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DIARY FOR AUGUST.

1. Thurs. *Lammas.*
4. SUN... *7th Sunday after Trinity.*
11. SUN... *8th Sunday after Trinity.*
14. Wed... Last day for service for County Court. Last day for County Clerk to certify county rates to municipalities in counties
18. SUN... *9th Sunday after Trinity.*
21. Wed... Long Vacation ends.
24. Sat. ... *St. Bartholomew.* Declare for County Court.
25. SUN... *10th Sunday after Trinity.*
28. Wed... Appeals from Chancery Chambers.

THE

Upper Canada Law Journal.

AUGUST, 1867.

THE LATE HON. SAMUEL BEALEY HARRISON.

It is with feelings of extreme regret that we record the death, after a comparatively short illness, of the Hon. Samuel Bealey Harrison, Judge of the County Court of the County of York, at his residence in Toronto, on the 23rd of July last, in the sixty-sixth year of his age.

This event which inflicts so severe a loss not only upon his immediate relatives and friends, but also on the whole community, calls for more than a passing notice; and though his name is so well known, and his sterling worth so well appreciated, that we can do nothing to add to his reputation or increase the love and respect of all who knew him, we may yet collect some few particulars of a life replete with the gifts that make a man useful in his generation, and blessed with that kindly nature which could not help but win the love of those who might even try to be his enemies.

He was the eldest son of John Harrison, Esq., of Foxley Grove, in Berkshire, and was born in Manchester on the 4th March, 1802. At the age of seventeen, he was admitted to the Honorable Society of the Middle Temple, and after a period of diligent study he commenced his professional career as a special pleader. In this branch he speedily acquired a large and remunerative business which he conducted with much ability for several years. During this time, he had as his students, a number of young men many of whom have since risen to the highest honors in their profession. Amongst the best known of these were, we believe, Lord Chief Justice Cockburn, and the late Mr Samuel Warren. The late Mr. Esten, one of the Vice-Chancellors of Upper Canada, was also for a short time one of his pupils.

Mr. Harrison subsequently gave up this business to his brother Richard, and being on the 15th June, 1832, called to the bar, he left the lucrative but somewhat monotonous chambers of a special pleader for the more precarious, but more brilliant prospects of the bar. Fortune here also smiled upon him, and his many friends prophesied that he was on the straight road to high professional distinction.

He went the Home Circuit, where his brethren were Montague Chambers, Shee, Channell, Russell Gurney, Gaselee, Dowling, and others.

Ill health and a desire for change, however, induced him, after a few years, to come to this country and try his fortune as a colonist. This he did in the year 1837, and settled at Brontê, in the County of Halton, where he went into milling and farming with his accustomed energy. But he was not long allowed the questionable pleasures or profits of this retirement, for he was most unexpectedly to himself, in June 1839, requested by Sir George Arthur, then Lieutenant Governor of Upper Canada, to act as his private secretary. He filled this office until Mr. Charles Poulett Thompson, afterwards Lord Sydenham, who entertained a high opinion of his capacity, appointed him Provincial Secretary on the 10th February 1841, at the time of the union of the two Canadas, and three days afterwards he was made a member of the Executive Council.

Mr. Harrison was elected member for Kingston in the first Parliament of United Canada, on 1st July 1841, in the room of Mr. Manahan, who resigned the seat and was made collector of customs at Toronto. He continued in office until his resignation on 30th September 1843, on the question of the removal of the seat of government from Kingston to Montreal.

In politics Mr. Harrison was always a reformer, but not extreme in his views, which he expressed with much clearness and force, though without attempt at oratorical display, whilst his strong common sense, clear head and business habits rendered his services of great value to the government. When Mr. Baldwin, in September 1841, introduced his celebrated resolutions as on Responsible Government, Mr. Harrison was selected by Lord

Sydenham to move the amendments, which though only slightly modifying the original resolutions, remain on the Journals of the House as the *lex scripta* of Responsible Government in this country.

After his resignation of office in September, 1843, he removed from Kingston to Toronto, and again commenced vigorously the practice of his profession in partnership with Mr. Colley Foster, and a flourishing and increasing business was the result of his labours.

In 1844 he again entered Parliament as member for Kent. On the 4th January 1845, he was appointed Judge of the Surrogate Court for the Home District in the place of Mr. Blake, and on the 29th May 1848, he was made Judge of the District Court for the Home District on the resignation of the late Judge Burns.

He was called to the Bar of Upper Canada in Michaelmas Term, 1839, and was made a Queen's Counsel on 4th January 1845, and was elected a Bencher of the Law Society.

Amongst the numerous other public positions held by this lamented gentleman was that of one of the first appointed members of the Board of Education for Upper Canada, of which, in February, 1848, upon the death of Bishop Power, he was unanimously chosen chairman. His services in the cause of public instruction may best be expressed in a minute adopted at a meeting of the Board shortly after his decease—as follows:—

"That this Council learn with the deepest regret the decease of the Hon. Samuel Bealey Harrison, Q. C., Judge of the County and Surrogate Courts of the county of York, who, as member of Lord Sydenham's administration, and Secretary of the province, introduced and carried through the legislature, in 1841, the first general school bill for united Canada, who was a member of this council since its first organization in 1846, and its chairman during the last nineteen years, and who by his intelligence and enlarged views, and by his interest in public education, conferred great benefits upon the country and contributed largely to the efficiency of the proceedings of the Counsel, while yy his courtesy and kindness he added much to the pleasure of its deliberations."

Even during the time devoted to the engrossing care of his professional duties, Mr. Harrison found time to give to the profession several law works which will hand his name down for many years to come. At an early period in his career he published his well known Digest, one of the most useful books ever written, and that not only as to the matter of it, but as to the manner of arrangement adopted. When he commenced it, the making of digests was somewhat of a new thing, and that he had the art of arrangement is evidenced by the fact that his system has been to a great extent followed in later works of the same nature. He edited a second edition in 1837, in three volumes, comprising nearly three thousand pages of closely printed matter. He also published a new edition of Woodfall's Landlord and Tenant, now in general use, largely altering, and in many places adding to and re-writing the original work. In 1835 he published, in connection with his friend Mr. Wollaston, a volume of reports of cases in the King's Bench and Bail Court during that year. In 1838, in conjunction with Mr. F. Edwards, he wrote a practical abridgment of the law of *Nisi Prius*, together with the general principles of law applicable to the civil relation of persons and the subject-matters of legal contention.

He entertained strong views as to the propriety and feasibility of a code of legal proceedings, upon a plan similar to one proposed by Crofton Uniacke. With the object of testing and explaining his ideas on the subject, he compiled in 1825 a small but compact synopsis of the law of evidence, intending eventually to bring his views more prominently before the public. We are not aware, however, that it ever went further than this.

In later days, in the western suburbs of the City of Toronto, he employed his leisure time in the care and management of one of the best kept and most complete little gardens in this country. A walk through the greenhouses and grounds with their pleasant proprietor was something to be remembered

As a judge he was respected by all—the profession having great confidence in his ability and impartiality and the knowledge which he possessed of the first principles of law, and the public placing unlimited reliance on his strong common sense, keen perception of character and motives, and his intense hatred of anything approaching to meanness or injustice

These attributes made him eminently successful in his sphere as Judge of Division Courts. He had the happy way of satisfying in a great measure, both parties, or at least of convincing their better judgment that his

decisions were founded on true principles of equity, moulded to the habits, customs, and necessities of the people between whom he was called upon to adjudicate.

His courteous disposition combined with a desire to lose nothing that could be advanced in support of an argument or either side, occasionally led to protracted discussions, which a man of rougher mould, or a judge less open to conviction, would not have had the patience to attend to. He had a great, some said, a too great contempt for "case law," and though he was too good a lawyer, and too well acquainted with his duties as a judge to decide contrary to binding decisions cited before him, he was nevertheless bold and able enough to take a comprehensive view of the general current of authorities and was so well versed in the great leading principles of law, combined with much facility of application, that his judgments were seldom appealed from. But whatever his imperfections on the bench as to trifling matters may have been, they are swallowed up and forgotten in the memory of the numberless traits of character which made his presence on the bench beneficial to the country and pleasant to the profession.

It is well known to many that conscientious scruples as to the infliction of the death penalty prevented his accepting a seat on the Superior Court Bench. This has been often regretted; but his sphere of usefulness was scarcely less in the position which he occupied, than it would have been on the upper bench; whilst, so far as he was concerned, the position was more independent, and, at least in the matter alluded to, more in accordance with the humane instincts of his nature.

In private and social life he was the impersonification of kindness and courtesy, and was blessed with an even temper and contented disposition. His varied experience and literary tastes, assisted by a most retentive memory, rendered his conversation pleasant and instructive. And though he expressed his opinions without reserve, he did so with great good humour and pleasantry. His heart was incapable, apparently, of harbouring an evil or even unkind thought, he was beloved by all, and his death was universally regretted.

Mr. Harrison married in England when a young man, and subsequently, after the death of his wife in this country, he was married to the widow of the late Col. Foster, Assistant Adjutant General. He left no children.

At a meeting of the Bar at Osgoode Hall on the 25th July last, the following resolution was passed:—

"That the Bar of the County of York and City of Toronto, desire to express their extreme sorrow at the recent death of the very esteemed Judge of the County Court, the late Hon. S. B. Harrison, and to record their sense of the great loss the Bar have sustained in the death of one who was at once so impartial a Judge and upright a man."

"That the members of the Bar of the county and city, also desire to express their heartfelt sympathy with Mrs. Harrison in the great loss she has sustained in her heavy bereavement."

The funeral was an exceedingly large one, the Chief Justice and the rest of the Judges in town at the time, and the members of the bar (in their robes) being present, together with a large number of citizens, all desirous of testifying their respect to the memory of the deceased.

REGISTRARS AND THEIR DUTIES.

A very important decision on this subject was given last term, by the Court of Queen's Bench, on an application for a mandamus to George Lount, Esq., Registrar of the County of Simcoe, to compel him to endorse on an instrument, the certificate required by the Act. It appeared that a mortgage in duplicate was sent by the attorney for the mortgagee to this Registrar to be recorded; that after some time one of the instruments was returned, with an endorsement upon it in the following words: "No. 44322, purporting to be a duplicate hereof, was recorded at the County of Simcoe Registry Office on the 9th day of January, &c.," but not signed by the Registrar or his deputy. This certificate, if it may be called such, being in no respect a compliance with the act, the document was of course sent back by the attorney to the Registrar, with a request that a proper certificate might be endorsed on the duplicate mortgage of *its* registration—not that a number, purporting to be a duplicate, was recorded. This very proper and reasonable request Mr. Lount thought fit to refuse, alleging that it was no part of the duty of the Registrar to compare documents, but he did think fit to have this meaningless endorsation signed by the Deputy Registrar.

The party interested, unwilling to submit to this view, obtained a rule nisi for a man-

damus to compel the Registrar to do his duty and give the certificate the act required.

The Court held the ground taken by the Registrar to be totally untenable, and declared it to be the *duty* of every registrar to compare the documents left with him, so that he might satisfy himself thereby that he could properly enter thereon the certificate required by law —that the law required him to make himself acquainted with the facts to which he was to certify, and that there was nothing in the act to warrant him in making a qualified certificate.

Among the arguments used by counsel (or rather a plea for mercy, for it would come strictly within the latter term) it was stated, that the Registrar was not paid for comparing documents; but, as was remarked by the Court, that was not a matter with which they had any thing to do, and so long as the law laid down clearly the duty to be done by Registrars, they were bound to enforce the performance of such duty. Considering that these officials do about the least work for the most money, and have the least to do for nothing, of any in the country, this appeal caused some merriment amongst the members of the bar, the Chief Justice remarking that if this Registrar considered the emoluments of the office insufficient, he had no doubt the government would have no difficulty in finding many men quite as competent to fill it, and who would do the duties for the same remuneration.

The court were unanimously of opinion, notwithstanding it was urged by counsel that the point was a new one, that the Registrar should be made to pay the costs, saying that the case was so very clear and the reasons given by the officer for not doing his duty so very untenable, and the proceeding so "wrong headed," that it was just such a case as required the infliction of costs.

This is one of the many instances where several Registrars that could be mentioned (who, for some reasons which other people are unable to discover, look upon themselves as an illused class and fall foul of every body in general, and the profession in particular) have taken upon themselves to put forced constructions upon the various acts affecting their duties and emoluments; but, as was in substance remarked by one of the learned judges in giving judgment, it is rather a curious fact that of the many remarkable constructions placed by Registrars upon the act, they seem to take great care to construe doubtful points in their own favor.

Practitioners and others who have accepted qualified certificates, such as spoken of above, would do well in our judgment to have the proper certificates endorsed without delay.

We may have occasion to refer again to the subject of Registrars' duties on these and other points.

SELECTIONS.

FRAUDULENT ARSON.

