with others which form a special feature of the present revision.

These arise from the creation, by the British North America Act, of two distinct sources of legislation as an element in the constitution of the Dominion of Canada, owing to which the Province of Ontario is subject not only to laws passed by its Local Legislature, and valid within its territorial limits alone—but also to laws passed by the Parliament of the Dominion, which affect Ontario only as one of its constituent parts. No analogy to this state of things is to be found even in the various revisions of the Statute Law in the United States, whose constitution of Confederated States, subject to a federal Government, in some other respects resembles the constitution of the Dominion of Canada. The revisions of the Statutes in the various States, however, merely regard the State Acts, and do not deal with enactments of Congress which affect the State in common with the rest of the Union.

Owing to the comparatively short time which has elapsed since Confederation of the Provinces, many of the questions of jurisdiction arising under the British North America Act have not as yet come up for consideration in Parliament, or been brought before the courts for judicial opinion; yet, to separate the statutes into two parts corresponding to the two divisions caused by the different sources of Canadian legislation, would be practically to determine many of the questions of jurisdiction that can arise. We should hesitate to dispose thus summarily of matters of such importance, even if the utility of adopting such a course were more apparent, and the reasons for each decision sufficiently obvious; but the questions would not finally be disposed of, and the necessarily concise wording of the British North America Act leaves the proper place of many Acts an open question.

Other difficulties peculiar to the present consolidation arise from the defective powers which any Commission appointed by your Excellency alone, must necessarily possess, in relation to statutes not within the legislative authority of the Legislature of Ontario.

By section 129 of the British North America Act it was enacted that all laws in force in Canada should continue in force in Ontario and Quebec, as if the Union had not been made; subject, nevertheless, to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislatures of Ontario and Quebec, according to their respective authority.

With regard to many subjects embraced in Acts of the late Province of Canada, but in relation to which the Dominion Parliament has now exclusive jurisdiction under secs. 91 and 92 of the British North America Act, we find that that Parliament has exercised its legislative authority, by the passing of what seems in each case a comprehensive enactment, intended to embrace the whole of the particular subject; but the Act of the Province of Canada upon the same subject having been either entirely ignored, or repealed only so far as inconsistent with the Dominion Act, the sections of the former which are unaffected by the latter appear to be still in force in Ontario and Quebec, although they have no application to the rest of the Dominion.

Where cases of this kind occur, the only mode in which we can proceed, appears to be as follows:—By a careful examination of the two Acts, to come to a conclusion as to what portions of the prior statute are repealed or superseded by the Dominion Act, and omitting these, to print the remaining portions in the form of *addenda* to the Dominion Act, to which, however, they will occasionally be found to form rather incongruous pendants.

Inasmuch, also, as the power of legislation in matters relating to criminal law is given exclusively to the Dominion, it is impossible for the Ontario Legislature to enact any portion of this branch of the law, and therefore sections relating to criminal matters contained in any statute of the Province of Canada, over which in other respects the Ontario Legislature has jurisdiction, must be printed amongst the subjects within the exclusive legislative authority of the Dominion.

The Imperial Acts affecting Ontario, and with which we are directed to deal, are not numerous, but have not as yet occupied our attention.

With respect to the Canadian Statutes, the work of consolidation has been so far proceeded with that the law has been collected from the numerous Acts through which it lay dispersed, and has been to a certain extent arranged under appropriate heads. It still remains, however, in the shape in which it was originally enacted,

with all those differences of language and form which were inevitable from the diverse habits of thought and expression peculiar to the successive draftsmen of the various Acts. All these dissimilarities have next to be harmonized: redundancies expunged; contradictory, discordant, or irreconcilable enactments eliminated or explained: and the law presented in a condensed, methodical, and simplified form. Upon this task we have already entered, and made considerable progress in respect to the Acts within the jurisdiction of Ontario, and a consolidation of these, if not a revised edition of the whole of the Acts within the purview of the Commission, we hope to be able to submit to your Excellency before the next session of the Legislature.

(Signed) WM. H. DRAPER,
" S. H. STRONG,
" GEO. W. BURTON,
" C. S. PATTERSON,
" O. MOWAT,
" THOS. LANGTON,
" C. R. W. BIGGAR,
" R. E. KINGSFORD.

Toronto, December 12, 1874.

ACTS OF LAST SESSION.

The following Acts of the last Session of the Ontario Legislature are published *in extenso*. They are referred to editorially on a previous page:

An Act respecting the operation of Statutes of Ontario.

Her Majesty, by and with the consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The repeal of any Act or part of an Act shall not revive any Act or provision of law repealed by such Act or part of an Act, or prevent the effect of any saving clause therein.

2. The preceding section of this Act shall apply to every Act heretofore passed or which may be passed at the present or any future Session of the Legislature of Ontario.

3. Where a penalty or punishment is imposed under the authority of any Statute of the Province of Ontario, or of any other statute or law being in force in Ontario, and being in respect of any matter within the legislative authority of the Legislature of the said Province, and is recoverable before, or may be inflicted by, a justice or justices of the peace, or a police or stipendiary magistrate, the like proceedings, and no other, shall and may be had for the recovery of the penalty, and the infliction of the punishment, and otherwise in respect thereof, and the convicting justice, justices, or police or stipendiary magistrate shall perform the like duties in respect thereto, and in respect of any conviction or order made by him or them by virtue of such Statute, as under the Statutes of the Dominion then in force, might be had and should be performed, if such penalty or punishment had been imposed by a Statute of Canada, unless in any Act hereafter passed imposing such penalty or punishment, it be otherwise declared: Provided that nothing in this section contained shall confer upon any person, who considers himself aggrieved by a conviction or order made by any justice, justices or magistrate, the right of appealing to the General Sessions of the Peace, or shall affect procedure on appeals.

4. The Clerk of the Peace for the County shall be the public officer to whom shall be transmitted convictions to be filed, and recognizances in respect of which proceedings require to be taken at the General Sessions of the Peace.

5. Where a conviction or order is made by a justice or justices of the peace, or by a police or stipendiary magistrate under the authority of any statute being in force in Ontario, and in respect to matters within the legislative authority of the Province of Ontario, unless it be otherwise provided by the particular Act under which the conviction or order is made, any party who considers himself aggrieved by the conviction or order may appeal therefrom to the General Sessions of the Peace.

6. In case an appeal lies to the Court of General Sessions of the Peace from a conviction or order, made as aforesaid under the authority of a Statute or law having force in the Province of Ontario, but not enacted by the Legislature of the said Province, the practice and proceedings on the appeal and preliminary thereto and otherwise in respect thereof, shall be the same as the practice and proceedings under the Statutes of the Dominion then in force, on an appeal to the General Sessions of the Peace from a conviction before a justice of the peace, made under the authority of a Statute of Canada.

7. In case an appeal lies to the General Sessions of the Peace from a conviction or order made as aforesaid under the authority of a Statute of the Legislature of the Province of Ontario, the practice and proceedings on the appeal and preliminary thereto and otherwise in respect thereof, shall be the same as provided in the next preceding section, except that either of the parties to the appeal may call witnesses

and adduce evidence in addition to the witnesses called and evidence adduced at the original hearing.

8. If, upon the trial of an appeal, any question arises respecting the class of cases to which under this Act the appeal belongs, the decision of the Chairman of the Sessions of the Peace in respect thereof, shall be final and conclusive.

9. Any appellant may abandon his appeal by giving the opposite party notice of his intention in writing six days before the Sessions appealed to; and thereupon the convicting justice, justices or magistrate may tax the additional costs, if any, of the respondent, and add the same to the original costs, and proceed on the original conviction or order in the same manner as if there had been no appeal thereon.

10. If the Parliament of Canada amend any Statute, the operation whereof is extended by virtue of this Act, no such amendment shall have any force in Ontario, by virtue of this Act, until after the termination of the Session of the Legislature of Ontario held next after the amending Statute was passed.

11. Nothing in this Act contained shall affect the provisions of an Act passed in the thirty-sixth year of the reign of Her Majesty intituled "An Act to amend the Law of Evidence," or of an Act passed in the thirty-seventh year of Her Majesty's reign intituled "An Act to provide for the better government of that part of Ontario situated in the vicinity of the Falls of Niagara," or of the seventieth section of the Administration of Justice Act of 1874, or shall affect any enactment respecting the application of any penalty or respecting the return or publication of convictions made by justices of the peace.

12. The following Acts are hereby repealed so far as they relate to Ontario: chapter 103 of the Consolidated Statutes of Canada intituled "An Act respecting the duties of Justices of the Peace out of Sessions in relation to summary convictions;" chapter 114 of the Consolidated Statutes for Upper Canada intituled "An Act respecting Appeals in cases of summary convictions;" chapter 50 of the Acts passed by the Legislature of the late Province of Canada in the session held in the 29th and 30th year of Her Majesty's reign intituled "An Act to amend the law respecting Appeals in cases of summary convictions and returns thereof by Justices of the Peace;" Provided that matters pending when this section goes into effect may be proceeded with as if the said Acts had not been repealed.

An Act respecting procedure on Appeals to the Judge of a County Court from Summary Convictions.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Wherever by any Statute heretofore passed, or by any Act of this Session, whether any special provision is made in that behalf or not, and also wherever any such appeal is given by any Act hereafter to be passed, and no special provision is made therefor, an appeal is given to the Judge of the County Court without a jury, from a summary conviction had or made before a justice of the peace, such appeal shall be to the Judge of the County Court of the county in which the conviction is made, sitting in chambers; and the proceedings thereon shall be as hereinafter provided.

2. Firstly: If the appeal is against any conviction whereby only a money penalty is imposed, then, in case the person convicted deposits with the convicting justice the amount of the penalty and the costs and a further sum of ten dollars, or with two sufficient sureties, enters into a recognizance before a Justice of the Peace (Form A), in a sum double the amount of the penalty and the costs conditioned duly to prosecute the appeal, and to abide by and perform the order of the judge thereupon, and to pay such costs as he shall order;

Secondly: If the appeal is against a conviction whereby imprisonment is imposed, then, in case the person convicted, with two sufficient sureties, enters into a recognizance before a justice of the peace (Form B) in double the amount of any penalty and costs which he has been ordered to pay, and such additional sum, not less than one hundred nor more than two hundrod dollars, as the convicting justice directs, conditioned as aforesaid and also containing the further condition that the person convicted will surrender himself if the conviction is affirmed;

Thirdly: If the person convicted is in custody for non-payment of the fine or costs, or in consequence of imprisonment being imposed, as aforesaid, and fails to make the required deposit, or to enter into a recognizance, as hereinbefore provided, but deposits with the said justice the sum of ten dollars. In any of the said cases the said justice shall, at the request of per- the son convicted, made within five days after the date of the conviction, forthwith transmit to the clerk of the county court, by registered letter post-paid, all the proceedings and evidence.

3. In any of the cases of the class firstly or secondly above-mentioned, the convicting just-

ice, upon the recognizance being given or the deposit made, as the case may require, shall stay all proceedings upon the conviction, and if the person convicted is in custody, the said justice shall issue his warrant (Form C) to liberate such person. In any of the cases thirdly above-mentioned, the person appealing shall remain in custody while the appeal is pending, unless he is in custody for non-payment of a fine or costs, in which case the convicting justice shall order his liberation upon his depositing (in addition to the said sum of ten dollars) the amount for the non-payment of which he is in custody.

4. Within ten days after the date of the conviction but not afterwards, unless it is made to appear to the judge that the delay arose wholly from the default of the convicting justice, the judge of the county court, if he be of opinion from the said evidence that the conviction may be erroneous, may grant a summons calling upon the county attorney and the prosecutor to show cause why the conviction should not be quashed; such summons shall not be granted in any case after the expiration of one month from the date of the conviction.

5. Upon the return of the summons the judge upon hearing the parties may either affirm or quash the conviction, or if he shall see fit, may hear the evidence of such other witness or witnesses as may be produced before him, or the further evidence of any witness already examined, and may then make an order affirming, or amending and affirming, or quashing the conviction as he may think just, and may order the payment of costs and may fix the amount thereof.

6. Upon the production of the judge's order affirming, or amending and affirming the conviction, the justice who has made the conviction shall, if the case is one in which a recognizance has not been given, issue his or their warrant for payment of such further sum for costs as the sum deposited with him is insufficient to pay; if the conviction be quashed the judge shall order a return of the money deposited, and shall have authority to order payment of such sum for costs as he may tax and allow, and unless the sum be paid by the complainant, the justice shall issue his warrant to levy the costs.

7. If by the conviction it is adjudged that the person convicted should be imprisoned, and the conviction is affirmed, or amended and affirmed, or the person convicted should fail duly to prosecute the appeal, the judge shall issue his warrant (Form D) for the commitment to the proper gaol or other place of imprisonment of the person convicted, and unless such person within one week thereafter, surrenders himself into the custody of the constable or other officer entrusted with the execution of the warrant the condition of the recognizance shall be deemed broken, and the recognizance forfeited, and upon proof of the default being made by affidavit of the officer or otherwise, the judge may certify (Form E) the default on the back of the recognizance, and shall thereupon transmit the recognizance to the clerk of the peace, and such recognizance shall be thereafter proceeded upon at the general sessions of the peace in the same manner as a recognizance taken upon an appeal to the sessions from a summary conviction may be proceeded upon, and the said certificate shall be deemed sufficient *prima facie* evidence of the default of the defendant, but such proceedings shall not relieve the person convicted from undergoing the term of imprisonment for which he was sentenced, and the warrant of the judge issued in that behalf, or any new warrant issued by him may be executed in any part of Ontario in the same manner, and subject to the like conditions as a warrant of a justice of the peace for the apprehension of an offender.

8. If by the conviction only a money penalty is imposed, the judge upon being satisfied by affidavit or otherwise that default has been made upon a recognizance given on an appeal in such a case, shall certify in like manner, as is provided in the preceding section, and similar proceedings shall thereupon be had in respect of such recognizance.

9. In case it is proved to the satisfaction of the judge that the person convicted had previously served a portion of his term, the judge shall only issue his warrant for the commitment of the defendant for the residue of the term of imprisonment to which he was sentenced: The judge may, if he thinks fit, transmit his said warrant to the convicting justice in order that he may place the same in the hands of a constable for execution.

10. Any warrant issued under this Act may be directed in the same manner, and executed by the like officers as a warrant of commitment upon a summary conviction made under a Statute of the Dominion of Canada.

11. In all cases of appeal to a County Court Judge from any summary conviction, had before any justice, the judge to whom such appeal is made shall hear and determine the charge or complaint on which such conviction has been had, upon the merits, notwithstanding any

defect of form or otherwise in such conviction; and if the person charged or complained against is found guilty, the conviction shall be affirmed, and the judge shall amend the same if necessary.

12. The justice shall retain any moneys deposited with him as aforesaid, for the period of six months unless judgment shall be sooner given; upon the judgment in appeal being given, or upon the expiration of six months from the day of the date of the conviction, the justice shall pay over such moneys to the person or persons entitled thereto in accordance with the judgment, and if the judgment in appeal is not delivered within six months from the day of the date of the conviction, the conviction shall stand, but the respondent shall not be entitled to any costs of the appeal; and in case imprisonment was adjudged by the conviction, the convicting justice shall, or any other justice may, issue his warrant for the commitment of the person convicted for any portion of the term which he may not have served, and no further proceedings shall be taken on the appeal.

13. No conviction affirmed or amended and affirmed on appeal by the County Court Judge shall be quashed for want of form or be removed by certiorari into any of Her Majesty's Superior Courts of Record; and no warrant or commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

14. In all cases where it appears by the conviction, that the person convicted has appeared and pleaded, and the merits have been tried, and that such person has not (in manner hereinbefore provided) appealed against the conviction where an appeal is allowed, or if appealed against, that the conviction has been affirmed, or amended and affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case.

15. In all process and proceedings before the Judge of the County Court under this Act the Judge shall, with reference to the matters herein contained, have all the powers which belong to, or might be exercised by him in the County Court, and all necessary process may be issued from the office of the Clerk of the County Court.

16. The several forms in the schedule to this Act contained, varied to suit the case, or forms to the like effect, shall be deemed good, valid and sufficient in law.

17. The word "justice" or the expression "justice of the peace" wherever used in this Act shall include two or more justices of the peace, or a stipendiary or police magistrate.

The word "conviction" shall include an order made by a justice of the peace.

The expression "person convicted" shall include any person against whom an order is made as aforesaid.

Form "A."

Recognizance to try the appeal; to be taken where only a money penalty is imposed.

Province of Ontario,)
County of)

Be it remembered, that on *A.B.*, of (*Laborer*) and *L.M.*, of (*Grocer*), and *O.P.*, of (*Yeoman*), personally came before undersigned (*one or two*) of Her Majesty's Justices of the Peace in and for the said county of , (*or* united counties *as the case may be*) and severally acknowledged themselves to owe to our Sovereign Lady the Queen, the several sums following, that is to say, the said *A.B.* the sum of and the said *L.M.* and *O.P.* the sum of each, of good and lawful money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, Her Heirs and Successors, if he the said *A.B.*, shall fail in the condition hereunder written (*or* endorsed).

Taken and acknowledged the day and year first above mentioned at before me (*or* us).

J. S.

Whereas the said *A.B.* was on the day of A.D. convicted before *C.D.* (and *E.F.*) one (*or* two) of Her Majesty's Justices of the Peace for the said county (*or* united counties) for that (*stating the substance of the conviction.*)

And whereas the said *A. B.* has undertaken to appeal against the said conviction to the judge of the County Court of the county of (*or* united counties of.)

Now the condition of the above (*or* within) recognizance is such that if the said *A. B.* shall within one month from the date of the said conviction, obtain from the said judge a summons calling upon the county attorney and the

prosecutor to show cause why the said coinvention should not be quashed, and shall duly prosecute the said appeal, and shall abide by and duly perform the order of the judge to be made upon the trial of such appeal, and shall pay such costs as the said judge shall order, then the said recognizance to be void, and otherwise to remain in full force and virtue.

Form "B."

Recognizance to try the appeal; to be taken where imprisonment is imposed.

Province of Ontario, }
County of }

Be it remembered, that (*proceed as in Form "A" to the end, and add the following additional condition*):

And further that if the said *A. B.*, in case the conviction is affirmed, or amended and affirmed, shall surrender himself into the custody of the constable or other officer entrusted with the execution of the warrant, within one week after the judge shall issue his warrant for the commitment of the said *A. B.*, then the said recognizance to be void, and otherwise to remain in full force and virtue.

Form "C."

Warrant of deliverance where defendant is in custody, and entitled to be liberated.

Province of Ontario, }
County of }

To the Keeper of the Common Gaol of the county of (*or* united counties of, or to *E. F.*, the constable having in his custody *A. B.* hereinafter named, *or as the case may require.*)

Whereas *A. B.* hath before one (*or* two) of Her Majesty's Justices of the Peace in and for the said county of entered into his own recognizance and found sufficient sureties to prosecute before the judge of the County Court of the county of , an appeal from a conviction had before me (*or* us) for that (*stating the substance of the conviction*) for which the said *A. B.* was committed to your custody.

These are therefore to command you, in Her Majesty's name, that if the said *A. B.* do remain in your custody for the said cause and for no other, you shall forthwith suffer him to go at large.

Given under my (*or* our) hand and seal (*or* hands and seals) this day of in the year of our Lord , at in the county aforesaid.

J. S. ..... L.S. .....

J. N. ..... L.S. .....

Form "D."

Warrant of the Judge of the County Court when imprisonment adjudged and conviction affirmed.

Province of Ontario, }
County of }

To all or any of the constables and other peace-officers in the said county, and to the keeper of the common gaol of the said county:

Whereas *A. B.*, late of (*Laborer*), was on or about the day of convicted before J. S., one of Her Majesty's Justices of the Peace in and for the said county for that (*stating the offence*), and it was thereby adjudged (*stating the judgment;*) And whereas the said *A. B.* hath appealed against the said conviction to me, *H. K.*, the judge of the County Court of the said county of ; And whereas, after hearing the said appeal, I, the said *H. K.*, have affirmed the said conviction (*or* have amended the said conviction as follows, *stating the amendment made*, and have affirmed the said conviction as so amended.)