On Saturday, at the Central Criminal Court, two men were convicted of setting fire to a dwelling-house with intent to defraud an insurance company. They were sentenced severally to five and seven years' of penal servitude. In passing upon them this very inadequate punishment, Mr. Justice Willes said he was much afraid—to speak in the most measured terms—that it was not an uncommon offence. He had himself, during the time he had been on the bench, tried a great number of cases in which persons had been convicted of arson for purposes of fraud, and he had tried other cases in which resistance had been made to the payment of insurance by fire offices under circumstances which made it clear to his mind that the accused had set fire to their premises. He was much afraid that there were a number of persons in this country who traded on the fears of the insurance officers, and who went about taking houses and filling them with rubbish in the shape of furniture, on which they effected insurance, and then, in case of fire, made enormous claims on the insurance officers trusting that those officers would almost do anything rather than resist a claim on account of the unpopularity to which it would expose them. That, in fact, was the real reason why the insurance company in this case had not prosecuted. The prisoners were most fortunate in being tried by a jury who had so interposed on their behalf. Following the path of thought which had led to that recommendation to mercy, he treated Bond as the principal and Nye as the tool, though his was the hand that set fire to the house, and he sentenced Bond to seven years' and Ney to five years' penal servitude."

The judge was rightly of opinion that the crime is not uncommon. The late Mr. Braidwood was wont to affirm, as the result of his own extensive experience, that more than one half of all the fires in the metropolis were raised by incendiaries with deliberate design to defraud the insurance offices. Fire-raising has, in fact, become a regular profession, like begging-letter writing. It was almost unknown when death was the punishment for arson. The ill-judged leniency with which that great

crime has been visited of late years has doubtless tended to its encouragement. In determining the measure of punishment for offences, it should be borne in mind that crimes committed for the sake of gain, and especially all those that are of the nature of fraud, are acts of deliberation and calculation, and therefore should be treated with more severity than crimes that result from passion or other sudden impulses. Crimes *not* for gain are not to any considerable extent influenced by the dread of punishment, the degree of which will not much affect the amount of such crimes. But it is otherwise with crimes committed for the purpose of gain, and especially frauds. The criminal here calculates the risk and cost, and and balances these against the gain. The more severe the punishment, the more it will operate as a deterrent, and instead of treating fraud with less severity than other offences, as is the fault of our law, and the inconsiderate practice of our Judges, it should be visited with *severer* penalties. This principle applies to all frauds; but where the fraud is perpetrated by means so dangerous to life and property, and which might inflict such extensive injury, as arson, there is, in fact, a double crime, and there should be a double punishment. If not long since arson by itself was deemed worthy of death, surely arson combined with fraud should be visited with the highest secondary punishment. It should be an inflexible rule to punish it with penal servitude for life. What possible circumstances of mitigation *can* there be in such a case?

Mr. Justice Willes also observed, with equal truth, that the criminals calculated upon the aversion of offices to prosecute, because of the unpopularity to which it subjected them. It is lamentable that the newspapers should lend themselves to the promotion of this prejudice. If they would applaud as public benefactors the offices that boldly asserted the duty of punishing this most dangerous class of malefactors, public opinion would speedily undergo a change. But in the meanwhile we venture a hint to the insurance offices themselves. They have formed a very efficient alliance for the purpose of preventing losses by the common action for the extinguishment of fires. Let them, in like manner, unite for self-protection against the crime of arson. Let them form a committee to whom all suspected cases shall be submitted, who shall determine to resist the claim, or prosecute the criminal, as the case may be, at the common cost, and avowedly as the common act, so that no prejudice can result from it to the particular office, and we venture to prophesy that in twelve months the frauds now under consideration will be diminished by one half.*—*Law Times.*

* Such a course as is suggested might also have some slight effect in preventing what is alleged by companies to be a necessity, but what has the appearance of injustice, not to say indecency i. e. defending actions brought under suspicious circumstances on some avowedly technical and inequitable grounds, because the real defence cannot be substantiated. —Eds. L. J.

OBSERVATIONS ABOUT WESTMINSTER HALL AND LINCOLN'S INN.

One cannot remain for months about Westminster Hall and Lincoln's Inn, and in daily attendance upon the Courts of Common Law and Chancery, without learning many things of interest to the American bar, which he would never otherwise learn. But after having received such kindness and hospitality from the English bar and the English judges as cannot fail to inspire feelings of the most profound and grateful respect and affection, one naturally feels great reluctance to speak of the detail of justice here, lest, inadvertently, some possible breach of the confidence of social life might be committed or suspected.

But, speaking only of those things which are patent and open to all, it must be conceded that the English courts have many advantages over us in searching out the headsprings and foundations of the law, which must always give the decisions here greater weight. On one occasion this was made very obvious in the trial of a recent suit in equity, on appeal, before the Lord Chancellor and the Lords Justices, sitting as the full Court of Chancery Appeal in the Lord Chancellor's room. A case was cited which had not been fully reported. It was the case of *The President of the United States* v. *The Executors of Smithson*, for the obtaining of the Smithsonian fund. The inquiry before the Court at he time was, in what name the United States might properly sue. It was contended, on the one side, and so held in Vice-Chancellor Wood's Court, that they could only sue in the name of some official party or personage, authorized to represent the interests of the government, and to answer any cross-bill the other party might bring; while, on the part of the government, it was very naturally insisted that they should be allowed to sue in the name given in the Constitution, and the only name by which they had ever sued in their own courts. This suit was brought in that name and dismissed in the Vice-Chancellor's Court, because no personal party had been joined. The case alluded to was brought in for the purpose of showing that they had before sued in the English courts of equity in the name of the President of the United States. It became important, therefore, to show how far this case, for the recovery of the Smithson legacy, differed from the ordinary case of the government suing for the recovery of its own property. The court ordered the registrar to bring in the file: when it appeared that, by a special Act of Congress, the President had been authorized to sue for and recover this particular legacy, thus constituting him a special trustee to receive the same on behalf of the government, and consequently to discharge the executor upon such receipt of the fund. This enabled the court to perceive that it had no bearing whatever upon the general question, and thus virtually confirmed the impres-

sion and intimation of the Court of Appeal, that, as they expressed it, "The Government of the United States must be allowed to sue for their own property in their own name;" and this intimation has since been confirmed by the unanimous decision of the full Court of Chancery Appeal. The advantage of this ready opportunity of consulting the records of equity cases in the registrar's office, in order to supply any deficiencies in the reports, is often witnessed in hearings in equity in the English courts. And there are many other traditional benefits resulting naturally from being upon the ground and having at command all the appliances of such ready access to records and documents, which can never be transferred into a distant country. This, of itself, must always render these localities of great interest to Americans.

And there are some other things one meets in the English courts which naturally inspire admiration. The judges seem far more familiar with the leading members of the bar than is common in this country. Being in court during the whole time of the delivery of the almost interminable judgment in the late case of *Slade* v. *Slade*, in the Exchequer, when the law and the fact both were, by agreement of parties, referred to the court, which occupied more than four hours in the delivery, we noticed billets passing between the court and the counsel engaged in the cause in the most familiar manner, indicating the most perfect confidence and intimacy. And in all the arguments which we have listened to in the courts, either of common law or equity, there is a constant conversation kept up from the bench, but in such a common-place and kindly manner, that the counsel against whom suggestions and intimations are made do not seem at all embarrassed by them. The wonder seems to be how counsel can continue such persevering arguments under such multiplied rebuffs as sometimes fall from the bench here. In one case, where the argument continued six or seven hours, there was a constant argument on the part of the bench against the decision of the court below (it being a hearing on appeal). That was indeed a very remarkable case, already referred to, where Vice-Chancellor Wood, upon the supposed authority of a dictum of Sir John Leach, solemnly decided that, although a foreign goverment might sue in a court of equity in England for the vindication of its property rights, the United States of America could not sue in that name, notwithstanding the fact that this was the only name by which they had ever been known in any public acts with Her Majesty's Government; but that they must join some personal party for the mere purpose of enabling the opposite party to obtain a discovery by cross-bill, upon oath. Nothing could seem more unreasonable upon the face of it, and so it was held upon appeal. But these constant and repeated intimations from the bench that it was impossible to maintain the decision below without a virtual denial of all remedy to the United States, since the denial of the right to sue in one's own name seemed quite the same thing as the denial of all remedy; all this, and much more of the same kind, did not seem in the least to daunt the courage of the counsel.

At the conclusion of his judgment in the case of *Slade* v. *Slade*, Baron Martin said he wished, on his own personal account above, to enter his solemn protest against the practice of submitting matters of fact to the determination of the court instead of the jury. He believed nothing was more unsatisfactory than the trial of matters of fact by the judges. He believed the jury the only proper tribunal for the determination of matters of fact; and he must say that he believed one great reason why the decision of matters of fact by the jury was so satisfactory was, that they were not required to assign reasons for their decisions. He thought it not improbable that if jurymen were required to submit to the cross-examination of counsel, as to the grounds of their verdict, they would be quite as much puzzled to find satisfactory reasons for all their decisions as any of the witnesses in the present case.

It seemed that the amount of testimony in this case of *Slade* v. *Slade* was quite fabulous, and the cost of procuring it almost monstrous, exceeding $150,000. It is true the determination of the suit involved an inquiry into the validity of a marriage celebrated in Lombardy, an Italian province of the Austrian Empire, at the time, more than forty years since, upon which depended the title to a baronetcy and large estates. And this incidentally involved inquiries into the civil and ecclesiastical law, both of Italy and Austria, to such an extent as to become, not only very difficult and perplexing, but almost impossible of any satisfactory determination. There was in consequence a resort to the testimony of legal experts, which was found, as usual, most unsatisfactory, there being about an equal number on either side, and each determined to vindicate the views of the party for which he had been called. This led, in most instances, to a most extended cross-examination, in some instances extending over nearly twenty days, until in one case certainly, at the urgent request of the witness, an adjournment of the examination was had, in order to enable him to regain his health, which had been seriously impaired by the extended cross-examinations. We did not suppose any new light was to be gathered from the report of these illustrations of the abuse of the duties of experts or of examiners of witnesses; but it seemed refreshing to find that in Westminster Hall, in one of the most venerable of her ancient courts, it was found impracticable to elicit from professional experts anything but one-sided opinions. We do not know whether there is any inherent difficulty in so selecting experts as to render them fair and impartial; but it appears that in England as well as America, when it is allowed to be done by the

parties, it is not easy to obtain any such result. That was the great difficulty in regard to the case of *Slade* v. *Slade*.

But to return to Baron Martin's protest against submitting matters of fact to the judges. He said his experience, which was now somewhat extended, convinced him that almost all the divided judgments which had been rendered in that court arose on matters of fact or construction, and not upon matters of pure law, in regard to which the judges almost never differed. We could not but feel gratified to find so experienced and able a member of the English Bench confirming our own opinion, which we had long entertained, but which we believe is not universal with the American bar. There seems to be a growing opinion with the American bar that the jury are not to be relied on as either fair or competent in the trial of matters of fact. We believe that complaint, or the cause of it, lies far more at the door of the judges than is commonly supposed. If the judge is indifferent, and suffers the cause to glide along without much care how it is decided, or if he is so muddy in his own views or in the mode of expressing them that he cannot make himself understood by the jury, it is not improbable that the results of jury trials will become most unsatisfactory. But where the judge feels bound to master the cause and the testimony, and really sums up in a manner to make the jury understand the law and the facts fully, and also the application of each to the other, the jury will be able to reach, in the majority of cases, a satisfactory result. And a jury does relieve the judge from great responsibility, and one which it is difficult for any tribunal to sustain, where reasons must be assigned for every judgment.

There is so much testimony which is either fictitious or exaggerated, that it is impossible to decide matters of fact wisely and justly without disregarding much of the formal testimony, in regard to which there is no very obvious reason for its rejection, except the vague belief that there must be some mistake about it. But such a reason will not be likely to commend itself to the party who loses his cause in consequence of the rejection. Hence it has been said that courts of equity decide facts by counting the witnesses on either side, and that the Chancellor has no scales for weighing evidence. There will be some exceptions to these general rules, and some judges will possess an intuitive knowledge of facts, as well as law, and will find some mode of satisfying the parties with the results to which their intuition leads them.

There is another thing which one can scarcely fail to admire in the English courts. There is no appearance of haste; certainly not of hurry. Perhaps it is more apparent in passing from one cause to another than any where else. In an American court there seems to be a kind of horror or dread seizing upon the bench the moment one cause is coming to an end lest something else should be crowded in before the court can reach the next cause on the calendar. Some motion or some question seems to be the constant dread of the court the moment there is a pause between two causes. It is not so much during the progress of the hearing, but the moment the final close is attained there is a rush for the next cause, so as to preclude all interruption. But nothing of that kind occurs here. This may be partly owing to some constitutional or habitual difference in the people of the two countries. For one cannot ride across the island of Great Britain, in any direction, in an express railway train, and not observe a very marked difference in two particulars between this and our own country, in the stops and in the progress. The train starts on the moment, at the click of the bell marking its time; it runs with terrific speed to its next stopping-place, and reaches it the moment it is due. Every thing then is quiet; time enough for all changes, and every thing is ready, and very likely one or more minutes to spare before the time arrives for departure. This is most refreshing. So different from the pauses in railway travelling in our own country sometimes, where there is scarcely time to get out of the train before it is off, as if life and death hung upon losing no time at stops. So in court here. One cause is finished. Time is given to breathe; to pack up books and papers, and to get in place for taking another cause; and then, after every body gets ready, quietly start off.

We are by no means sure that a good deal of this quiet passage from one cause to another is not attributable to the fact that no motions can be interposed except upon motion day, and then mostly at Chambers. The English judges attribute their relief from perplexing impediments and motions of every grade of perplexity to the fact of sessions at Chambers, where most of these motions are heard, and where they are attended by solicitors, and not in general by counsel.

And this brings us to dwell for a moment upon the different grades of the English bar, which are maintained with great punctilio. The serjeants were long regarded as the highest rank of the profession. And now all the judges are made serjeants by special writ, before they can be sworn in as judges. But this is mere form. It is called taking the coif, and is regarded as a kind of degree or grade in the profession, which must be attained before they can be made judges. The order of serjeants was formerly much more numerous than at present, and they still compose a separate Inn, to which all the judges join themselves so soon as they become judges, and afterwards are not allowed to dine in the hall of their former Inn, except on state occasions (as the Grand Dinner at the close of Trinity Term, which fell this year upon the 12th of June), when some fifty to one hundred benchers and invited guests sit down at the high table, at the end of Middle Temple Hall, and four or

five hundred in other parts of that vast hall, and partake of a dinner which would do credit to the first nobleman in England. After the removal of the cloth, the Master of the Temple, as the rector of the Temple Church is styled, returns thanks, and the benchers and honorary guests retire to the Bencher's Rooom for dessert, where, fruit and wine being served, the president first proposes the health of the Master of the Temple, who responds in a brief speech. Some other customary toasts follow, concluding with the health of the invited guests, who all respond, of course, in speeches of more or less brevity, as taste or inclination may suggest. On the present occasion, the predominant feeling seemed to be a desire for cordial good understanding with the American nation and people. Nothing but the entire reciprocation of that sentiment was offered in return. But the opportunity of reminding them of the fact that we claimed to be something more, and better, than a mere aggregation of separate sovereign states, held together by compact or treaty, was too inviting to be wholly disregarded. It was explained, in some degree, to that learned assembly of judges and benchers that a constitution which professed to create a paramount national sovereignty, and which in terms gave a national legislature and a national executive, and a national judiciary, having the power to enforce its own decrees by its own police and by the army and navy, and which had authority to define the limits of national jurisdiction, and to correct the decisions of all the state courts bearing upon that point, must of necessity be paramount to all state sovereignty; and that the result of the late national conflict was only to establish the decrees of the national courts of last resort, declared years before by our great expounder of the National Constitution, John Marshall, and to enforce the eloquent expositions of our great national orator and senator, Daniel Webster, to which men the grand result might be as fairly and as truly attributable as to the victories of our armies in the field; to all which these gentlemen responded with all earnestness and sincerity, and blessed the hour of our first and of our final independence. After having been present in that grand old hall of the benchers of three or more centuries standing, where the principles of English liberty had been cultivated and expressed, and having listened to the congratulations of the barristers and judges and the encomiums of the elder brethren towards the yonuger members of the same great family of juridical teachers and learners, one could not well believe in any natural rivalries or jealousies between the two people, except in the matter of each doing the best in its power to maintain and defend the grand and noble principles of English and American liberty. It was a grand and inspiring occasion, both to the English and the few representatives of the American bar.—*American Law Register.* I. F. R.

UPPER CANADA REPORTS.

ELECTION CASE.

(Reported by Henry O'Brien, *Esq., Barrister-at-Law and Reporter in Practice Court and Chambers.)*

The Queen upon the Relation of Andrew Gregory Hill v. Moses Betts.

Municipal law—Disqualification of candidate—Contract with corporation—Effect of acquittance from, in equity

A person cannot be said to be disqualified as a member of a Municipal Corporation as having a contract, &c., with it if he be plainly acquitted in equity from such contract, and a sealed instrument is all that is required to perfect his discharge at law.

The rights of the candidate must be looked upon as they are in substance and effect at the time of the election.

[Chambers, May 27th, 29th, 1867.]

This was a quo warranto summons

It was alleged that Moses Betts had not been duly elected, and that he unjustly usurped the office of Reeve in the village of Welland and county of Welland, under pretence of an election held on the 26th of March, 1867, because at the time of his election he had a contract with the corporation of the county of Welland, as one of the bondsmen or sureties of James McGlashen, treasurer of the county, not discharged or released.

The facts were, that Moses Betts became a surety for McGlashen, the county treasurer to the county, on the 24th of July, 1865, in the sum of $2,000; that he offered himself for election as reeve of the village, and was elected in January last.

That his election was moved against, and was vacated because of his surety-ship for the treasurer with the county.

That another election was ordered to be held, and was held on the 26th of March, when he was again elected to be reeve.

That after the avoidance of the first election and before the holding of the second, the County Council agreed to release him from his liability as surety, and on the 14th of March passed a resolution to the effect: "That Hugh N Rose be, and is hereby approved and accepted as security for the county treasurer, in the sum of $2000, in the room and stead of Moses Betts, and that the clerk be directed to prepare and have executed the necessary bond, which shall be subject to the approval of the warden; and from the date when such bond shall be executed and approved and filed with the county clerk the liability of Moses Betts to the county, under his bond, shall cease and determine"

That the bond of Hugh N Rose was prepared and executed and was approved by the warden, and was filed with the county clerk on the 23rd of March.

That Betts received 59 votes; and the relator who is a lawyer, only 16 votes; and it was asserted that many more would have voted for Betts if they had not looked upon his election as sure.

That Betts thought he was discharged from his liability under the bond, and that the whole public of the village thought so to.

That the auditors of the county, on the 7th of May instant, reported on the accounts of the treasurer to the 31st of December last, and found

them and certified them to be correct; and since the issuing of the writ in this matter, the auditors have also reported on the accounts of the treasurer up to and inclusive of the 24th of March last, and have found the same and certified them to be correct.

That there was no default from the making of the bond up to the 24th of March last, for which Betts was liable to the county; and that the whole security, which was all along furnished by the treasurer to the county, was to the extent of $36,000, of which sum Mr Betts was liable only to the amount of $2000.

It was also shewn that the bond was destroyed by erasure of the signature and destruction of the seal—though when this was done was not stated.

Dalton shewed cause, and contended that Betts had been absolutely discharged from all liability to the county, in equity, by what had taken place; and if, by application there, Betts could compel the county to give him a release under seal, so as to be available at law, he was at liberty to set up his absolute right to a discharge in answer to this objection, which was made for a collateral purpose, and by a person who was almost, if not altogether, a stranger to the transaction.

That Betts had been, in fact, discharged from "all liability under his bond," according to the terms of the resolution; and not merely from all liability from the time of his acquittal, leaving him yet liable for any supposed default which might be discovered against his principal up to that time; and that the bond, by the removal of the signature and seal, had actually been destroyed, which is equal to a release.

Robt. A. Harrison, contra.

The disqualification created by statute is the "having by himself or his partner an interest in any contract with or on behalf of the corporation."

Now, firstly, this person has a contract in fact, because it is still undischarged; and we have only to deal with legal rights.

Secondly, if the contract can in one sense be said to be determined by reason of the alleged equitable claims put forward for that purpose, it is quite clear he has yet an interest in that contract—an interest to have a legal acquittance procured from the corporation against it.

And, thirdly, at the most Betts is only entitled to be discharged from liability from the 23rd of March last, and he remains liable for anything which has happened upon it up to that time.

ADAM WILSON, J.—Assuming that a person having a contract with the county is disqualified from being elected a member of council of a village within the county, I am of opinion that if he be plainly acquitted in equity from his contract, and only wants the ceremonial of a sealed instrument to perfect his discharge at law,—he cannot be said to be a person having a contract, or an interest in a contract with the corporation. I make no distinction between a contract and an *interest*, for although there is a difference between them, that difference does not apply here.

I have no doubt that Betts could, in an action on the bond, plead an equitable plea in discharge upon the facts stated—which are not denied; and if he could, and should succeed upon it, which he would, that would certainly determine his liability on that bond

I think I should look upon his rights as they are in substance and effect, and as he can make and perfect them to meet every requirement of rigid law; rather than by the mere imperfect form in which they happened to be at the time of his election.

I think, if Betts had contracted for the purchase of land, or for the grant of a lease for years, and had completed those acts of part performance which a Court of Chancery receives as sufficient for its jurisdiction, in lieu of the formal written contract required at law, I should hold that he was disqualified from being elected by reason of such a contract, though he could maintain no action upon it at law, and his remedy lie only in equity.

If, therefore, this disqualification includes such a case, it should exclude the case of a person nominally and formally a contractor at law, but not so in truth, and able to be declared not to be so, even at law.

I am also of opinion that the facts show that Betts was entirely discharged from all liability upon his bond, and not only from further liability upon it from and after the 23rd of March.

I must discharge this proceeding, with costs, to be paid by the relator.

Summons discharged.

COMMON LAW CHAMBERS.

(*Reported by* HENRY O'BRIEN, ESQ., *Barrister at-Law, Reporter in Practice Court and Chambers.*)

WOOD v. NICHOLS ET AL.

Summons for time to plead—Lapse—When defendant to take next step.

A defendant in default for not pleading obtained a summons for further time, with a stay of proceedings. Not attending on the return, the summons lapsed, and plaintiff immediately afterwards on same day signed judgment *Held*, that the judgment was irregular, the defendant having the whole of the return day to plead; and that a summons that has lapsed is in the same position as one that is abandoned by notice or otherwise.

[Chambers, May 26, 30, 1867.]

The declaration was served on the 30th of April.

On the 6th of May the plaintiff's attorney, at the request of the defendant's attorney, gave him ten days further time to plead, without any condition.

The defendant's attorney, in the afternoon of the 10th of May, asked the plaintiff's attorney for further time to plead, which he refused to give, as his client was blaming him, but said an order should be applied for, for that purpose.

On the 17th of May the defendant's attorney obtained a summons, calling on the plaintiff's attorney to show cause why further time to plead should not be allowed. This summons contained a stay of pleadings.

On the 18th of May, upon the return of the summons, the defendant's attorney did not attend until after the judge had left his chambers, and the plaintiff's attorney signed judgment immediately after Chambers were over and on the same day for want of a plea, and refused to waive it on being desired to do so.

The defendant then obtained a summons to shew cause why the judgment so signed for want of a plea should not be set aside for irregularity, on the ground that the said judgment was signed while proceedings were stayed, and while an application for further time to plead was pending and undisposed of; and also to shew cause why the said judgment should not be set aside and the defendant allowed to plead to the plaintiff's declaration upon such terms as to costs and otherwise as a judge should think fit, on grounds disclosed in affidavits and papers filed.

English shewed cause.

Lauder contra, citing the authorities below mentioned.

Adam Wilson, J.—The practice is stated in Arch. Pr. 11 ed. 1568, to be that: "If the rule was obtained by the defendant he must take the next step on the same day the rule is disposed of [if discharged] at his peril; but he is allowed the whole of that day so to do."

This is in accordance with the decision in *Hughes* v. *Walden*, 5 B. & C. 770, note; followed in *Vernon* v. *Hodgins*, 1 M. & W. 151; and *Mengens* v. *Perry*, 15 M. & W. 557.

And the same practice applies when the summons is taken out while the defendant is in default, as after the time to plead had expired; and although the defendant after the hearing of the summons, declines to draw up the order and elects to abandon it.

The question, then, is whether the same practice applies to the case of a defendant who, while in default for not pleading, obtains a summons for further time to plead, and allows it to lapse on the day when it is attendable? Is the defendant, whose summons has *lapsed*, in the same condition as the defendant who *abandons* his summons? I am not able to see any difference between the two cases. A lapse is an abandonment. The summons "will cease to operate as a stay, if the party taking it out expressly, by notice *or otherwise*, abandon it." Arch. Pr. 11 ed. 1590. Or "by *non-attendance* upon the judge at the time appointed," *Ibid.* 1591-2. That is, as I understand it—it will, if abandoned, or not attended, *on* the return day cease to operate as a stay *after* that day.

I am obliged, therefore, to hold that the summons having lapsed or been abandoned on the day it was attendable, and therefore while proceedings had been for some time of that day stayed—though in this case the stay is more semphatic, for it was embodied in the summons—the defendant had the whole of the same day within which to take the next step—that is to file his plea—and the plaintiff having signed judgment upon that day for the supposed default of the defendant to plead, his judgment was signed too soon, for the defendant having the whole of that day to plead, was not, according to the practice in such a case, in default.