These are therefore to command you, the said constables or peace-officers, or any of you, to take the said *A. B.*, and him safely to convey to the common gaol at and there to deliver him to the keeper thereof, together with this warrant; And I do hereby command you, the said keeper of the said common gaol, to receive the said *A. B.* into your custody in the said common gaol, there to imprison him, and to, keep him at hard labor, for the space of being the term (*or* being the portion yet unserved of the term) mentioned in the said conviction; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of in the year of our Lord , at in the county of .

H. K. ..... L.S. .....

Form "E."

Certificate of default to be endorsed on the recognizance.

I hereby certify that the within-named *A.B.*, hath not surrendered himself (*stating according*

to the fact the default on account of which the recognizance is forfeited) in accordance with the condition of the within Recognizance, but therein hath made default, by reason whereof the said Recognizance is forfeited.

H. K.

SELECTIONS.

DR. KENEALY.

As will be seen, Dr. Kenealy is no longer a member of the English Bar. The Benchers of the Honorable Society of Gray's-Inn, with which he had been affiliated for upwards of a quarter of a century, on 2nd instant, resumed the consideration of the charges preferred against him as the reputed editor of the *Englishman;* and the result is, that his call to the Bar, which dated from May, 1847—twenty-seven years ago—has been vacated, he himself expelled from the Society, and his name erased from the roll of its members. Neither then nor at the preceding meeting of the Benchers, about a week ago, convened to deliberate on his conduct, was Dr. Kenealy present, nor was he represented by any one although the Benchers had caused formal notice to be given him to appear and show cause why he should not be disbarred for, as was alleged in substance, writing and publishing articles reflecting upon the dignity of the Bench, the honor of the Judges, and casting aspersions of an odious character upon Benchers of Gray's-Inn individually, and other persons in authority. It is but right to say that illness has been assigned as the cause of his absence from the investigation instituted by the governing body of the Inn.

The meeting of Benchers on 2nd inst. was resumed at 4 o'clock, and lasted nearly two hours. The deliberations were strictly private, in the sense of being confined to themselves; but there was no secrecy on their part as to the result at which they eventually arrived. The privacy observed on the occasion had nothing exceptional in it. On the contrary, it was quite in accordance with the traditions and customs of the Inn, and not in any way meant to defeat the reasonable curiosity on the part of the public. The Benchers present on the occasion were—Mr. John Archibald Russell, Q.C., treasurer of the Inn, who presided over the deliberations; the Solicitor-General, Mr. Wilde; Mr. Manisty, Q. C.; Mr. Stephens, Q.C.; Mr. Southgate, Q.C.; Mr. Parker, Mr. Wigg, Mr. Whishaw, Mr. Blount, Mr. Tatham, Mr. Fooks, Q. C.; Mr. Joyce, Q.C.; Mr. Henniker, Q.C.; and Mr. Edwards, Q.C.

Subjoined is the result at which the Benchers eventually arrived, and which has been courteously furnished to us by their directions:

Moved by Master Manisty, seconded by Master Holker, Solicitor-General, and carried unanimously:

"That, in the opinion of this Bench, Dr. Kenealy, being the editor of the newspaper called the *Englishman*, replete as it still is with libels of the grossest character, is unfit to be a member of this honorable Society or of the English Bar."

Moved by Master Manisty, seconded by Master Holker, and carried unanimously:

"That Dr. Kenealy's call to the Bar be, and the same is hereby vacated; that he be expelled from this Society, and his name erased from the roll of members thereof."

With that the proceedings terminated, and the Benchers separated. Dr. Kenealy, as may be remembered, became a Queen's Counsel in 1868, and was not long afterwards made a Bencher.

A correspondent sends the following account of that part of the proceedings at Gray's-inn, on 2nd instant, not referred to in the preceding report:

After the minutes of the previous meeting were read, the Benchers proceeded *seriatim* to the consideration of the several articles written in the *Englishman* on which they founded their impeachment of Dr. Kenealy. The one most seriously reflecting upon them was the following, which they denounced as infamous, and calculated to bring reproach upon their body. After furnishing a list of the names of the Benchers taking part in the present proceedings, the article says of them:

"We believe that wherever the English language is spoken, and this paper is read, they will be spat upon by every lover of truth and justice. If the learned professions in England were weeded out, probably the equals of these men in ignorance, meanness, and vulgarity could not be found. They are so hopelessly and

helplessly illiterate that when the Prince of Wales recovered from his fever the Benchers could not produce an address of congratulation that would pass muster; and it was finally handed over to Dr. Kenealy to polish their ungrammatical and barbarous composition into something like decent shape, and as he wrote it so it went to the Prince. . . . At the part which Manisty has played in this travestie of justice we are in no way surprised. This ex-attorney has always been the foe of Dr. Kenealy; he was the only man who violently opposed his admission to the Bench when Dr. Kenealy was appointed Queen's Counsel. He has since exhibited the most rancorous spirit. Nothing, however, could operate on that mean and paltry little mind which showed its minute pettiness by boasting that on such a day its owner dined with Mellor, Cockburn, and Lush, who ought to be as gods in justice, but who are too often the slaves of passion, of prejudice, of revengeful pride, if they are not allowed to do as they think fit. How often has he dined with those three judges, and in order to curry favor with such persons he was an accomplice in a conspiracy which has for its object the destruction of Dr. Kenealy."

At the last meeting of the Benchers, Mr. Manisty, it will be remembered, moved Dr. Kenealy's disbenchment, which was seconded by Mr. Solicitor-General Holker, and carried unanimously. The article then turns to the Solicitor-General, and says:

"Mr. Disraeli has permitted his paid agent to attack Dr. Kenealy, which he would not have done without his master's leave or desire. And the Prime Minister is insane enough to attack the most popular man in England at the present moment. The mass of the people know and feel that Dr. Kenealy has done no wrong. He is simply the victim of a powerful cabal of aristocrats."

The paper then alluded to the Benchers as "these eleven lacqueys," and proceeds:

"We cannot think that a mere puppet like Holker would dare to act as he has done if he had not orders."

The article winds up as follows:

"It is whispered that the whole of this plot was finally arranged at the Lord Chancellor's breakfast on Monday, when Cockburn, Mellor, Lush, Holker, Manisty and Fooks (the aspirant for Dr. Kenealy's chambers) were present, and devised what was to take place the next day but one. We acquit Lord Cairns of any participation in, or even suspecting such a deed, but the others are capable of any act of shame."

Then the article alludes to the Benchers present, and, speaking of those absent, says:

"They would never have joined this infamous cabal. Scaramouch Huddleston was not there, but he has already sunk so deep in the mire by his abject compliance with Lord Forgery's manœuvres on the Oxford Circuit against Dr. Kenealy, and his absence or presence signifies nothing."

Then the article, alluding to the Bar, says:

"But the Bar is so degraded and cowardly that it has not spoken out as it should have done for one of its members. . . . We are curious to see whether the Judges will endorse this deed of transcendant villainy—ten obscure and wicked men conspiring together against the life of Dr. Kenealy for editing a paper which no human being has complained of except Sarah Pittendreigh. These ten will go down to posterity with her, while the curse of God will fall upon each of them and their posterity for having plotted the destruction of Dr. Kenealy and his innocent children."

Alluding to a petition which is being got up in Leeds for the abolition of Gray's-Inn, it says:

"Every name is ten times more respectable than that of the ten conspirators whom we have enumerated."

It would be impossible here to give the several articles published in the *Englishman* reflecting upon the Bench, the Bar, and the Benchers generally, which were considered on 2nd instant at Gray's-Inn. Many of them are of a character involving the reputations of several eminent personages, scurrilous caricatures of the several members of the Bench of Gray's-Inn, invidious attacks upon the reputation of the three Judges who presided at the Tichborne Trial, imputations upon the *bona fides* of members of the Bar, who are charged with truckling to the Bench for purposes of promotion, and a variety of other accusations—all, however, so monstrous and absurd as to make it to be regretted that they were ever penned. These and several other matters

were duly considered on 2nd instant, and temperately discussed by the Benchers for about two hours, after which Mr. Banks, the Steward, came forward and read the resolutions expelling Dr. Kenealy from the Society of Gray's-Inn and vacating his call to the Bar.

The Lord Chancellor, acting upon the threat contained in a letter of the 20th ultimo, has removed Dr. Kenealy's name from the list of Queen's Counsel. Among the reasons given are systematic charges of bias, venality, and corruption brought by him against the persons connected, whether as Judges, jury, counsel, or otherwise, with the prosecution of "*The Queen* v. *Castro*," intended to lower the dignity of the Bench, and to degrade and discredit the administration of Justice.—*The Times.*

CAUSE OF ACTION.