I am obliged to make the summons absolute, and to set aside the judgment with costs; but it must, under the circumstances, be on the terms of the defendant's bringing no action for what (if anything) has been done on the execution; and I fix the costs to be paid by the plaintiff to the defendant at fifteen shillings.

Order accordingly.

CHANCERY CHAMBERS.

(*Reported by* Mr. Charles Moss, *Student-at-Law*.)

Graham v. Davis.

Foreclosure suit—Proceedings in ignorance of plaintiff's death—Motion to confirm—Infants.

Where in a foreclosure suit the plaintiff's solicitor had taken proceedings after the plaintiff's decease, in ignorance of that event, *held*, on motion to confirm those proceedings that no order could be made except by consent, and there being infant defendants, no binding consent could be given in this case, and that therefore the motion must be refused.

[Chambers, 28th May, 1867.]

The suit was brought against the infant heirs of the mortgagor for the foreclosure of a mortgage, and a decree was obtained and the accounts taken in the usual manner. Afterwards the plaintiff's solicitor discovered that the plaintiff, who had been resident in England, had died during the progress of these proceedings. He then caused the suit to be revived, and now moved to confirm all proceedings taken since the plaintiff's decease and while the solicitor was ignorant of it. The following cases were cited: *Lys* v. *Lee*, 17 Jur. 272, 607; *Houston* v. *Briseve*, 7 W. R. 394; *Fullarton* v. *Martin*, 1 Drew. 238; *Jebb* v. *Tugwell*, 20 Beav. 461.

The Judge's Secretary—Of the cases cited the only one which really bears upon the question is *Houston* v. *Briseve*. In that case V C. Kindersley made an order confirming the proceedings, there being no infants interested and all parties being represented and consenting to any order that might be made.

In *Smith* v. *Horsfall*, 24 Beav 331, one of several co-plaintiffs having died before decree, though the fact was unknown until the decree had been proceeded on before the chief clerk, the master of the rolls held that the suit must be revived and a new decree obtained, but when a motion was made to revive the suit, the representatives of the deceased plaintiff submitting to be bound by the proceedings, and the defendants not appearing, an order was made to revive the suit and prosecute the decree already made. Here there are infant defendants, and although their guardian does not object to an order confirming the proceedings, no consent to bind them can be given.

By refusing the motion the infants will have a longer time for redeeming, and that I must assume is for their benefit. I therefore refuse the application

Re Ward

Committee of lunatic—Receiver—Security required from

A person will not be appointed committee of a lunatic upon entering into his own recognizance only. Nor can a receiver be appointed upon his own security only, unless by consent.

[*Chambers, June, 1867.*]

Application for the appointment of a committee to the lunatic, upon his entering into his own recognizance only, or for the appointment of the same person as receiver upon his own security.

The Judge's Secretary—The friends of the lunatic apply for the appointment of a committee giving his own security only. This, I think, I cannot grant. The statute expressly requires "two or more responsible persons as sureties" to be given. I cannot appoint a receiver either.

on his giving his own security only. This has sometimes been done in England, but only when all parties are *sui juris* and consent, *Tylee* v. *Tylee*, 17 Beav. 583; 2 Daniels Practice (last edition) 1573.

COUNTY COURTS.

(*Reported by* Warren Totten, Esq., *Barrister-at-Law*)

Gore Bank v. Eaton, et al.

Insolvent Act of 1864—*Compulsory liquidation by secured creditor—Merger of liability in higher security—Requirements of sub sec.* 7, *of sec.* 3, *of Insolvent Act—Setting aside attachment.*

The above named Andrew Eaton and James McWhirter, miller and commission merchant, having respectively drawn and accepted bills of exchange, and discounted them with the Gore Bank to the amount of $18,000, the Bank, on the 30th day of November, 1866, took a mortgage from Eaton to secure the whole indebtedness. On the 11th of March, 1867, the Gore Bank put their debtors above named into insolvency. The *fiat* for the writ of attachment was made upon two affidavits of Robert Park, Esq., manager at Woodstock, and two corroborative affidavits. The manager stated in substance the indebtedness, reciting the several bills of exchange, and that to the best of his knowledge and belief, the defendants were insolvent within the true intent and meaning of the Insolvent Act of 1864, and have rendered themselves liable to have their estates placed in compulsory liquidation, and gives as his reason for so believing, that the bills of exchange are all due and unpaid and have been due and have remained unpaid from the times they respectively matured, and that he has frequently applied for payment thereof and that he believes the defendants have not the means or property sufficient to pay the said claims in full. In his other affidavit he says that the defendants have a considerable quantity of grain in a warehouse in Woodstock. That he had good reason to believe and verily did believe that the defendants were immediately about to remove and dispose of the said grain with intent and design to defraud the plaintiffs. The corroborative affidavits stated that they were acquainted with the defendants and were aware of the indebtedness, and that to the best of their knowledge and belief they were wholly unable to pay the amount of the indebtedness, and had not sufficient property or means to pay the same, and that the defendants were insolvent to the best of their knowledge and belief.

This was an application by petition presented to the judge of this court, to set aside the order and writ of attachment issued in this cause, upon various grounds stated below.

Beard, in support of the petition, objected,

1st. That the attachment was irregular in not being made returnable properly. It being made returnable on a day certain, instead of after the expiration of five days from the service.

2nd. That there were no sufficient grounds stated in any of the affidavits to warrant the issuing of the attachment, that the facts and circumstances charging the act of insolvency should be positively stated, and not according to belief.

3rd. That the plaintiffs do not show themselves to be creditors, and that they could not proceed jointly in bankruptcy on these bills. He cited Con. Stat. U. C. cap. 42, sec. 23, contending that the proceedings being in *rem* and not in *personam*, they were not authorized by this act.

4th. That there was not any debt due, because the liability on the bills was merged in the mortgage given by the defendant Eaton, 30th Nov., 1866. He cited *Price* v. *Moulton*, 10 C. B. 573; *Mattheson* v. *Brouse*, 1 U. C. Q. B. 272.

5th. That after an adjudication the grounds cannot be shifted, 30 L. T. O. S. 106; 10 Ves. 286; 9 Ves. 207; 10 Ves. 290; Ex. Sa. 9 L. T. N. S. 120.

6th. That the adjudication cannot be supported because the debt has been secured to plaintiffs to the full amount. Sec. 5, sub-sec. 5 of the Act of 1864. That the plaintiffs are out of court, having full security. As to the value of the security, he referred to the affidavits filed, that the plaintiffs required it to be insured to the amount of $7,000, which showed the value they placed upon it. That our act was *pari materia* with the English Act, 24 and 25 Vic. cap. 134, sec. 97, sub-sec. 1. That these securities, being recent, repelled any presumption of fraud as to the dealings of the defendants with regard to the rest of their property.

7th. That the plaintiffs cannot maintain the adjudication, because they have given time, and that the short form of mortgage given in the statute 27 and 28 Vic. cap. 31, shows that time was given, Tudor's L. C. 260; that the clause showing that the mortgagee is to have possession, pp. 220, 216, 223 of the Act, shows that the plaintiffs did give twelve months time, and the proviso means that they would give further time after the expiration of the twelve months.

8th. That the affidavits show that the Royal Canadian Bank was to make certain advances, and the affidavit of Mr. Burns, shows, that under the warehouse receipts, the grain in store was secured to the Royal Canadian Bank for advances. That the sale was valid under the two acts recited therein, and vested the property in the Royal Canadian Bank, and showed there was no fraud. As to what is an act of bankruptcy, he cited *Tims* v. *Smith*, 1 Hil. & C. 849; *Whitman* v. *Claridge*, 9 L. T. N. S. 451; *Exp. Colmaere* v. *Colmaere*, 13 L. T. N. S. 621; *Buckliston* v. *Cook*, 6 Coll. & B. 297; *Farrell* v. *Reynolds*, 11 C. B. N. S. 709. That the sale was not a sale of all the property, but of part, and not to secure an antecedent debt, but to secure advances.

Ball, and with him, *Richardson*, contra, contended that under the amended act, the judge may name a day for the return of the attachment, but if the return day was wrong, he asked to amend, as in *Re Owens*, 3 U. C. L. J. N. S. 22; that the form "F." only requires the party to swear to his belief, as to the facts and circumstances, and that having complied with the requirements of the act in this respect, the affidavits were sufficient; that the defendants had an interest in the grain which might be attached; that the statute 22 Vic. 642, shews that the defendants were jointly liable on the bills, and the affidavits showed that they were partners as to the grain. (Mr. Ball put in two bills of sale, one made by McWhirter to White for $250, and one by Eaton to T. J. Clark for $600, to which Mr. Beard objected, on the ground that they did not relate to any question in issue. Mr. Ball

cited *In re Lilburn*, 12 L. T. N. S. 209; *Graham* v. *Chapman*, 12 C. B. 85.) That as to the merger the bank had the right, under 25 Vic. cap. 416, to take additional security for the payment of their bills, without loosing their remedy on the bills; that the grain did not become the property of the Royal Canadian Bank, till the debt becomes due; that the warehousemen were the parties removing the grain; that the receipts were not indorsed as meant by the statute; that the stuff must be in store, and that the bank cannot take security on property not in *esse*. See schedule II.

McQueen, Co.J.—I do not see that the petitioners have been in any way prejudiced by the attachment being made returnable on the 22nd March, a day certain instead of after the expiring of five days from the service thereof, as the Amendment Act 29 Vic. cap. 18, sec. 8, provides, as it appears from the date of the service thereof on the petitioners. They have had the advantage of having the period for presenting their petition extended, by the irregularity. The irregularity may now be amended, and the plaintiffs are at liberty to amend if they think proper to do so. *Owens*, 3 U. C. L. J. N. S. 22.

The adjudication, if the *fiat* for the attachment may be termed such, is not, I am inclined to think, founded on sufficient materials to support it. The 7th sub-sec. of sec. 3, is, that in case any creditor by affidavit (form F.) shews to the satisfaction of the judge that he is a creditor of the insolvent for a sum of not less than $200, and also shews by the affidavit of two credible persons, such facts and circumstances as satisfy such judge that the debtor is an insolvent within the meaning of this Act, and that his estate has become subject to compulsory liquidation, such judge may order the issue of a writ of attachment, &c. Sec. 3 and its sub-sec., and sub-sec. 2 and 3 of sec. 3, point out the different cases in which a debtor shall be deemed insolvent and his estate shall become subject to compulsory liquidation.

The requirements of sec. 3, sub-sec. 7, are, 1st. That the creditor shall satisfy the judge by his own affidavit, or that of his agent, that *he* is a creditor for a sum of not less than $200. 2nd. He must shew by the affidavits of two credible persons, such facts and circumstances as satisfy such judge, that the debtor is insolvent within the meaning of the Act, and that his estate has become subject to compulsory liquidation.

The statements in the affidavits as to the facts and circumstances, must, I think, concur in relating to some one or more of the acts of insolvency, designated in the different classes of cases pointed out in the Act. As subjecting the estate of the debtor to compulsory liquidation, see sub sec. 8 of sec. 3.

It was admitted on the argument, as I understood, that the proceedings of the plaintiffs were founded on sub-sec. 6 of sec. 3, and that the act relied upon as subjecting the estate of the defendants to compulsory liquidation, rested upon the facts and circumstances of the defendants being possessed of a considerable quantity of grain in a warehouse in the Town of Woodstock, which they were immediately about to remove and dispose of with intent and design to defraud the plaintiffs. Now such being the case, the affidavit of Mr. Park to support the act of insolvency relied upon for these proceedings is, I think, insufficient, as his statement of the facts and circumstances has not been corroborated, as it seems to me the act requires, by the affidavit of another credible person. The evidence then being insufficient as to the act of insolvency relied upon, the adjudication cannot be sustained, and the attachment must be superseded. I cite as authorities upon this point, *In re Gillespie*, a bankrupt, 2 U. C. Jurist 2; *In r Rose*, a bankrupt. Ib. 14, in addition to the authorities quoted by Mr. Beard.

Various other objections have been raised as to the validity of the adjudication and the writ of attachment, and some of them are, I am constrained to say, very formidable. Entertaining the views I have endeavoured to express, as to the right of the defendants to have this attachment set aside, I need not I think allude to all of the objections urged, but there are some of them that call for particular observation, on account of the important interests involved in this case. The petitioners, besides disputing any act of insolvency committed by them, impeach the validity of the plaintiffs claim on several grounds, and some of those grounds are entitled to the most attentive consideration.

The objection that the plaintiffs cannot maintain this suit—1st. Because the defendants liability on the bills of exchange was merged in the mortgage given by the defendant Eaton 30th November, 1866, reciting these bills, 2nd. Because the proviso in the mortgage, with a covenant for payment, extends the time of payment of these bills. 3rd. Because the plaintiffs are creditors holding security and are only entitled to prove on the estate for the difference between the value of the security and the amount of their claim,—seems to me to be unanswered. Undoubtedly the plaintiffs in their corporate capacity may take mortgages on real and personal estate by way of further or additional security for debts contracted to the bank in the course of its dealings, but the enactments conferring upon banks such privileges, only places them on a footing, in these respects, with private persons, and do not, to favor them, abrogate that general rule of law which prohibits inconsistent remedies on distinct securities of different degrees for the same debt. The same principle of law governs all transactions.

The question then is, whether upon the facts appearing as stated, the taking of the mortgage from the defendant Eaton for the amount intended to be secured to the bank by the bills of the defendants attached to the mortgage security, does not extinguish the claim of the plaintiffs upon the bills; the debt in both cases being identical. I have not failed to notice that only two of the bills were due, when the mortgage was given.

The doctrine with regard to such questions appears to me to be pretty clear, and I think the authority cited, *Price* v. *Moulton*, 10 C. B. 57, and *Matheson* v. *Brouse*, 1 U. C. Q. B. 272, govern this case. In the former, Maule, J., after remarking on the facts of the case before the court, says, "I think it is quite clear that a man cannot have a remedy by covenant and by assumpsit, for the same debt, the two are wholly incompatible and cannot co-exist. If the promise was made before the covenant, the latter must prevail. *The intention of the parties has nothing to do with that.* I entirely agree with the *dictum* of Park, B., in the case of the *Norfolk Railway Co.* v. *McNamara*,

when he says, if the bond or covenant had been for the identical debt, the plea would have been a good answer without the additional allegation that the instrument was given in satisfaction." The policy of the law is that there shall not be two subsisting remedies, one upon the covenant and another upon the simple contract, by the same person against the same person for the same demand. And in the latter case, Robinson, C. J., in delivering the judgment of the court, says, "If B. on the 11th of November had made a note to M. for the sum due him, payable on the 14th February, and had afterwards given him a mortgage for the same debt, with a covenant to pay the money on the 4th of March, it is clear that the debt due on the simple contract would be merged in the higher security, and there would no longer remain a remedy to M. on the note. But I see no substantial difference between that case and the present."

And I may now remark that I can see no substantial difference between the case just cited and the present. Then, again, I think the plaintiffs are seeking too much. They, being creditors holding security, could only, according to the rules of law in England and which should prevail here, proceed and rank on the estate for the difference between the value of the security and the amount of the claim.

What that difference would be, would be rather difficult to determine upon the contradictory statements contained in the affidavits as to the value of the property. I may very possibly be wrong in the conclusions I have come to, and if so I shall only be too glad to be corrected by an appeal to a superior court.

As I do not know what has been done since the writ of attachment was issued that may effect this property, the order will be to set aside the *fiat* and the writ of attachment, see *Smalcoun* v. *Oliver*, 8 Jurist 606.

ENGLISH REPORTS.

COMMON PLEAS.

The National Savings Bank Association (Limited) v. Tranah.

Promissory note—Action on consideration—Note given to third persons as trustees for plaintiff.

To a declaration on the common counts, the defendant pleaded that he, after the accruing of the claim, at the request of the plaintiffs, delivered to third persons his promissory note for, &c., and the said note was made and delivered, and accepted and renewed by the said persons with the authority of the plaintiffs on account of the claim pleaded to, and that the said persons still held the same, and were entitled to the amount thereof.

Replication, on equitable grounds, that the said persons were and are trustees for the plaintiffs, who alone were entitled to the benefit of the note, of all which the defendant had notice, and that the note was due and unpaid.

Held a good replication.

[15 W. R. 1015. June 10.]

Declaration on the common counts for money lent, money paid, and interest.

4th plea.—As to £150, part of the money claimed, that after the accruing of the said claim the defendant, by and with the authority, and at the request, of the plaintiffs, delivered to certain persons, to wit, J. W. Williamson and J. F. Wieland, his promissory note, whereby he promised to pay to the said persons, or to their order, £150 at three months after date, and the said note was made and delivered, and accepted and renewed by the said persons, with the authority of the plaintiffs, on account of the claim herein pleaded to, and the said persons thenceforth hitherto have been, and still are, holders of the said note, and entitled thereto, and to the amount thereof.

Replication to the above plea on equitable grounds.—That the said J. W. Williamson and J. F. Wieland were, at the time of the delivery of such note to them, and are, trustees of and for the plaintiffs, and that the said promissory note in the said 4th plea mentioned was delivered by the defendant to the said J. W. Williamson and J. F. Wieland for, and for the benefit and behoof of the plaintiffs, and not otherwise, and the plaintiffs always have been, and are, the sole persons interested and entitled to the benefit of the said note, of all which the defendant had notice, and that before and at the time of the commencement of this suit the said promissory note was and still is unpaid.

Demurrer to the above replication.

Schalch, in support of the demurrer. The replication shows no answer to the plea either on legal or equitable grounds. Where a negotiable instrument given on account of a debt is lost, that is an answer to an action for the debt: *Crowe* v. *Clay*, 2 W. R. 304, 9 Ex. 604. As long as the bill or note is outstanding in the hands of some one other than the plaintiff, no action can be brought on the consideration; and the fact of the holder being trustee for the plaintiff, which is the only distinction between that case and the present, makes no difference. The cases on lost negotiable instruments are analogous: *Hansard* v. *Robinson*, 7 B. & C. 90; *Ramuz* v. *Crowe*, 1 Exch. 167. Neither is the replication good on equitable grounds, for in Story's Equity Jurisprudence, s. 885, are pointed out the principles on which a Court of Equity would interfere to stay proceedings at law; but here there was no hardship or fraud; and an unconditional injunction would not be granted, and therefore the replication cannot be set up as an equitable answer in this Court: *Jervis* v. *White*, 7 Ves. Jun. 412; Story's Equitable Jurisprudence, sections 86, 696.

Holl, in support of the replication.—The fact of the note being delivered to third persons as trustees for the plaintiffs is the same thing as if it had been delivered to the plaintiffs themselves. If this is not a good equitable replication, the effect would be that the plaintiffs would be deprived of the right to sue on the original consideration so long as the trustees hold the note.

Schalch, in reply.

Bovill, C. J.—Notwithstanding the ingenious argument of Mr. Schalch, I am of opinion that our judgment should be for the plaintiffs. The declaration is for the original debt, and the plea sets up, as an answer to part of the claim, not a discharge of the debt, but a prevention of the remedy. It sets up a promissory note which the defendant says he made and delivered to third persons on account of this claim, and with the authority of the plaintiffs. It does not say

whether the note is still running, or whether it is overdue and unpaid; but that it is overdue and unpaid appears by the replication, and so there is no defence on that ground: *Price* v. *Price*, 16 M. & W. 232. Then it is said that the note is outstanding in the hands of third persons; but it was put there by the assent of both parties, for it was put there by the defendant at the request of the plaintiffs, and it is still held by those third persons in the same capacity. Taking, therefore, the replication with the plea, the replication is perfectly good both at law and in equity. As Mr. Holl said, suppose the note outstanding in the hands of the plaintiffs themselves, because that would be the same thing as handing it to trustees for the plaintiffs, with notice to the defendant of that fact. Our judgment must, therefore, be for the plaintiffs.

Willes, J.—I am of the same opinion. On the question of pleading I think it is better to follow the rule in *Price* v. *Price*. The replication adds to the averments of the plea that the note was put into the hands of the third persons as trustees for the plaintiffs, with no right of their own, and that the defendant had notice of the whole transaction, and that the note was due and unpaid; the parties agreed that the third persons should hold it under the same circumstances as if the plaintiffs held it. Then, if the note is overdue and unpaid, there is no answer to this action. It was agreed under the existing circumstances that an action should lie for the original consideration, and that I think is the true construction of what the parties have done.

Montague Smith, J., concurred.

Judgment for the plaintiffs.

CHANCERY.

Lloyd v. Banks.

Incumbrancer—Priority—Notice to Trustees.

In order to secure priority to an incumbrancer on a settled estate, actual notice of the incumbrance must be given by the party to be benefitted by such notice, to the trustees, and knowledge of the incumbrance acquired by them *aliunde* is not sufficient notice

A trustee of a settlement read in a newspaper an advertisement of an application by the tenant for life for his discharge under the Insolvent Court.

Held, that the knowledge so acquired did not give the assignee in the insolvency priority over a subsequent incumbrancer, who on application to the trustee was not informed of the insolvency, though the trustee had in another matter acted upon this knowledge.

[15 W. R. 1006. June 26; July 1.]

This was a summons to vary the chief clerk's certificate.

A settlement, dated the 21st of December, 1852, was made on the marriage of Thomas Lloyd with a Miss Cheese, under which the husband took the first life interest. The defendant, Richard Banks, was one of the trustees of the settlement.

Thomas Lloyd, subsequently to the marriage, became insolvent, and on the 27th of January, 1859, a vesting order was made against him under the Insolvent Debtors' Act. An advertisement was published in a country newspaper of his intention to apply to the Court for his discharge under the Insolvent Debtors' Act. This advertisement the defendant Banks admitted in his cross-examination to have read early in the year 1859.

On the 22nd of April, 1859, Thomas Lloyd obtained his discharge, under the Insolvent Debtors' Act. No formal notice of the insolvency was at this time given to the trustees of the settlement, but it was admitted that Banks, who was a solicitor, had for another purpose, upon the knowledge acquired by reading the advertisement, treated the insolvency as a fact

On the 8th of October, 1861, Mrs. Lloyd died; and on the 4th of November, in the same year, Thomas Lloyd executed a mortgage of his life interest to the defendant Shepherd. On the 1st of March, 1862, formal notice of the mortgage was given by Shepherd to the trustees of the settlement, and in a reply to an inquiry made by the mortgagee at the same time the defendant Banks on the 12th of March, 1862, stated that the trustees had not had notice of any incumbrance prior to Shepherd's mortgage.

On the 25th of February, 1864, formal notice of the insolvency was given to the trustees of the settlement by the assignee under the insolvency. The chief clerk in his certificate gave the assignee under the insolvency priority over the mortgagee, and the present application was to vary the certificate by declaring that the mortgagee was entitled to priority over the assignee.

Jessel, Q. C., and *Kingdon*, for the mortgagee, contended that the advertisement was not notice A trustee was not bound to recollect what he saw in a newspaper. *Non constat* that it was true. Anyhow, it was not notice of a discharge, or of a vesting order. It only professed to be notice of a petition to the Insolvent Court. They cited *Spratt* v. *Hobhouse*, 4 Bing. 173; *Meux* v. *Bell*, 1 Hare, 73; *Re Barr's Trusts*, 6 W. R. 424, 4 K. & J. 219; *Re Atkinson*, 2 D. M. G. 140; *Foster* v. *Cockerell*, 3 Cl. & Fin. 456.

Pearson, Q. C., and *H. B. Miller*, for the assignee in insolvency, contended that it was the duty of the trustee upon reading the advertisement, to have ascertained the facts as to the insolvency, and it must be presumed that he did so. He did in fact act upon it for another purpose, and he could not say that he had not notice. If knowledge had been actually acquired, formal notice was immaterial. The advertisement was of a petition for the insolvent's discharge, which could not be made till after the vesting order. They cited *Tibbits* v. *George*, 5 Ad. & Ell. 107; *Browne* v. *Savage*, 7 W. R. 511, 4 Drew. 635.

Jessel, in reply—Information acquired *aliunde* is neither knowledge nor notice; *Foster* v. *Cockerell*; *Re Atkinson*, Sudg. Ven. and Pur 11th ed., 1006.

July 1.—Lord Romilly, M.R., after stating the facts, continued:—The question is whether the fact of Banks having seen the advertisement in the newspaper, and believed it to be true, constitutes notice of which the assignees can take advantage. I think it does not. He certainly had knowledge of the fact, and acted upon it. But that is not the same thing as notice It is clear that belief or disbelief of what he saw in the newspaper cannot affect the question of notice. It cannot depend upon his recollecting or not what he saw. He was not bound to believe or recollect what he saw in a newspaper Information by a stranger would be clearly in-

sufficient, and how does notice by a newspaper differ from notice by a stranger? Not only will notice by a stranger be insufficient, but in some cases the notice must be given in a particular way. For example, in the familiar case of an insurance company, notice of an incumbrance on a policy must be given in accordance with the usages of the office. To give priority the notice must be full and regular notice, given by the person interested, who intends to derive benefit from the notice. In this case, if the trustees had had proper notice, they would be liable to make good any loss to the mortgagee from their false information. But it is impossible that they could be made liable where the only notice they had of the incumbrance was by reading a newspaper. The law upon this point is clearly stated by Lord Eldon in *Evans* v. *Bicknell*, in the words quoted in the judgment in the case of *Burrowes* v *Lock*, 10 Ves. 475. The trustees in that case could not have been made liable if their only information had been derived through a newspaper. It is in my opinion impossible to discriminate between a mere casual conversation and a paragraph in a newspaper. The certificate must be varied by declaring that Shepherd is entitled to the first charge on the life estate.