To what occult motive power are we to assign the reconciliation of the three Courts of Common Law on the vexed question of what is a 'cause of action' within the meaning of section 18 of the Common Law Procedure Act, 1852? Can it be that the coming event, the new Court of Justice, one and undivided, has cast its great shadow before it, and warned those Courts, which are to be merged into its mighty self, forthwith to sink their differences, and attain to uniformity of decision? Nothing less than some such overwhelming force could have driven from Westminister Hall that conflict which has raged openly for sixteen years, and which seemed to be removed beyond the hope of peace. Section 18 of the Common Law Procedure Act, 1852, runs thus: 'It shall be lawful for the Court or judge upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction,' &c. In *Fife* v. *Round*, 6 W. R. 282, the Court of Exchequer favoured the view that it was enough if a substantial part of the cause of action arose within the jurisdiction. In *Sichel* v. *Borch*, 33 Law J. Rep. (N.S.) Exch. 179, the same Court held that the words imply the *whole* cause of action. In *Hutton* v. *Whitehouse*, 1 H. & N. 32, the Court of Exchequer interpreted the section so as to claim jurisdiction wherever leave has been given, whether rightly or wrongly, to proceed under it; and Baron Martin said: 'It is not required that there should be a cause of action, but that the Court or a judge should be satisfied that there is one.' In two cases decided at Judges' chambers, *Slade* v. *Noel*, 4 F. & F. 424, and *Nettleford* v. *Fünche*, C.P., March, 1866, Mr. Justice Williams and Mr. Justice Willes respectively interpreted the words in the section as meaning a substantial part of the cause of action. In *Allhusen* v. *Malgarejo*, 37 Law J. Rep. (N.S.) Q.B. 169, Justices Blackburn, Mellor, and Lush held that *Sichel* v. *Borch* was rightly decided, and that the words mean the whole cause of action. In July, 1869, the Court of Common Pleas, consisting of Chief Justice Bovill, and Justices Keating, Smith, and Brett, held that the original decision of the Court of Exchequer, in *Fife* v. *Round*, and the decisions of Mr. Justice Williams and Mr. Justice Willes at chambers, were correct; and the Court repudiated the second thoughts of the Court of Exchequer and the judgment of the Court of Queen's Bench: *Jackson* v. *Spittall*, 39 Law J. Rep. (N.S.) C.P. 321. In *Durham* v. *Spence*, 40 Law J. Rep. (N.S.) Exch. 3. Barons Pigott and Cleasby held, that in action of contract the breach was sufficient to constitute the cause of action; that is to say, that the words 'cause of action' mean a substantial part of the 'cause of action.' The Lord Chief Baron differed, and held that the words mean the whole cause of action. In *Cherry* v. *Thompson*, 41 Law J. Rep. (N.S) Q.B. 243, the Court of Queen's Bench, after taking time to consider its judgment, adhered to its own decision in *Allhusen* v. *Malgarejo*, and declined to concur with the opinion expressed by the Court of Common Pleas in *Jackson* v. *Spittall*. In *Vaughan* v. *Weldon* the question as to the construction of the statute was once more raised before the Court of Common Pleas, and on November 20 that Court was enabled to announce that the judges had arrived at a resolution on the subject which would finally get rid of the difference of opinion hitherto existing. Lord Coleridge said that the judges had consulted, and that the majority of them were in favour of the view taken by the Court of Common Pleas. The judges of the Court of Queen's Bench still retained their original opinion; but having regard to the opinion of the majority, the inconvenience of conflicting

decisions, and the impossibility of the point being settled in a Court of Error, they were prepared to give way. The rule, therefore, that the action is satisfied if a substantial part of the cause of action has arisen in England, will in future be observed by all the Courts. Without diving too deeply into the councils of Her Majesty's judges, we may be permitted to suppose that the Court of Queen's Bench was unanimously on one side of the question, and that the Court of Exchequer presented a somewhat narrow majority in favour of the opinion of the Court of Common Pleas.—*Law Times.*

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

Kingston Election Petition.

Stewart v. Macdonald.

Controverted Elections—36 Vict., Caps. 27 and 28, C.

The English and Dominion election acts as to corrupt practices and their consequences compared and considered.

Alleged expenditure of money intended to influence a certain class of voters, viz.: keepers of public houses.

Hiring of rooms at public houses to hold meetings—effect of, and how far a violation of the law.

How far disqualification in the nature of a penalty, considered. As the penalty imposed by the Act of 1873 is not merely that which pertains to locality, but to the person of the candidate, it is to be construed with the strictness of a penal statute.

Meaning of the words "directly or indirectly" and "by himself or by any other person on his behalf."

The effect of "treating" as a corrupt practice considered.

Acts legitimate in themselves done with mixed legitimate and illegitimate motives.

Responsibility for acts of sub-agents.

Expenditure reasonable or otherwise, according to attendant circumstances.

[Kingston, Nov. 21, 1874—Richards, C. J.]

This petition contained the usual charges, and also alleged corrupt practices on the part of the respondent personally.

The case was tried at Kingston before the Chief Justice of Ontario.

It was admitted that the election must be set aside for the acts of agents, but the personal charges were denied.

Jas. Bethune and *Britton* for the petitioner.

Walkem for the respondent.

The facts and arguments of counsel fully appear in the judgment of the Court.

Richards, C. J. As this case is tried under the provisions of Dominion Acts of 1873, chs. 27 and 28, it must be borne in mind that these statutes are not so broad, so far as relates to acts which will avoid an election, nor as to the consequences to the candidate of complicity in what may be considered corrupt practices, as the English Acts, the statutes of Ontario, and the Dominion Act of last session.

The Imperial statute, 17-18 Vict., cap. 102, the Corrupt Practices Prevention Act of 1854, defines minutely the offences of bribery, treating and undue influence. It states that the following persons shall be deemed guilty of bribery, and shall be punished accordingly :—1. "Every person who shall directly or indirectly by himself or by any other person on his behalf give, lend, or agree to give or lend, or shall offer, promise, or promise to procure, or to endeavour to procure any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote, to refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election. 2. Procuring or agreeing to procure a place, office, or employment for a voter or any other person. 3. Making any gift, loan, offer, procurement, or agreement as aforesaid to or for any person to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election. 4. Any person who shall in consequence of any such gift, loan, offer, &c., procure or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election. 5. Any person who shall advance, or pay, or cause to be paid, any money to or for the use of any other person, with intent that such money or any part thereof shall be expended in bribing at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election." The section then declares that any person so offending shall be guilty of a misdemeanor and liable to forfeit £100 to any person who shall sue for the same.

Section 3 makes the voters who receive money, or make agreements to receive money, gifts, &c., for voting or refraining to vote, and for receiving money after an election for voting or refraining from voting guilty of bribery. These persons are declared guilty of a misdemeanor and liable to forfeit £10 to any one

suing for the same. The 4th section defines corrupt treating, and the 5th undue influence.

The 36th section declares, "If any candidate at any election for any county, city or borough shall be declared by any election committee guilty *by himself* or his agents of *bribery, treating, or undue influence*, at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city or borough during the Parliament then in existence."

The English Parliamentary Elections Act of 1868, defines corrupt practices to mean bribery, treating, and undue influence, or any of such offences as defined by Act of Parliament or recognized by the Common Law of Parliament. By section 11, sub-section 12, at the conclusion of the trial, the judge shall determine whether the member whose return or election is complained of, or any and what other person was duly returned or elected, or whether the election was void. By sub-section 14, when there is a charge in the petition of any corrupt practice having been committed at the election to which the petition refers, the judge shall, in addition to such certificate, and at the same time report in writing to the Speaker whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice. Sec. 15 provides as to the effect of the judge's report as to corrupt practices having extensively prevailed, having same effect as report of a committee as to issuing a commission of enquiry.

Under the 43rd section of the Act, when it is found by the report of the judge that bribery has been committed with the knowledge and consent of any candidate at an election, such candidate shall be deemed to have been personally guilty of bribery at such election, and his election, if he has been elected, shall be void, and he shall be incapable of being elected to and of sitting in the House of Commons during the seven years next, after the date of his being found guilty, and he shall further be incapable during the said period of seven years

(1). Of being registered as a voter, or voting at any election. (2). Of holding any office under certain Acts of Parliament recited. (3). Of holding any judicial office, or of being appointed a Justice of the Peace.

The statutes under which we are now acting make the following provisions applicable to these subjects.

36 Vict., cap. 27, section 18, declares:

"No candidate shall directly or indirectly employ any means of corruption by giving any sum of money, office, place, &c., or any promise of the same, nor shall he either by himself or his authorized agent for that purpose threaten any elector with losing any office, salary, income, or advantage, with intent to corrupt or bribe any elector to vote for such candidate, or to keep back any elector from voting for any other candidate. Nor shall he open and support, or cause to be opened and supported, at his costs and charges any house of public entertainment for the accommodation of the electors. And if any representative returned to the House of Commons is proved guilty before the proper tribunal of using any of the above means to procure his election, his election shall be thereby declared void, and he shall be incapable of being a candidate, or being elected or returned during that Parliament."

The next statute in the Acts of that session, "the Controverted Elections Act of 1873," defines corrupt practices to mean bribery and undue influence, treating, and other illegal and prohibited acts in reference to elections, or any of such offences as defined by Act of the Parliament of Canada. This definition of corrupt practices, it will be seen, differs from that contained in the Imperial Act, and it also differs slightly from that contained in the Ontario Act. The general provisions of the Dominion statute as to the trial of the controverted elections, and the report to be made by the judges trying the same, seem to have taken from the English Act, but the 43rd section of that Act, already quoted, for the punishment of corrupt practices is omitted, as well as the 44th section imposing a penalty for employing a corrupt agent, and section 45 disqualifying persons other than a candidate found guilty of bribery from being elected or sitting in Parliament, and other disqualifications as under section 43.

It may be as well to note here that the 46th section of the English Statute refers to the disqualifying persons under the 36th section of the Act of 1854 as to a member guilty of corrupt practices other than personal bribery, within the 43rd section of that Act the report of the judge was to be deemed substituted for the declaration of an Election Committee. Now the only Dominion Act applicable to this case which declares the punishment of bribery is section 18 of cap. 27. Section 36 is already quoted, and that refers to "bribery and keeping open house."

By the Common Law of Parliament there is no doubt respondent is so far compromised by the acts of his agents that his seat must be vacated in consequence of their admitted acts, and also by the acts committed by them as shown by the evidence given on the trial.

The further inquiry which was gone into was with a view of having the respondent declared guilty of employing directly or indirectly means of corruption by giving money, employment, gratuity, reward, or promise of the same with the intent to corrupt or to bribe electors to vote for him, or to keep back electors from voting for any other candidate, or that he opened or supported or caused to be opened or supported at his costs and charges houses of public entertainment for the accommodation of the electors.

Mr. Bethune, who probably has had as large experience as any counsel at the bar in this Province in these election cases, admitted that he could not ask the Court to decide on the evidence that the respondent had been guilty of, or had knowledge of and consented to any distinct act of individual bribery, but he contended that there had been an expenditure of money to influence a class of votes, viz., keepers of public houses, and that this expenditure was with the knowledge and consent of the respondent. The object of holding meetings at public houses was to influence the votes of the persons who kept these houses, and to induce them to support the respondent at the election. Mr. Noble's evidence shows that $10 a night was paid for the use of a room when $5 would have been sufficient; that there was an expenditure of $40 in treating, which would bring the case within the second branch of sec. 18 of the Dominion Act, 36 Vict., c. 27. He referred to the *Tamworth Case*, 1 O'M. & H., 86, 7, 8; *Coventry Case*, 98; *Hastings Case*, 218. The evidence shows that respondent desired to get the influence of this class for himself, or to prevent his opponent getting them. Then there was no account of the expenditure of the money in the several wards; respondent was bound to take care that the fund was properly applied, and it was incumbent on the respondent to call Mr. Campbell to show how the money had been expended, as he was his special agent. He also referred to the *Bewdley Case*, 1 O'M. & H., 18, 21.

Mr. Britton, on the same side, contended that the effect of the respondent's evidence was: That money is improperly expended at all elections. That there was some expended at his election in 1872 for bribery. He thought more money would be required for the contest in 1874 than in 1872. He furnished the money without instructions as to how it should be used. It is admitted that it was improperly used, therefore the respondent is personally responsible.

Mr. Walkem, for the respondent, contended in effect: That it was not the duty of the respondent to call Mr. Campbell. If the respondent had claimed that there was no improper expenditure of money, and that his seat ought not to be vacated, then he might be asked to show by Mr. Campbell the terms on which the money had been placed in the hands of persons who used it improperly. Now, however, the onus of proof is changed, the petitioner ought to show that the respondent has been guilty of acts which affect him personally with bribery or keeping open house. That has not been done, and the Court will not presume that acts of this sort were done, unless they are proved by satisfactory evidence. The respondent's evidence as to what he thought was generally done at elections given frankly and fairly was not to be construed as admitting that he knew such things were done at this election, and that he was a consenting party to such acts. Supposing the whole amount expended on behalf of respondent $2,500 or even $3,000, that was not unreasonable. Besides the regular meetings, two or three in a night, at which the respondent addressed the people, there were ward meetings in each of the seven wards every night; besides this canvassers had to be hired and cabs paid for their use—all these expenses during a canvass of four weeks—it might be reasonably expected would swallow up the sum mentioned without respondent supposing any money expended for bribery. There were about 1,600 votes polled in the city. The hiring of the rooms at the taverns was absolutely necessary, as none others could be got, and the fact that the innkeepers might exert themselves for the respondent could not fairly be considered as bribery. No attempt to show that respondent was aware, or that the fact was that rooms were hired of any persons who were opposed to respondent, to influence their votes; on the contrary, he (respondent) understood that the meetings were held in the houses of persons who were his supporters. Besides this printed copies of the law were distributed amongst the Committees so that they might not violate it, and respondent always impressed on everybody that they must not violate the law.

The first question is as to the nature of the evidence required to affect the personal status

of the respondent so far as to disqualify him from being elected to serve in this present Parliament. The law, as it exists in England, is briefly referred to in the last edition of Bushby's Manual of the Practice of Elections at p. 114. As to the person bribing he may be anyone who does the prohibited acts, "directly or indirectly," that is, by anyone who either does them himself or authorizes another to do them for him. As this is also the case at Common Law it need not be dwelt upon; the next words are "by himself or by any other person on his behalf," words which will carry two senses according to the purpose for which they are construed. When sought to be enforced penally they will mean precisely the same as does the preceding phrase. It is a general rule that no man can be treated as a criminal or mulcted in penal actions for offences which he did not connive at, nor does the statute authorize any infraction of the rule. The person to be deemed guilty of bribery is spoken of throughout the sections as doing the guilty act, the addition that he does it by another on his behalf need only mean that he does it through one whom he has authorized for that purpose, and it is settled law that enactments are not to be given a penal effect beyond the necessary import of the terms used. But in the next place the words need not be so limitedly construed by an election Judge, and for civil purposes they are far more comprehensive and reach every one whose agents bribe in his behalf either with or without his authority. The first question before an election Judge in such cases usually is as to the bribery having been effected (so too it is now enacted that any charge of a corrupt practice may be gone into before proof of agency unless the Judge otherwise direct.) The second question is as to the relation existing between the person effecting it and the candidate, and if it appears that they stand in the relation of agent and principal in other respects, the candidate will not escape the result of bribery, the loss of his seat and the consequent disqualification, merely because he gave his agent no authority to bribe. This appears at first sight unjust, and a hardship; no doubt it must be when a seat is vacated for bribery, of which the candidate was wholly unconscious. But the avoidance of an election under such circumstances is a purely civil consequence. It is not brought about in order to punish the candidate, but to secure an unbiased election. Were his punishment the object, of course *a guilty knowledge would have to be proved against him*, but in that case the penalty would probably be of a graver kind, *and would not have been locally limited*, whereas in the actual state of the law he suffers no other penalty than the loss of his seat, and is eligible immediately for any place other than that at which he has been unseated.

At page 135 it is stated that formerly if any candidate was declared by an Election Committee guilty, by himself or his agents, of bribery at such election, he not merely lost his seat, but he became incapable of being elected or sitting in Parliament for the same place during the then Parliament. And this is still the law when he is found guilty by the report of a Judge upon an election petition of bribery through his agents without his own knowledge and consent. But if the Judge reports that bribery has been committed by or with the knowledge and consent of the candidate as defined above, he is to be deemed personally guilty of bribery, and in addition to his election being made void, incapable of sitting in Parliament for seven years, besides incurring other disabilities.

I come to the conclusion, inasmuch as the penalty imposed by the statute of 1873 is not merely that which pertains to the locality, but to the person of the candidate to be disqualified, and applies to all constituencies during that Parliament, that that act is to be construed as any other penal statute, and the respondent must be proved guilty by the same kind of evidence as applies to penal proceedings.

In the *Tamworth Case* Mr. Justice Willes is reported to have said, p. 84, first ascertaining upon whom rests the burden of establishing the affirmative "You ought to judge of a case just as much by evidence which might have been produced if the affirmative were true, which has not been produced, as by the evidence which has been laid before the court. In other words no amount of evidence ought to induce a judicial tribunal to act upon mere suspicion, or to imagine the existence of evidence which might have been given by the petitioner, but which he has not thought it his interest actually to bring forward, and to act upon that evidence and not upon the evidence which really has been brought forward."

The second principle, which is more particularly applicable to circumstantial evidence, is this: "That the circumstances to establish the affirmative of a proposition, when circumstantial evidence is relied upon, must be all such of them as are believed circumstances consistent with the affirmative, and that there must be some one or more circumstances believed by the tribunal; if you are dealing with

a criminal case inconsistent with any rational theory of innocence, and when you are dealing with a civil case (otherwise expressed, though probably the result is, for the most part, the same), proving the probability of the affirmative to be so much stronger than the negative that a rational mind would adopt the affirmative in preference to the negative."

It having been admitted that respondent has not been personally guilty of bribery, what evidence is there to show that bribery took place with his knowledge and consent?

First, as to treating—that has always been punishable at Common Law as a species of bribery. The only difference being that the corrupting medium was food and drink, or both. But treating, in the sense of ingratiation (or to use the ordinary language of the country as being considered a good fellow) by mere hospitality, or even to the extent of profusion, it was doubted if it was struck at by the Common Law: Willes, J., *Lichfield Case*, 1 O'M. & H., 25. If it was shown that there was an organized and general system of treating in all directions on purpose to influence voters, that houses were thrown open where people could get drink without paying for it, such an election would be void at the Common Law: Bushbey, page 138.

The general practice which prevails here amongst classes of persons, many of whom are voters, of drinking in a friendly way when they meet, would require strong evidence of a very profuse expenditure of money in drinking to induce a Judge to say that it was corruptly done, so as to make it bribery or come within the meaning of "treating" as a corrupt practice at the Common Law.

Now when the respondent in his evidence speaks of expending money in treating by his friends during the canvass, and when such expenditure might be within reasonable bounds, not amounting to bribery, and he said he had no apprehension they would expend any money in bribery, and the evidence does not show that he had knowledge of and consented to such extravagant expenditure in eating and drinking as would amount to bribery, I do not feel warranted in saying that such a corrupt practice existed with his knowledge and consent, particularly as he closes his evidence with the statement that he did not directly or indirectly authorize or approve of or sanction the expenditure of any money for bribery or a promise of any for such purpose, nor did he sanction or authorize the keeping of any open house, and he was not aware that any open houses were kept. I arrive at this conclusion now with less hesitation in consequence of the different provisions contained in the Dominion Act of 1874 and the Ontario statutes, from those contained in the statutes under which we are now acting. The corrupt practices intended to be prevented by these statutes are so clearly defined that no candidate need be involved in difficulty as to expenditures at an election unless he deliberately determines to violate the law, and the precautions taken by these statutes to compel a disclosure of money expended on behalf of a candidate will aid in deterring improper expenditures of money. While on this subject it may be as well to point out the omission in the Dominion statute of the provision in the English Act of 1854, by which the seat may be avoided by the corrupt acts of an agent and the candidate prevented from standing for that constituency during the then Parliament, when it was not shown that the candidate authorized the corrupt act and when the additional personal disqualifications referred to in the Dominion Act of 1874 would not attach.

The next question is whether the holding of meetings at public houses, when the probable effect of doing so would be to make the proprietors use their influence in favor of the respondent, is not bribery or a corrupt act. The respondent in his evidence said there were sub-committees in every ward. The houses in which they met were small; as the weather was cold meetings could not be held in the open air, and the tavern-keepers then made it their harvest, and as only a few could attend at each meeting, they were the more numerous, and as both parties were equally active and held meetings, it was important to have the last word, and so the meetings were more numerous, and in that way the expenditure was great. In another part of his evidence he said the calling of meetings at public houses was to have people to talk to Inn-keepers are of course a power in their localities, and that may have been a reason amongst others for holding meetings there, and another to prevent the other side from getting them. He was not aware of any meetings of his friends at any inn where the party was not a supporter of his. "Of course when you get a supporter you want to keep him." Again, he said, "I did not consider holding meetings in the taverns and paying for the use of the rooms would be a violation of the law."

There is no doubt that respondent and his friends expected to reap an advantage by holding meetings at public houses. The very strong remarks by the Judges in the cases referred to

by Mr. Bethune as to the impropriety and danger of holding meetings of candidates and their committees in inns are appropriate, and ought, and doubt no hereafter will be considered and have their influence with candidates at future elections. In the argument it was urged that at the inclement season of the year when the election took place it was exceedingly inconvenient, if not impossible, to get rooms in which to hold meetings and committee meetings unless at inns, and consequently that it was a necessity that this should be done, and that both parties yielded to this necessity, and held the meetings and committee meetings at inns.