Re Breech-Loading Armoury Company (Limited). Ex parte Henry Calisher

Company—Winding up—Practice—Witness—Attendance before Examiner.

A witness who is summoned to attend for examination before an examiner, under the 115th section of the Companies' Act, 1862, is entitled to be attended by counsel and solicitor.

[15 W. R. 1007. July 11.]

This was an application on behalf of the official liquidator, "that a witness (having submitted to be examined under the 115th section of the Companies' Act, 1862, before a special examiner), might be ordered to attend before such examiner to be examined by the counsel of the official liquidator without any counsel, solicitor, or other persons being present on behalf of the witness."

The witness was a Mr. Calisher, who had had dealings with the company, and from whom the official liquidator desired to get information as a preliminary to taking further proceedings. Mr. Calisher had attended before the examiner, and had been sworn, but when the counsel for the official liquidator required that all persons other than the certain witnesses, and those who appeared for the official liquidator, should withdraw, Mr. Brandon refused to do so, and the examination was adjourned that this application might be made. Mr. Brandon was also solicitor for other parties who had yet to be examined, and whose answers were, it was submitted, likely to be affected by the result of Mr. Calisher's examination.

There was some dispute as to whether Mr. Calisher had attended to be *cross-examined* on an affidavit which he had filed in opposition to an application to settle his name on the list of contributories, or whether he had really submitted to be *examined* under the 115th section, but his lordship directed the question to be argued on the assumption that he had attended only as a witness to be *examined*.

Selwyn, Q. C., and *Swanston*, for the application.—We only ask to have the same advantage which is attained in a public court by ordering all other witnesses to go out of court while one witness is examined. This is not a cross-examination, but an examination under the 115th section. When the assignees summon a witness in bankruptcy, the witness has no right to bring solicitor and counsel, though it is often allowed when there is no objection. This is an examination not of a *party*, but of a witness, the official's duty to extract *information*, as a preliminary to taking proceedings. The information which he will get from Mr. Calisher will not be evidence against him or anybody. If there were any issue joined and any adversary, counsel and solicitor might attend on behalf of such adversary but not on the witness's behalf.

Jessel, Q.C., and *Cottrill*, were not called on.

Lord Romilly, M.R.—This application cannot be granted. It is clear that what a witness said before an examiner might be used against him, if he said anything inconsistent with the evidence he might afterwards give. The witness must attend if summoned, though it is not clear what power there is to examine him under the 115th section, but he must have the assistance of his counsel and solicitor.

Tichborne v. Tichborne.
Tichborne v. Mostyn.
Case of the "Pall Mall Gazette" and other Newspapers.

Contempt of Court—Publication of evidence in a cause and commenting on it.

An article was published in a newspaper giving an account of certain affidavits which had been filed in a suit but which had not come before the Court. The writer went on to comment on the affidavits, and as to some of them used these expressions: "Many of these are important enough, if the deponents can endure cross-examination in the witness-box; many are obviously false, absurd, and worthless."

Held, that the publisher of the newspaper had been guilty of a gross contempt of Court.

The Court will discountenance any attempt to prejudice mankind against the merits of a case before it has been heard, and will protect every suitor against that which can affect the minds of persons who might be willing to give evidence, and which may prevent persons from giving evidence.

The case before Lord Hardwicke, reported in 2 Atkyns, 469, and *Lutter* v. *Thompson*, 2 Beav. 136, approved and followed.

[15 W. R. 1072. July 18.]

The first of these motions was one, made by special leave granted on the 15th July, that John Kellett Sharpe, the printer and publisher of the *Pall Mall Gazette*, might stand committed to prison for a contempt of Court in printing and publishing an article headed "*Tichborne* v. *Tichborne*," and that he might pay the costs of the motion. The article appeared in the paper on the 13th of July, and contained comments on the affidavits filed on behalf of the plaintiff, which the plaintiff considered to be injurious to his case.

The plaintiff had filed a bill to obtain possession of certain estates to which he laid claim. A great mass of title, which mainly depended on his being able to prove his identity with Roger Tichborne, formerly a cornet of carabineers, who had not been heard of for many years, and was supposed to be dead. His account was that he

had been saved from a shipwrecked vessel, and had afterwards lived for some years in Australia, and that he was the Roger Tichborne who had been supposed to be dead. The article gave an account of the evidence in proof of his identity, and then proceeded to make certain comments on it. The affidavits had been filed, but had not been before the court.

The following are some of the principal comments complained of:—

"We have not space to enter into details as to the statements of the thirty-four persons whose affidavits follow those of the claimant and Lady Tichborne. Many of them are important enough if the deponents can endure cross-examination in the witness-box; many are obviously false, absurd, and worthless, being those of persons who, having never seen the claimant before he left England, are nevertheless convinced that he is the person he claims to be." And—"No single member of either the Seymour or the Tichborne families, nor any of the numerous officers with whom he served in the carabineers, with the single exception of Major Heywood, have made any affidavits of their belief in the plaintiff's identity." And—"We happen to know as a fact that several of his relations have had interviews with the claimant, and have failed to recognize him, and as we do not find any affidavits from them in corroboration of his identity among the documents included in the volume now before us, we presume that they failed to recognize in the claimant their long-lost relative."

The plaintiff's solicitor, in an affidavit filed in support of the motion, stated his belief that the article "is likely to create a prejudice against the plaintiff, and to prevent witnesses from making affidavits, and otherwise seriously to impede the course of justice prior to the hearing of this cause"

G. M. Giffard, Q.C., *Druce*, Q.C., and *L. Webb*, for the plaintiff in support of the motion.—Many parts of this article are calculated to impede the due administration of justice It might prevent persons from giving evidence. The words of Vice-Chancellor Kindersley in *Felkin* v. *Lord Herbert*, 12 W. R. 241, apply very forcibly to the present case. So do the remarks of Lord Hardwicke in the case of the *Champion* and the printer of the *St. James's Evening Post*, reported in 2 Atk. 469, 471. Of a similar character are the cases of *Roach* v. *Garvan*, 2 Dick, 794, where reflections were made in a paper on witnesses in a cause, and in *Ex parte Jones*, 13 Ves. 237, also reflecting on witnesses. In *Littler* v. *Thompson*, 2 Beav. 13 i, Lord Langdale remarked that "if witnesses are in this way deterred from coming forward in aid of legal proceedings, it will be impossible that justice can be administered." They also referred to *Coleman* v. *The West Hartlepool Railway Company*, 8 W. R. 734.

Sir R. Palmer, Q.C., and *Speed*, for the editor of the *Pall Mall Gazette*.—Unless the mere publication of the pith of affidavits, with legitimate comments on them, is to be treated as a contempt of Court, this article does not fall within any of the cases cited If the cases in 2 Atkyns and 2 Dickens are examined, it will be found that the tone and spirit of the comment was as utterly unlike anything in this article as can be. In *Felkin* v. *Lord Herbert* there was a direct intimidation to those who made the affidavits. If this motion is granted a perfectly new precedent will be established. The Court, although it possesses large powers, has always confined their exercise within reasonable limits, and does not interfere with publications which do not tend to pervert the course of justice. The present article was intended to be a fair statement of the grounds on which the plaintiff's claim was made.

A reply was not heard.

WOOD, V. C.—I have no hesitation in saying that a gross contempt of Court had been committed in this case. The first observation I would make is, that from the time of Lord Hardwicke downwards the rule which that great judge laid down in the case which has just been referred to by Mr. Speed has been the rule which the Court has adopted for its guidance, namely, the determination on the part of the Court to discountenance any attempt to prejudice mankind against the merits of a case before it has been heard. That that attempt has been made here I have not the slightest doubt; that it has been made in the most offensive manner I have not the slightest doubt. An opinion has been pronounced by the author of this article, who sits down to examine the affidavits, and who sits down to examine them, as I shall show from the concluding paragraph of the article, with a clear and decided bias,—an opinion has been pronounced with all that boldness which persons under the screen of the anonymous, and which persons having no responsibility cast on them, think themselves entitled to indulge in. But those who have responsibility cast on them, this Court, and every tribunal which has to administer justice, is bound to protect every suitor from such an attempt to pervert the course of justice. I am not entitled to consider myself above being influenced by articles of this description, though I should hope I am. I am not entitled to think that the jury whom I may have to summon are above such influences, although perhaps I ought to do so. But this I am bound to say, and every authority bears that stamp, that it is the duty of the Court to protect every suitor against that which can affect the minds of persons who might be willing to give evidence in a case, obviously one of some degree of contrariety of evidence, and possibly (for I know nothing about it,) of doubt and difficulty, and which may prevent persons so critically situated from giving evidence, (and in a stage of the cause when a voluntary affidavit is the simple mode of arriving at a result upon an interlocutory application) if they are to be the subject of criticisms of this description, obviously coming from a quarter having considerable bias. I have quoted the language of Lord Hardwicke. I will now refer to the language of Lord Langdale in that case of *Littler* v. *Thompson*, which is very applicable to a case of this description. I read it thus: "I am surprised that a gentleman of education and science should think that it was serving the cause of truth and justice to publish articles of this description pending the progress of a cause." The writer of the article in question is undoubtedly a gentleman of education and information, and I am surprised he can conceive it is possible that he is serving the cause of truth and justice by tak-

ing up a set of documents, which have never been submitted to the Judge who has to determine the case, and making comments upon them. This is the first intimation I have had of a single word of the evidence, and it has never yet been submitted to the Judge. The *animus* of the commentary we gather in a great measure from the concluding paragraph of the article, because, having taken the evidence in his hand, and commented on it (whether correctly or not, I cannot say), he concludes by stating that this is the only evidence which the plaintiff at present has brought forward, and he says—"We happen to know as a fact that (certain gentlemen whom he names, supposed relatives of the claimant, his uncle and certain officers, and his aunt and his cousin, who are all named.) have had interviews with him." How does this writer know that fact? Of course he has been in communication with some one or other of these parties, and some one or other of these parties, the writer presumes, from their not having made affidavits, do not favour the claimant's case, because, he says, "Do we not find any affidavits from them in corroboration of this identity among the documents included in the volume now before us, we presume that they failed to recognise in the claimant their long-lost relative." That affords a clue to the source from whence this article emanates.

It was stated that the plaintiff had not made an affidavit stating that he did not furnish the book of affidavits to this author of this commentary. "*Qui s'excuse s'accuse.*" Why should he swear to anything of the kind? We all know that, in matters of an interlocutory description, if the defendant really believed or suspected anything of the kind, it would be easy for him simply to set forth certain facts, pledging his belief to the truth of them, and that would be sufficient to call upon the plaintiff to answer them. The plaintiff is not obliged to excuse himself beforehand from all the possible motives that may be imputed to him in the course of a cause before anybody has ventured to accuse him.