It seems to me that this view was reasonable, and that the fact of the opponents of the respondent holding meetings at inns was a circumstance to show that it was necessary that this should be done at that season of the year. Not that the respondent, because his opponents did an equivocal or illegal act was at liberty to do a similar act, but that they all thought under the circumstances that it was the right and proper thing to be done. As no evidence was given on the trial to show that equally convenient places and such as were more proper to be used for that purpose, could then be obtained, I think I ought to hold that respondent and his friends had a legitimate motive for holding their meetings in these houses, although they might have had other motives which are not so legitimate.

I find this language used by Baron Bramwell (whose "brilliant common sense" is the admiration of the English Bar) in the *Windsor Election Case*, 31 L. T. N. S., page 135: "The respondent has declined to answer whether, when he made certain gifts of coals and food to a number of poor cottagers, on occasion of a flood, there being voters and non-voters amongst them, he had in view the election for the borough of Windsor." The learned Baron proceeds: "Why, it is certain that it must have been present to his mind; a man cannot suppose a thing of this sort is a matter of indifference, that it operates in no way at all; he cannot suppose that it operates unfavorably to him; therefore he must suppose that in some way or other it will to a certain extent operate favorably. *But there is no harm in it if a man has a legitimate motive for doing a thing, although in addition to that he has a motive which, if it stood alone, would be an illegitimate one.* He is not to refrain from doing that which he might legitimately have done on account of the existence of this motive, which by itself would have been an illegitimate motive." In the view I take of this question I do not think I can say that this was a corrupt act committed with the knowledge and consent of the respondent.

It clearly appears that the respondent himself contributed $1,000, and his friends to his knowledge a much larger sum for the purposes of his election, and that a sum probably equal in the whole to $3,000 was raised for that purpose, the larger part of which passed into the hands of Mr. Campbell, a warm personal and political friend of the respondent. That no consultation took place between them as to how or in what way the money should be used, or what, if any, precautions were to be taken to prevent illegal or corrupt use of this large sum of money. That Mr. Campbell, as far as we know, gave it to all or any of the committeemen that applied for it, who were employed in furthering the respondent's election, without any instructions from him as to how it was to be spent, or warnings against an improper use of it. That a great deal of this money was admittedly spent in corrupt purposes, some in direct bribery, and in treating to the extent of avoiding the election, and some of the parties who made this improper use of the money in giving their evidence spoke of it in a way which might induce duce those who heard them to suppose that they rather took pride in having violated the law rather than feeling that they had done acts which were culpable, disreputable as far as they were concerned, and seriously injurious to the candidate to whom they pretended to be friendly.

It cannot be denied, judging from the demeanor and manner of giving evidence of some of these witnesses, that Mr. Campbell was guilty of great carelessness, if not reckless indifference to consequences in placing the unrestricted use of considerable sums of money in such hands as these, and in this respect he certainly failed to serve the true interests of the friend for whom he was acting, and apparently showed an indifference as to whether the law of the land was violated or not, which certainly is not commendable to say the least of it, in a gentleman in his position.

I shall refer to the *Bewdley Case*, 1 O'M. & H., 18. There it appears, from the report, that the respondent had deposited as much as £11,000 in the hands of one Pardoe, directing him in his letters to apply that money honestly, but not exercising, either personally or by any one else, any control over the manner in which that money was spent, and not in fact knowing

how it was spent. The learned Judge before whom the case was tried, Mr. Justice Blackburn, said, "Upon that I can come to no other conclusion than that the respondent made Pardoe his agent for the election to almost the fullest extent to which agency can be given. A person proved to be an agent to this extent is not only himself an agent of the candidate but also makes those agents whom he employs. The extent to which a person is an agent differs according to what he is shown to have done. An agent employed so extensively as is shown here makes the candidate responsible not only for his own acts, but also for the acts of those whom he (the agent) did so employ, even though they are persons whom the candidate might not know or be brought in personal contact with." He then refers to the case of a sheriff answerable for the acts of his deputy as somewhat analogous. In dealing with the evidence affecting the personal guilt of the respondent he said: "In paying money to a person not declared to be his election agent, the respondent was in most direct terms acting contrary to 26 Vict., cap. 29, sec. 4; besides I cannot in the slightest degree doubt that if a fund is placed in the hands of an agent by a candidate, and if it is shown that the agent expended it in corrupt practices afterwards, it is evidence tending to show that the candidate paying into those hands the money that was spent in corrupt practices was himself intending that it should be spent in corrupt practices. Then it seems to be a question to what extent it was shown if the money was bestowed for corrupt practices, that the candidate who gave the money was aware of it, and in that case also the extent to which it was shown that there were corrupt practices would be very material. I think if it were shewn that there had been, as in many other boroughs in former times and it may be now, extensive bribery, a large number of people bribed, corrupt clubs paid money, and so forth, it would be a very serious question whether the candidate in putting money into the hands of his agents was not personally cognizant of it."

There was no affirmative evidence given to show that the money which the respondent knew had been raised for the purposes of the election was so large that as a reasonable man he must know that it or some considerable portion o it would be used for corrupt purposes, and that he could not suppose that the fair and reasonable amounts to be paid for rent of rooms for canvassers, and the expenses in canvassing, such as treating persons whom they met, and probably the payment of cab hire, together with expenses of committeemen for similar purposes with the other unavoidable legitimate expenses, could absorb the sum raised for the purpose of his election.

It was suggested that rent of a room, $10, was an unreasonable sum. It was said a public meeting was held in this room, that there were 200 people present at it; there would be light and fuel required. I cannot say it struck me that $10 was a very extortionate charge. The rooms that would be occupied by committeemen would require light and fuel; there would probably be a number of people in the room; they would not be likely to be of that class that would necessarily take much pains to keep the place very tidy. It would probably require cleaning out next day, and if only the charge for the use of the room is to be taken into consideration, $5 a night would not seem to be a large sum under the circumstances for an ordinary sized room. No evidence was given as to the number of canvassers that would be reasonable, or as to their compensation or their expenses. I can recall the evidence of a witness in the East Toronto case, tried before me. I think he was an honest man. He took a list of voters in a certain locality with a view of canvassing them, he wanted no pay for his time; he went at night and he met the voters frequently at taverns, and as was the custom amongst people of his class when they met to talk over matters, if they met in a tavern one would call for a drink, then the other would in his turn do so, and so with no intent to bribe whatever, he found in this way that he was frequently out of pocket from half a dollar to a dollar, and if I mistake not on some nights as much as two dollars for this kind of expenditure. He had no wish to charge for his own services, but he could not afford to be out of pocket in this way. Now if a similar practice prevailed at the election here, I can understand how a candidate might well presume that the legitimate expenses attending his election in a very close and active canvass requiring that each elector should be frequently seen to ascertain if he continued in the same mind as formerly, would be very large. In the absence then of anything like conclusive evidence on this point against the respondent, I have not been able to make up my mind that I ought to decide against him.

The fact that the respondent might have relied on Mr. Campbell, as a lawyer and a good business man, not permitting any expenditure that was improper, may perhaps be something in his favor. But the result shows as far as we

can see that Mr. Campbell did not take any steps whatever to prevent improper expenditure, and it might, therefore, be inferred from his conduct that he thought it best not to take a different course for fear that it might have prejudiced respondent's chance of success in the contest.

I must confess I have been very much embarrassed in coming to a conclusion in this matter satisfactory to myself. If it was not that I felt compelled to look upon this branch of the case in the nature of a penal proceeding requiring that the petitioner should prove his allegations affirmatively by satisfactory evidence, and that he might have given further evidence to have repelled some of the suggestions in respondent's favor, if such suggestions were not reasonable ones, I should feel bound to decide against the respondent, but looking at the whole case I do not think I ought to do so.

It is found from experience that the provisions contained in the present laws now in force in the Dominion and in Ontario do not effectually put an end to corrupt practices at elections, and that in order to do so it will be necessary to bring candidates within the highly penal provisions of declaring them, when they violate the law, incapable of being elected or holding office for several years, election judges will probably find themselves compelled to take the same broad view of the evidence to sustain these highly penal charges that experience compelled committees of the House of Commons to take as to the evidence necessary to set aside an election. I think the petitioner was well warranted in continuing the enquiry as to the personal complicity of the respondent with the illegal acts done by his agents, and that he is entitled to full costs, and that the respondent is not entitled to any costs for obtaining his amended particulars.

I shall, in accordance with Mr. Bethune's request, report that respondent, by his agents, has been guilty of bribery, but that they were not his authorised agents for that purpose, and that no corrupt practices have been proven to have been committed by or with the knowledge or consent of the respondent. From my present view of the law I do not think that such finding can affect the status of the respondent as a candidate at any future election under the statute, but I so make my report that the petitioner may have whatever benefits from it he thinks it will entitle him to. I will certify that the witnesses made full and true answers to my satisfaction.

Election set aside with costs.

UNITED STATES REPORTS.

SUPREME COURT OF IOWA.

Annie Morrow, Respondent, v. James Wood, Appellant.

A parent in sending his child to school surrenders to the teacher such control over the child as is necessary for the proper government and discipline of the school. But where the parent desires that the child shall omit a part of the regular course of study and so directs him, the teacher has no paramount authority to enforce the study of the omitted part, and corporal punishment of the child for disobedience under such circumstances is an unlawful assault.

The fact that the school was a public one, in which the studies were prescribed by statute, *held* not to vary the general rule as to the right of a parent to direct the omission of part of the prescribed studies.

This was an action by Annie Morrow, the respondent in error, against Wood, the appellant, for malicious prosecution. The plaintiff was a teacher in a public school, and the defendant, Wood, was the father of one of the pupils, a boy about twelve years of age. Defendant's child on coming to the school was directed by plaintiff to take up certain studies including geography. The boy, by command of his father, refused to study geography, and for this disobedience was punished by the teacher. The father thereupon commenced a prosecution against the teacher for assault and battery. After some continuances the prosecutor failed to appear before the justice, and the case was discontinued. The teacher then brought this action and obtained a verdict for $500, whereupon the defendant took a writ of error to this court.

Barber & Clementson, for appellant.