Then something has been read from the bill in order to show that the plaintiff has courted the attention of the public to his case. That may or may not be so. But the statement which is contained in the bill says nothing on earth about any affidavit which had been filed to support his case; it says nothing about anything pending before the Court—it could not, in fact, because there was, of course, no affidavit filed anterior to the suit being instituted. Now what are these comments which are said to be fair comments, which are said to be unbiassed comments, and which are said further not to err against those rules which have been laid down as fair comments on matters of public interest and public notoriety? In the first place, let me observe, that rule does not extend to comments of any description on a matter that is pending, waiting for argument and waiting for decision; and I think this Court would be failing extremely in the administration of justice if it allowed comments of such a description as are here contained to be made on any documents whatever which are before the writer and not before the Court, but which are afterwards to come before the Court, and which comments have a clear and distinct tendency, and I say are intended to have a tendency, towards directing and swaying the mind of the Court or jury, or whoever may have to determine the cause. Let us examine what the comments are. Every turn of the case is put adversely to the claimant. I was surprised at Mr. Speed's figure of speech when he expressed his doubt as to who had reason to complain of the article The article is in fact an argument, not an incapable argument, for I am not accusing the writer of incapacity, but it is an able argument adverse to the view put forward by the plaintiff. The writer says he has read the affidavits, but he does not give the public the information contained in the affidavits, so that the public may form their judgment upon the affidavits, or even upon portions of them, but he points out some two or three facts which he says are stated, and then makes strong comments upon the omissions. The article begins by stating that the plaintiff's tale is that he was lost in a vessel and saved in another vessel, and then it states "neither the name of the vessel that thus saved the claimant's life, nor of her captain, or of any of his rescued shipmates, are given in the claimant's affidavit." Then it proceeds to relate his interview with his mother, and her statement in her affidavit. That seems to be principally narrative, and at the end of it she says that in her judgment "his features, disposition, and voice are unmistakeable, and must be recognised by any impartial and unprejudiced persons who knew him before he left England, and that his memory as to everything which occurred to him up to the time of his leaving England is perfect." That is made use of again in a further part of the argument. Then the writer says: "We have not space to enter into details as to the statements of the thirty-four persons whose affidavits follow those of the claimant and Lady Tichborne. Many of them are important enough." Even that is qualified by saying, "if the deponents can endure cross-examination in the witness-box, many are obviously false, absurd, and worthless, being those of persons who, never having seen the claimant before he left England, are nevertheless convinced that he is the person he claims to be." I say, as to such a comment as that, it is quite obvious in whose favour the comment is made, but such a comment as that far transcends the bounds of any legitimate comment, if it were legitimate or could be legitimate to make comments anterior to the case being heard or the affidavits being brought before the Court which has to decide upon it. Then the writer says: "many of them are important enough, if the deponents can endure cross-examination in the witness-box; many are obviously false, absurd, and worthless, being those of persons who, never having seen the claimsnt before he left England, are nevertheless convinced that he is the persen who he claims to be." No details of those affidavits are given. For aught I know it may be open on argument to show that notwithstanding those persons may not have seen him, they may have had some other good reasons for their belief; they may have had letters from him, or some correspondence with him; a certain number of circumstances may be stated which may have led to their being so convinced. I cannot,

therefore, say that, on the mere statement of the fact, that they never saw him before he left England, and are nevertheless convinced that he is the person he claims to be, they must be obviously false, absurd, and worthless. Neither do I think that any person, having a mind to comment fairly upon the affidavits at all, would have so characterized the affidavits which any person had made in the cause, or would have thought it decent or proper, before any proper argument had been offered to the court on the effect of the affidavits, to say there are the affidavits of thirty-four persons, "many of them are important enough, if the deponents can endure cross-examination in the witness-box; many are obviously false, absurd, and worthless." Then the article proceeds after that to say: "Perhaps the most important of all is the affidavit of Major Heywood, late of the carabineers, who served with Mr. Roger Tichborne in that regiment for nearly two years." Then the writer gives his statement, in which he says he has no doubt whatever as to his identity. Then it goes on, "There are also the affidavits of two or three persons formerly non-commissioned officers, privates, and servants in the carabineers, who also bear witness that the claimant is co-identical with the Cornet Tichborne, who formerly served with them in that regiment." Then the writer adds this: "No single member of either the Seymour or the Tichborne families, nor any of the numerous officers with whom he served in the carabineers, with the single exception of Major Heywood, have made any affidavits of their belief in the claimant's identity. As, according to the dowager Lady Tichborne's affidavit the claimant's person and manner are little changed, and as his memory is perfect there can be no doubt that when the case comes to be tried the claimant will readily obtain justice. The name of a vessel in the Australian trade, which in 1854 picked up at sea nine shipwrecked persons, maintained them on board for three months, and landed them at Melbourne, can easily be ascertained; it is more than probable that some of the other survivors of the wreck of the *Bella* may be in existence, the gentleman by whom Mr. Roger Tichborne was educated at Stonyhurst, and the Roman Catholic priest by whom his religious exercises were directed, must be accessible, and at least a score of his brother officers in the carabineers will be available, and unbiassed witnesses as to his identity."

And then there is this:—"We happen to know as a fact that several of his relations have had interviews with the claimant, and have failed to recognize him, and as we do not find any affidavits from them in corroboration of his identity among the documents now included in the volume now before us, we presume they have failed to recognize in the claimant their long lost relative." This is an argument, and a powerful argument addressed by this person, whoever he may be, who wrote this article, against the claim made by the plaintiff; and that powerful argument not only indicates the bias of the writer's mind, but it is coupled with the observation that many of the claimant's witnesses would be important if they could bear cross examination in the witness-box, and that many of their statements are "obviously false, absurd, and worthless." It appears to me plain and manifest that this is a most improper interference with the administration of justice. I shall reserve what is to be done until I have heard the other cases.

There were similar motions against other newspapers. The first of these were against the *Times* and the *Morning Advertiser*, which papers had simply published the article complained of as an extract from the *Pall Mall Gazette*.

Roxburg, Q C, and *A. G. Marten*, appeared for the *Times* and the *Morning Advertiser*, and submitted that as these papers had merely copied the article and made no comments of their own, they ought not to be made to pay the costs of the motion.

The next motions were those against the *Southampton Times* and the *Hampshire Chronicle* The *Southampton Times* had printed a synopsis of the evidence without any comment.

Shebbeare appeared for this paper and submitted that nothing could be less objectionable than their synopsis, which was all in favour of the plaintiff.

[WOOD, V.C.—I think, Mr. Giffard, you might have given them a simple notice not to print this.]

The case of the *Hampshire Chronicle* was similar.

W. W. Cooper, appeared for this paper, which he submitted had not been guilty of any contempt of Court. The only case where parties had been committed for merely publishing affidavits was that of *Cann* v. *Cann*, reported in a note to *Matthews* v. *Smith*, 3 Hare, 383, and in that case the circumstances do not appear.

The remaining motions were against the *Hampshire Independent* and the *Morning Post*.

It was alleged by the plaintiff that the *Hampshire Independent* had published extracts from the affidavits, and also re-published the article from the *Pall Mall Gazette*, after the plaintiff had given them notice of motion.

Higgins, for the *Hampshire Independent*, asked for leave to answer this evidence

The *Morning Post* had published extracts from the plaintiff's affidavits in an article which ended by stating the effect from the evidence, which it would probably be produced from the defence

Kay, Q C., for the printer of the *Morning Post*, submitted that he had committed no contempt If he had done so, he made an humble apology for it

Sir R. Palmer, Q C.—Perhaps your Honour will allow me to say, on behalf of Mr. Sharpe, the publisher of the *Pall Mall Gazette*, that, of course, it was not his intention to commit a contempt of this Court, and of having been informed of your Honour's judgment he makes his humble submission and apology in the most respectful way

WOOD, V C.—That is a very proper course and I am now glad that I suspended my judgment as to the *Pall Mall Gazette*, which has been the source of the evil as regards the *Times* and the *Morning Advertiser*; but, after the submission which has been made, I think it is quite sufficient for the purposes of justice to order the *Pall Mall Gazette* to pay the costs of the motion

With regard to the other newspapers, although it is no defence to say they did it through ignorance. I am bound to say with regard to the country papers, which are not in the hands of men

of the same intelligence and talent as those who conduct newspapers in London, it is an evil incident to the improvement we have made in Chancery practice in printing documents that they are more easily circulated than they used to be: and, as to those Hampshire papers, I would rather abstain from pronouncing an opinion until I hear more of the particular case in which you have to answer the affidavit. Mr. Giffard, from which it appears that the affidavits got into the Hampshire paper from merely reprinting the documents published by you. I shall consider whether that is a case in which the motion ought to be made at all. I postpone all the cases about the Hampshire papers. With regard to the *Morning Post*, I think I must make the printer pay the costs. He will be indemnified no doubt. The printer is the person who is brought up in many of these cases. In the celebrated case of "Junius's Letters," State Tr. xx. 895, Mr. Woodfall was the printer, and was not the person who supplied the information. But the article in the *Morning Post* goes beyond, merely representing the article as extracted from the *Pall Mall Gazette*. From what that article states, it is clear they must have been in communication with some person who was wishing to make what Lord Hardwick calls an improper attempt to prejudice the case before it was heard. No doubt they may have thought it fair, that as they stated the evidence on one side, they should state what they understood was to be produced on the other. It only shows how unfortunate it is that they should have a notion that they ought to print anything at all when the case is in embryo, and in such a stage that one side only has filed affidavits which have not been read before the Court. As to the *Morning Post*, I make them pay the costs; as to the *Times* and the *Morning Advertiser*, it is enough to say that there will be no costs on either side

IRISH REPORTS.

CHANCERY.

Purcell v. Douglas.*

Practice—Pleading—Inconsistent pleas—Plea puis darrein continuance—Plea in bar of further maintenance of the action—Common Law Procedure Act (Ireland), 1853. ss. 58, 72, 73.†

A plea, purporting to be a plea of set-off, is bad if it omit to aver the defendant's willingness to set off the amount against the plaintiff's claim.

A plea *puis darrein continuance* will be set aside if pleaded without the affidavit required by the 73rd section of the Common Law Procedure Act (Ireland), 1853, or an order of the Court, in the absence of such affidavit.

A plea in bar of the further maintenance of the action will not be allowed along with traverses going to the entire cause of the action.

The plea of payment mentioned in the 58th section of the Act above quoted is a plea of payment before action of the entire sum claimed.

[15 W. R. 1019. C. P. (Ir.) July 1.]

This was an application to set aside a plea as embarrassing.

The action was brought to recover a sum of £94 6s. 6d., money had and received, and due on accounts stated. The defendant pleaded a traverse of each cause of action, and also a further defence to the entire, which was in the following terms:—As to £33 17s. 6d., part of the said sum of £94 6s. 6d., defendant says that before the commencement of this suit the plaintiff was, and still is, indebted to the defendant in a sum equal to the said sum of £33 17s. 6d., for work and labour done and performed. And as to the sum of £60 9s., being other part of the said sum of £94 6s. 6d., defendant says that the plaintiff ought not further to maintain his action in respect of the said sum of £60 9s., because the defendant says that after the commencement of this suit, and since the last pleading in this action was pleaded, defendant satisfied and discharged the said sum of £60 9s. by payment thereof in manner hereon endorsed.

E. Gibson, in support of the motion.—The portion of the plea which deals with the sum of £33 17s. 6d. is defective, because, commencing as a plea of set-off, it omits the usual and necessary averment that defendant is willing to set off that sum against an equal amount of plaintiff's claim. The part of the plea which deals with the sum of £60 9s., is either a plea of accord and satisfaction, in which case it should aver our acceptance of the money, but it does not; or it is a plea of *puis darrein continuance*, in which case it should comply with the provisions of the 73rd section of the Common Law Procedure Act of 1853, requiring an affidavit that the matter of the plea arose within eight days next before the pleading of such defence, unless the Court shall otherwise order; here there is no such affidavit, and no such order: or, lastly, it is a plea in bar of the further maintenance of the action, in which cases it cannot stand along with the traverses which go to the entire cause of action: *Suckling* v. *Wilson*, 4 Dowl. & L. 167.

O'Driscoll, in support of the plea.—The averment that the defendant is willing to set-off the £33 17s. 6d. against an equal portion of the plaintiff's claim is merely formal, and its omission will not vitiate the plea if it be otherwise evident that such is the purport and intention of the plea. The part of the plea which deals with the sum of £60 9s. is not a plea *puis darrein continuance*; it is therefore not subject to the provisions of section 73 of the Article; it is a plea to the further maintenance of the action, governed by section 72. Such a plea may be pleaded along with a traverse of the entire cause of action; section 58: *Cook* v. *Hopewell*, 11 Ex. 555. 4 W. R. 291; *Henry* v. *Earl*, 8 M. & W. 228; *Suckling* v. *Wilson*, *ubi sup.*, is inapplicable to the present system of pleading.

E. Gibson, in reply.

George, J.—The first part of the third plea purports on the face of it to be a plea of set-off, and, in my opinion, it is clearly bad, as omitting the averment of the defendant's willingness to set off the amount. The remainder of the plea appears to me to purport to be a plea *puis darrein continuance*; its terms are precisely those which should be used in such a plea. If it be a plea *puis darrein continuance*, it is open to the objection of not fulfilling the requirements of the 73rd section of the Common Law Procedure Act of 1853. It is argued, however, by the counsel for the defendant, that it is a plea to the further maintenance of the action, governed by the 72nd section, and sanctioned by the 58th. The latter

* Before George, J., sitting in Consolidated Chamber.

† Corresponding to the 84th, 68th, and 69th sections of the 15 & 16 Vict. c. 76.

section permits a defence denying the debt to be pleaded along with a plea of payment. In my opinion by such a plea of payment is meant a payment of the entire amount before action brought. A defence of payment after action brought has never been allowed along with traverses going to the entire cause of action. The cases cited by counsel for the defendant, therefore, do not apply to the present case, where such traverses are pleaded. The defence must be set aside, with costs; the defendant to be at liberty to amend, as he may be advised, within two days.

Rule accordingly.

DIGEST.

DIGEST OF ENGLISH LAW REPORTS.

FOR THE MONTHS OF NOVEMBER AND DECEMBER, 1866, AND JANUARY, 1867.

(*Continued from page* 165.)

Ademption.—*See* Will, 11.

Administration.

1. A guardian of an infant sole next of kin is entitled to administration in preference to creditors; and the latter cannot require the guardian to give justifying security, unless a very strong case for so doing is made out.—*John* v. *Bradbury*, Law Rep. 1 P. & D. 215.

2. A testator, by will, gave his property to trustees in trust, to invest part in an annuity for his widow, and to divide the residue among his children; the amount of the annuity and the names of the trustees and executors were left in blank. Administration with the will annexed was granted to the widow.—*Goods of Pool*, Law Rep. 1 P. & D. 206.