G. C. Hazelton and *O. B. Thomas*, for appellee.

The opinion of the court was delivered by

Cole, J.—It is claimed by the counsel for the defendant that the court below should have granted the motion for a nonsuit, because all the evidence showed that the criminal prosecution against the plaintiff for an alleged assault and battery committed by her upon the infant son of the defendant was never tried upon the merits, but was discontinued on her motion and against the consent of the complainant in that action. It is insisted that before an action for malicious prosecution can be maintained, it must appear that the criminal prosecution has been determined in favor of the party prosecuted, by a trial and acquittal, or the prosecution must have been discontinued against his consent.

We shall spend no time in the consideration of this point in the case, for the reason that we are fully agreed upon a question of law involved, which is fundamental and underlies the cause, and is entirely decisive of every other question arising upon the record. And as this is a question of some practical importance as affecting the duties and powers of teachers in our public schools we deem it best to decide it in the present case. The facts upon which this question of law arises as established on the trial, are these in brief.

About the 18th of November, 1872, the plaintiff, a qualified teacher under a contract with the district school board, commenced teaching a district school in Grant county. The defendant, an inhabitant of the district, sent his son, a boy about twelve years of age, to the school. The defendant wished his boy to study orthography, reading, writing, and also wished him to give particular attention to the study of arithmetic, for very satisfactory reasons which he gave on the trial. In addition to these studies the plaintiff at once required the child to also study geography, and took pains to aid him in getting a book for that purpose. The father, on being informed of this, told his boy not to study geography, but to attend to his other studies, and the teacher was promptly and fully advised of this wish of the parent, and also knew that the boy had been forbidden by his parent from taking that study at that time. But, claiming and insisting that she had the right to direct and control the boy in respect to his studies even as against his father's orders, she commanded him to take his geography and get his lesson. And when the boy refused to obey her and did do as he was directed by his father, she resorted to force to compel obedience. All this occurred a the first week of school. The defendant instituted a criminal action before a justice for this assault and battery upon his son, which is the malicious prosecution complained of. If the teacher had no right or authority to chastise the boy upon these facts for obeying his father, this action must fail. And whether or not she had the power to correct him is the question in the case, for it is not pretended that the boy was otherwise disobedient or was guilty of any misconduct, or violated any rule or regulation adopted for the government of the school. The Circuit Court, in considering the relative rights and duties of parent and teacher, among other things told the jury that where a parent sent his child to a district school he surrendered to the teacher such authority over his child as is necessary to the proper government of the school, the classification and instruction of the pupils including what studies each scholar shall pursue, these studies being such as are required by law or are allowed to be taught in public schools. And the court added in this connection, that a prudent teacher will always pay proper respect to the wishes of the parent in regard to what studies the child should take, but where the difference of view was irreconcilable on the subject, the views of the parent in that particular must yield to those of the teacher, and that the parent by the very act of sending his child to school impliedly undertakes to submit all questions in regard to study to the judgment of the teacher. In our opinion there is a great and fatal error in this part of the charge, particularly when applied to the facts in this case, in asserting or assuming the law to be that upon an irreconcilable difference of views between the parent and teacher as to what studies the child shall pursue, the authority of the teacher is paramount and controlling, and that she had the right to enforce obedience to her commands by corporal punishment. We do not think she had any such right or authority, and we can see no necessity for clothing the teacher with any such arbitrary power. We do not really understand that there is any recognized principle of law, nor do we think there is any rule of morals or social usage, which gives the teacher an absolute right to prescribe and dictate what studies a child shall pursue, regardless of the wishes or views of the parent, and, as incident to this, gives the right to enforce obedience even as against the orders of the parent. From what source does the teacher derive this authority? From what maxim or rule of the law of the land? Ordinarily it will be conceded the law gives the parent the exclusive right to govern and control the conduct of his minor children, and he has the right to enforce obedience to his commands by moderate and reasonable chastisement. And furthermore, it is one of the earliest and most sacred duties taught the child to honor and obey its parents. The situation of the child is truly lamentable if the condition of the law is that he is liable to be punished by the parents for disobeying his orders in regard to his studies, and the teacher may lawfully chastise him for not disobeying his parents in that particular. And yet this was the precise dilemma in which the defendant's boy was placed by the asserted authority on the part of parent and teacher.

Now, we can see no reason whatever for denying to the father the right to direct what

studies included in the prescribed course his child shall take. He is as likely to know the health, temperament, aptitude and deficiencies of his child as the teacher, and how long he can send him to school. All these matters ought to be considered in determining the question what particular studies the child should pursue at the given term. And where the parent's wishes were reasonable, as they seem to have been in the present case, and the teacher by regarding them could in no way have been embarrassed, her conduct in not respecting the orders given the boy was unjustifiable. If she had allowed the child to obey the commands of his father, it could not possibly have conflicted with the efficiency or good order or well-being of the school. The parent did not propose to interfere with the gradation or classification of the school, or with any of its rules and regulations further than to assert his right to direct what studies his boy should pursue that winter. And it seems to us a most unreasonable claim on the part of the teacher to say the parent has not that right, and further to insist that she was justified in punishing the child for obeying the orders of his father rather than her own. Whence, again we inquire, did the teacher derive this exclusive and paramount authority over the child, and the right to direct his studies contrary to the wish of his father? It seems to us it is idle to say the parent, by sending child to school, impliedly clothes the teacher with that power in a case where the parent expressly reserves the right to himself, and refuses to submit to the judgment of the teacher the question as to what studies his boy should pursue. We do not intend to lay down any rule which will interfere with any reasonable regulation adopted for the management and government of the public schools, or which will operate against their efficiency and usefulness. Certain studies are required to be taught in the public schools by statute. The rights of one pupil must be so exercised undoubtedly as not to prejudice the equal rights of others. But the parent has the right to make a reasonable selection from the prescribed studies for his child to pursue, and this cannot possibly conflict with the equal rights of other pupils. In the present case the defendant did not insist that his child should take any study outside of the prescribed course. But, considering that the study of geography was less necessary for his boy at that time than some other branches, he desired him to devote all his time to orthography, reading, writing and arithmetic. The father stated that he thought these studies were enough for the child to take, and he said he was anxious the boy should obtain a good knowledge of arithmetic in order that he might assist in keeping accounts. He wished to exercise some control over the education of his son; and it is impossible to say that the choice of studies which he made was unreasonable or inconsistent with the welfare and best interest of his offspring. And how it will result disastrously to the proper discipline, efficiency and well-being of the common schools to concede this paramount right to the parent to make a reasonable choice from the studies in the prescribed course which his child shall pursue, is a proposition we cannot understand. The counsel for the plaintiff so insist in their argument, but, as we think, without warrant for the position. It is unreasonable to suppose every scholar who attends school, can or will study all the branches taught in them. From the nature of the case some choice must be made, and some discretion be exercised, as to the studies which the different pupils shall pursue. The parent is quite as likely to make a wise and judicious selection as the teacher. At all events, in case of a difference of opinion between the parent and teacher upon the subject, we see no reason for holding that the views of the teacher must prevail, and that she has the right to compel obedience to her orders by inflicting corporal punishment upon the pupil. The statute gives the school board power to make all needful rules and regulations for the organization, gradation and government of the school, and power to suspend any pupil from the privileges of the school for non-compliance with the rules established by them or by the teacher with their consent; and it is not proposed to throw any obstacle in the way of the performance of these duties. But these powers and duties can be well fulfilled without denying to the parent all right to control the education of his children.

These views are decisive of this case. Under the circumstances the plaintiff had no right to punish the boy for obedience to the commands of his father in respect to the study of geography. She entirely exceeded any authority which the law gave her, and the assault upon the child was unjustifiable.

For these reasons the judgment of the Circuit Court must be reversed and a new trial ordered. —*American Law Register.*

REVIEWS.

The Municipal Manual. Containing the Municipal and Assessment Acts and Rules of Court, for the Trial of Contested Municipal Elections, with Notes of all decided cases, etc. By Robert A. Harrison, Esq., B.C.L., Q.C. Third edition. Toronto: Copp, Clark & Co., 1874. p.p. 871.

In the year 1858 Mr. Harrison successfully launched his first Municipal Manual. In 1867, nine years afterwards, a second edition appeared, which was even more successful than the first. The innumerable changes made by the Legislature, from time to time, were consolidated in the Act of 1873, and this Act is the text taken by Mr. Harrison for his third edition. In every respect the last is the most complete and satisfactory work of the three. Few men at the Bar, if any, have as great a familiarity with municipal law as the editor of this manual. That thorough knowledge of the subject, combined with his untiring industry and application, has enabled Mr. Harrison to produce a work which is invaluable, not only to those concerned in the management of our municipal affairs, but also to the Bench and Bar, who have to interpret and carry out the laws affecting them.

The preface to the third edition speaks feelingly of the endless alterations in the law: "If the Legislature of Ontario could be induced, for a few sessions, to refrain from mangling the Acts so that their provisions would become more generally and better understood, it would be to the public advantage." Few will object to these observations: the truth of them is too patent, and the same thing has even been remarked by the Bench.

The necessities and peculiarities of this country are naturally akin and in a great measure similar to those of the great Anglo Saxon offshoot lying to the south of us, and in many branches of law we have derived great assistance from the labors of those many learned men who have illustrated and discussed the subjects they treat of in the light both of English and American decisions. As text-writers the American jurists have been eminently successful, their mode of treatment being generally marked by great research and thoroughness. Amongst the number may be classed Hon. Mr. Dillon, a judge of one of the Circuit Courts of the United States. He recently published a work on Municipal Law, which is a standard authority on that subject in the United States, and has also been found of great assistance to those lawyers in this country who have had occasion to refer to it. We notice that Mr. Harrison has (with the author's special permission) borrowed largely from this "mine of municipal wealth." So that, practically, all that is to be found there of use to us in this country, is reproduced in its appropriate place in Mr. Harrison's manual.

In another branch of law which has lately been prominently before the public—the trial of election petitions—we have the benefit of the editor's experience in the notes to the sections of the Municipal Act relating to contested elections. The similarity of the main provisions in this Act to those of the Provincial, Dominion, and Imperial Statutes, enables one who is familiar with the principles which underlie the decisions, to give the greatest assistance to those who are interested in the trial of contested Municipal elections. Mr. Harrison has in this respect also added greatly to the value of his manual.

Another very important subject, which has also received Mr. Harrison's most careful attention, is that of the sale of lands for taxes. The notes on the points under the Statutes in that behalf are very full and complete.

The manual is so well known from the two previous editions, that the mere announcement of its publication will procure a ready sale. It is pleasing to come across a law-book, written in this country by a member of our Bar, that may be *financially* a success. Generally "virtue is its own reward," but the subjects which have been selected by Mr. Harrison to examine and illustrate, have been handled by him in such a practical and satisfactory way, that there is reason to hope that he has, to some extent at least, escaped the usual fate of those venturesome and public-spirited individuals who have, like himself, either as legal journalists, text writers, or annotators, endeavored to supply the want felt by their brethren, at great labor to themselves,

with scarcely the possibility even of any money return.

We notice a very useful calendar at the beginning of the volume, giving the times and order of the various proceedings that are to take place in the municipal year pursuant to the Act.

We congratulate an old and staunch friend of this journal upon this his last publication. The matter of it is good, and the manner in which it is given, as regards the preparation for the press, the Index, verification of cases, etc., is equally creditable to those who had charge of that part of the work.

The Principles of Equity, intended for the use of Students and the Profession. By the late Edmund Henry Turner Snell, of the Middle Temple, Barrister-at-law. Third Edition. By John Richard Griffith, of Lincoln's Inn, Barrister-at-law. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar, 1874. pp. 596.

This work is now too well known to require much reference to it. It is only two years since the second edition was published, and the third edition is now before us.

The simple and reliable statement of Equity principles in the first edition of the work commanded a favorable reception from the start. Unfortunately, the author did not live to see his work reach the second edition. But it is well for the reputation of the book that it has found an editor so able to realize the inspiration of the author and so faithful to his trust as Mr. John Richard Griffith.

The present edition contains the more important Equity decisions, including those of the current year; and the various acts of Parliament affecting Equitable doctrines passed since the last edition of the work, are also referred to or incorporated in the text.

In these days, when great efforts are made both in England and here to fuse law and equity, we cannot do better than recommend such of our Common Law friends as have not read the work, to give it a careful perusal. We know of no better introduction to the Principles of Equity. While affording to the student an insight to principles of which as yet he is not master, it places at the service of those familiar with the doctrines of Equity the most recent cases establishing or qualifying well understood principles.

Principles of Conveyancing—an Elementary Work for the use of Students. By Henry C. Deane, of Lincoln's Inn, Barrister-at-law. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar, 1874. pp. 474.

Law is a science, and, like other sciences, must be studied by ascertaining the principles which regulate it. No man is born a lawyer. Some men are born with an aptitude to learn the science of law. The most successful student is he who begins by mastering principles.

Watkins on Conveyancing has been for very many years the student's book on this very important branch of the legal curriculum. But for thirty years there has not been anew edition of it published.

Now, as law is a progressive science, a text book thirty years old can scarcely be a safe guide. The changes wrought during that time by acts of the Legislature and decisions of the Court are so many and so various, that old text-books become worse than useless.

We have been at a loss to understand why it is that no new edition of Watkins on Conveyancing has been recently issued. Perhaps one reason is that it would be so laden with notes as to obscure and bear down the original text.

Under these circumstances we think Mr. Deane has acted wisely in writing a new work. His object is "to present to the student an elementary view of the various forms of ownership of land which exist at the present day, and next, to examine the simpler forms of conveyance used in transferring land from one person to another."

The author has a good reputation as a real property lawyer. He has been recently re appointed lecturer to the Incorporated Law Society of the United Kingdom. This in itself is some guarantee of his ability. The second part of his work comprises in substance, lectures delivered

by him at the Law Institution, in the years 1873 and 1874.

Although the author states that his work is purely elementary and contains nothing which is not familiar to the practitioner, we have found it to be a valuable and reliable collection of modern conveyancing cases.

We hope to see this book, like Snell's Equity, a standard class-book in all Law Schools where English law is taught.

The first part, which treats of corporeal hereditaments, deals with the earlier tenures of land, an estate for years, an estate for life, an estate tail, an estate in fee simple, copyholds, the statute of uses, a reversion and remainder, an executory interest, estates in joint tenancy, tenancy in common, and caparcenary, husband and wife, and an equity of redemption.

The second part exclusively relating to conveyancing, treats of conditions of sale, purchase deeds, leases, mortgage deeds, settlements and wills.

The whole is preceded by a carefully compiled index of cases, and followed by a full and reliable index of subjects.

The New Ontario Digest. By C. Robinson, Q.C., and F. J. Joseph, Barrister. Toronto: Rowsell & Hutchinson.

The second part of Robinson & Joseph's Digest has been issued, and the third part is in type, and will be out shortly. We understand the delay has partly arisen from a re-arrangement and transposition of some of the principal headings.

FLOTSAM AND JETSAM.

Coughing in Court.—We have heard of a popular preacher who periodically reproved his congregation for coughing in church, and an incident which has just occurred in Liverpool shows that the prohibition ought to extend to all public places. Grave legal consequences very nearly resulted from a fit of coughing which lately overtook a member of the Bar in the Liverpool Court of Sessions. A prisoner charged with stealing a mackintosh coat, was on his trial, and the foreman of the jury was about to deliver the verdict, when the noise of the coughing caused the Clerk of the Peace to misinterpret the opinion of the twelve "gentlemen in the box." The learned Recorder at once proceeded to sentence the prisoner. With a suave approval of the judgment arrived at, he remarked that "the jury had found the prisoner guilty of the offence, and, so far as he (the Recorder) could see, very properly so." At this point, however, the unfortunate spokesman of the twelve became uneasy. The compliments of the Bench seemed to arouse him to an understanding of the situation, and he ventured to inquire whether the Recorder's kindly comments referred to the case just tried. The Recorder replied in the affirmative, and the luckless juryman could no longer conceal the fact that the verdict of himself and his brethren had been an acquittal. We think, on the whole, the conduct of the foreman is to be commended. By thus reverting to the actual verdict he lost, it is true, the approval of the Bench, but he might possibly have felt some little remorse if the prisoner had been condemned to a long term of imprisonment after the jury had taken pains to find him innocent.—*London Globe.*

Holding the opinion that the cultivation of a flower garden is one of the best of recreations for those professional men who cannot or do not care to indulge in more exciting or more athletic amusements, and that it is an employment very pacifying to a distracted brain, we make no apology for inserting the advertisement of a Floral Guide for 1875. We can well imagine that about this time it is being sought for by some we could name, whose opinions are as sound on the subject of floriculture as are their judgments on points of law in the Courts of Error and Appeal, Queen's Bench, or Common Pleas.

ANSWER TO CORRESPONDENTS.

[We omitted to append the following answer to the letter of J. R., published in our last number, p. 354.]

We assume that the facts are correctly stated. It would seem that sec. 220, of the C. L. P. Act does not warrant any such amendment at the trial as adding a plea. That amendment may be made under the 222nd sec. Section 220 applies only to amendments of "*variances*" and is one of a group of sections extending from sec. 216 to 221, all limited to such cases of amendments.

We think the application to review the amendment should be made in Court, not in Chambers. It would be very anomalous in itself, as well as a "variance" from the expressed provisions of the section. to move against the decisions of a judge at *Nisi Prius* before a judicial officer holding *pro hac vice* an inferior position in Chambers. A judge in Chambers has no power to stay the entry of judgment on the verdict nor to set it aside if entered up, pending an application to strike out a plea added at the trial. See an analogous point *Ross* v. *Grange*, 27 U. C. Q. B. 306. We are almost inclined to doubt whether the matter was properly brought before the learned County Judge, as his decisions on points of law are not often questioned.

Eds. L. J.

LAW SOCIETY—TRINITY TERM, 1874.

LAW SOCIETY OF UPPER CANADA

OSGOODE HALL, TRINITY 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):

ANGUS M. MACDONALD.
FREDERICK ST. JOHN.
JOHN ROSS.
DONALD GREENFIELD MCDONELL.
DAVID HILL WATT.
JAMES PARKES.
THOMAS B. BROWNING.
JOHN RICE MCLAURIN (admitted and called.)
JOHN WRIGHT, under special Act " "

And the following gentlemen obtained Certificates of Fitness:

JOHN BRUCE.
JAMES PARKES.
DAVID HILL WATT.
RICHARD DULMAGE.
JOHN ROSS.
GEORGE B. PHILIP.
FREDERICK ST. JOHN.
THOMAS B. BROWNING.
GEORGE R. HOWARD.

And on Tuesday, the 25th of August, the following gentlemen were admitted into the Society as Students-at-Law:

University Class.

CHARLES WESLEY PETERSON.
JOHN ENGLISH.
GEORGE WILLIAM HEWITT.
DUNCAN MCTAVISH.
DONALD MALCOLM MCINTYRE.
THOMAS GIBBS BLACKSTOCK.
WILLIAM E. HODGINS.
FREDERICK PIMLOTT BETTS.
ALFRED HENRY MARSH.

Junior Class.

ALEXANDER JACKSON.
HENRY P. SHEPPARD.
HORACE COMFORT.
BAYARD E. SPARHAM.
ARCHIBALD A. MCNABB.
WILLIAM SWAYZIE.
ALBERT O. JEFFERY.
WILLIAM F. MORPHY.
HAMILTON INGERSOLL.
ALBERT JOHN MCGREGOR.
ROBERT D. STORY.
DENIS J. DOWNEY.
ALFRED CARSS.
ALEXANDER V. MCCLENEGHAN.
CHARLES E. FREEMAN.
JOHN HODGINS.
FREDERICK MURPHY.
GEORGE W. HATTON
MARTIN SCOTT FRASER.
FREDERICK W. A. G. HAULTAIN.
WILLIAM PATTISON.
RODERICK A. MATHESON.
CHARLES E. S. RADCLIFF.

Articled Clerks.

PETER J. M. ANDERSON.
JOHN H. SCOUGALL.

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

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

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

That Articled Clerks shall pass a preliminary examination upon the following subjects:—Cæsar, Commentaries Books 5 and 6; Arithmetic; Euclid, Books 1, 2, and 3, Outlines of Modern Geography, History of England (W. 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. S. caps. 42 and 44).

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

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

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

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

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

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

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

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

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

3*rd year.*—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Story's Equity Jurisprudence, Fisher on Mortgages, Vol. 1, and Vol. 2, chaps. 10, 11 and 12.

4*th 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.