3. At an intestate's death, A., his only next of kin, was in New Zealand. On its appearing that immediate representation was necessary to preserve the estate, administration was granted to the intestate's sister for the benefit of A., limited till the grant should be made to A., or his attorney, and the administratrix was ordered to give justifying security.—*Goods of Cholwill*, Law Rep. 1 P. & D. 192.

4. A creditor was allowed to cite the next of kin to take administration, or show cause why it should not be granted to the applicant, though his right of action was barred by the statute of limitations.—*Goods of Coombs*, Law Rep. 1 P. & D. 193.

5. In a suit by creditors to administer the realty, there being no personalty, and the realty proving deficient, the costs of the plaintiffs and of the beneficial devisee, defendants, were taxed as between party and party, and paid *pari passu* out of the fund; and the balance of the fund was applied to pay plaintiffs' extra costs as between solicitor and client, and then to pay debts.—*Henderson* v. *Dodds*, Law Rep. 2 Eq. 532.

See Marshalling of Assets; Probate Practice; Will, 4.

Affidavit to hold to Bail.—*See* Practice, 3.

Agent.—*See* Principal and Agent.

Agreement.—*See* Contract.

Alimony.

1. The fact that a husband is obliged, in order to earn his income, to live in a more expensive place than the wife, will be considered in allotting permanent alimony. — *Louis* v. *Louis*, Law Rep. 1 P. & D. 230.

2. The husband's income did not exceed £60: the wife had £70 in her possession when suit was brought. Alimony *pendente lite* was refused.—*Coombs* v. *Coombs*, Law Rep. 1 P. & D. 218.

3. The respondent had been ordered to pay permanent alimony at a certain rate, so long as he should receive a rent charge of £400 a year (his only source of income), the trustees of which had a discretionary power to refuse payment. The respondent had, before the order, become bankrupt; but the trustees had continued to pay him the rent-charge, and he had failed to comply with the order. *Held* (the respondent and trustees opposing), that a sequestration should issue in general terms against the property, &c., of the respondent.—*Clinton* v. *Clinton*, Law Rep. 1 P. & D. 215.

4. In a separation deed, the husband covenanted with trustees to allow his wife £50 a year, he being indemnified against all liabilities on her account; and it being agreed, on her behalf, that she would not endeavour to compel the husband again to live with her, or to allow her any further maintenance or alimony than the annuity of £50. *Held*, that in the absence of any act showing an unqualified acceptance of the provisions of the deed, or of any attempt to enforce it against her husband, the court of equity would not, on interlocutory motion, restrain her from proceeding to the divorce court to obtain an allowance for alimony, as incident to her petition for judicial separation on the ground of cruelty: but the court put her under an undertaking to deal with the alimony as it should direct.—*Williams* v. *Baily*, Law Rep. 2 Eq. 731.

Appeal.

1. On appeals, the appellant will begin.—*Williams* v. *Williams*, Law Rep. 2 Ch. 15.

2. On appeal, any previous order in the cause may be read, but not evidence referred

to in it, unless referred to in the order under appeal.—*Jenner* v. *Morris*, Law Rep. 1 Ch. 603.

Arbitrator.—*See* Award.

Arrest.—*See* Practice, 3.

Assignment.

A. assigned to B. marginal receipts of a bank, representing deposits lodged in the bank till advice of payment of bills discounted by the bank. B. notified the bank of the assignment on the same day that A., who was largely indebted to the bank, suspended payment.—*Held*, that, as against the bank, B. was entitled to the amount covered by the marginal receipts, subject only to a set-off of any sums actually due and payable by the bank to A. at the time when the receipts became payable on liabilities contracted before the bank had notice of the assignment.—*Jeffryes* v. *Agra and Masterman's Bank*, Law Rep. 2 Eq. 674.

Attorney.—*See* Solicitor.

Auction.—*See* Vendor and Purchaser, 1.

Award.

1. To an application for a stay of proceedings under the Common Law Procedure Act, 1854, sec. 11, on the ground that the instrument declared on provides, that, "if any difference should arise between the parties, either in principle or detail," it shall be referred to arbitration, it is no answer that the difference is one of law as to the construction of the instrument.—*Randegger* v. *Holmes*, Law Rep. 1 C. P. 679.

2. By an agreement under seal, it was stipulated, that, if any dispute should arise concerning the subject matter of the agreement, or the agreement itself, such dispute should be referred to such member of the firm of B. & Co. as that firm should appoint, in accordance with the Common Law Procedure Act, 1854. Disputes having arisen, B. & Co. appointed a member of their firm arbitrator, and he made his award. *Held*, that there was sufficient submission in writing to be made a rule of court under the Common Law Procedure Act, 1854, sec. 17. — *Re Willcox* v. *Storkey*, Law Rep. 1 C. P. 671.

3. By charter-party between ship-owner and charterers, it was agreed, that, should any dispute arise, it should be referred. The owner sued for freight, and the charterers preferred a cross claim for damages resulting from the captain's misconduct; and, being willing to refer all matters to arbitration, the court, at their request, stayed proceedings under the Comman Law Procedure Act, sec. 11.—*Seligmann* v. *Le Boutillier*, Law Rep. 1 C. P. 681.

Bailment.—*See* Bill of Lading.

Bill of Lading.

1. A. was indorsee of a bill of lading, drawn in a set of three, of cotton, which had been lately landed, under an entry by A. at a sufferance wharf, with a stop thereon for freight; on March 4, A. obtained from M. an advance on the deposit of two copies of the bill, M. assuming the third to be in the master's hands; on March 6, the stop for freight being then removed, A. obtained from B. an advance on the deposit of the third copy of the bill which A. had fraudulently retained. On March 11, B., knowing of M.'s prior advance, sent his copy of the bill to the wharf, and had the cotton transferred into his own name, and afterwards sold it, and received the proceeds. *Held*, that the bill of lading, when deposited with M., retained its full force, though the cotton had been landed and warehoused; and there was a valid pledge of the cotton to M., and he could sue B., either for conversion of the cotton, or for the proceeds of the sale.—*Meyerstein* v. *Barber*, Law Rep. 2 C. P. 38.

2. H. requested W. to purchase cotton for him in W.'s name. W. agreed, employing (with H.'s knowledge) as a broker, C., who knew that W. was an agent; and W. became liable on a series of contracts, the first of which was due Sept. 9. Cotton failing, C. refused to take up the contracts unless secured from loss; and, on Sept. 26, H. deposited with W., who deposited with C., a bill of lading of goods belonging to a foreign firm, of which H. was factor. On the same day, C. made a first payment on account of W.'s indebtedness, and continued to make payments. H. became insolvent. *Held*, that the deposit of the bill of lading by H. was not made in respect to an antecedent debt of H. to W. within the meaning of the Factors' Act, and was binding on the foreign firm.—*Jewan* v. *Whitworth*, Law Rep. 2 Eq. 692.

See Freight, 1, 2; Ship, 1; Stoppage in Transitu.

Bills and Notes.—*See* Contract, 1; Practice, 2.

Boundary.—*See* Deed, 1.

Capital.—*See* Separate Estate.

Charter Party.

A charter-party provided that the ship should "with all convenient speed (on being ready), having liberty to take an outward cargo for owners' benefit direct, or on the way, proceed to E., and there load a full cargo." This the freighters bound themselves to ship. The ship deviated to C., and arrived at E. a few days

later than she would had she gone there direct. The only injury to the freighters from this delay was a small loss in freight. In an action against the freighter, *held*, that the above clause was a stipulation, not a condition precedent; and that the delay did not justify the freighter for refusing to load a cargo, but that his remedy for any damage was by cross-action.—*McAndrew* v. *Chapple*, Law Rep. 1 C. P. 643.

Children, Custody of.—*See* Guardian.

Codicil.—*See* Will, 2.

Company.—*See* Contract, 1; Master and Servant, 3, 4; Practice, 4; Ultra Vires; Vendor and Purchaser, 3.

Condition.—*See* Party; Contract, 2, 3.

Contract.

1. The defendants, members of an unregistered society, gave the following note for a debt of the society: "Twelve months after date, we the undersigned, being members of the executive committee, on behalf of the L. and S. W. Society, do jointly promise to pay," &c. *Held*, that they were personally liable.—*Gray* v. *Raper*, Law Rep. 1 C. P. 694.

2. A court will not imply conditions not expressed in an agreement, if it appear, from such agreement, that the conditions were either not thought of, or else that they were intentionally excluded from the agreement.—*Midland Railway Co.* v. *London and N. W. Railway Co.*, Law Rep. 2 Ex. 524.

3. A contract to sell cotton at a given price, to arrive at L. per ship from C., provided: "The cotton to be taken from the quay; customary allowances of tare and draft; and the invoice to be dated from date of delivery of last bale." *Held*, that the clause as to place of delivery was not a condition precedent, but a stipulation in favor of the sellers; and that the contract was in effect one to deliver the cotton at a reasonable time and under reasonable circumstances, the cotton to be at the buyers risk and charge from the time of landing on the quay.—*Neill* v. *Whitworth*, Law Rep. 1 C.P. 684.

4. A. sold stock, and lent the proceeds for a term of years to B., who covenanted to repay the stock in kind at the end of the term, and to pay interest on the proceeds in the mean while. A. allowed the loan to continue after the term. *Held*, that B. could discharge the loan by repaying the stock in hand, with interest till repayment; and that A. was not entitled to the market price at the end of the term, which was higher than at the time of re-payment.—*Blyth* v. *Carpenter*, Law Rep. 2 Eq. 501.

5. A son forged his father's name on notes, which he gave to bankers, who advanced him money on them. The banker showed the signatures to the father, who denied that they were his. Afterwards, in the presence of father and son, the bankers insisted on a settlement to which the father should be party: they made no distinct threat of prosecution, but said, "If the bills are yours [the father's] we are all right; if they are not, we have only one course to pursue, we cannot be parties to compounding a felony." The father consented to a settlement, and gave them an agreement to mortgage his property, on which the notes were given up to him. *Held*, that the agreement was invalid, and should be delivered up to be cancelled.—*Williams* v. *Bayley*, Law Rep. 1 H. L. 200.

See Covenant; Discovery; Easement, Freight, 3; Lease; Ship; Vendor and Purchaser.

Conversion.

Testator devised his real estate to S. for life, with remainder to her children in tail with remainders over, and bequeathed personal estate on corresponding trusts: he directed his trustee to sell a certain freehold estate, and invest the proceeds in lands in certain counties or in government securities, to be settled to the like trusts as his real and personal estate were settled. The trustees, in 1805, sold the freehold estate, and invested the purchase money in government securities, and allowed it to remain so invested till S.'s death in 1863. S. had only one child, who was born and died in 1810. *Held*, that the securities vested absolutely in S.'s child as personal estate.—*Rich* v. *Whitfield*, Law Rep. 2 Eq. 583.

Corporation.—*See* Company.

Costs.—*See* Equity Pleading and Practice, 4, 5, 6; Probate Practice; Solicitor, 3.

Covenant.

The purchaser of land covenanted with the vendor not to use any building erected thereon "as a public-house for the sale of beer." *Held*, that the sale of beer by retail, under a license "not to be drunk on the premises," was no breach.—*Pease* v. *Coats*, Law Rep. 2 Eq. 688.

Criminal Law.—*See* Contract, 5; Jurisdiction; Master & Servant, 5; Perjury; Threat.

Damages.—*See* Libel, 2; Ship, 3.

Deed.

1. In a lease, the boundary line was described "as a line drawn from A's house to a bound-stone;" and, in the description of the premises, it was said, "which said premises are particularly described by the map on the

back." On this map, the boundary line was drawn from the north-east corner of the house. The position of the house itself was incorrectly laid down on the map. *Held*, that the judge was bound to tell the jury that the line was to be drawn as marked on the map. (Lord Westbury *dissenting*; it being ascertained that the house was incorrectly laid down, there was a latent ambiguity, to determine which evidence should have been allowed to be given to the jury.)—*Lyle* v. *Richards*, Law Rep. 1 H. L. 222.

2. A., being indebted to B. on simple contract, made a deed, by which, after reciting the debt, he charged property as security for its payment, and agreed to execute such mortgage of the property, with all covenants and clauses incidental thereto, as B. should require. *Held*, that the deed made the debt a specialty debt. —*Saunders* v. *Milsome*, Law Rep. 2 Eq. 573.

See WILL, 4.

DEPOSITION.

Under the 1 Wm. IV. c. 22, sec. 10, which makes a deposition taken under it inadmissible at *nisi prius*, unless it shall appear to the satisfaction of the judge that the deponent is unable from permanent sickness, or other permanent infirmity, to attend, *held*, that the court out of which the record comes may review the judge's decision, but that it will not do so, unless it is shown that there was fraud, or that injustice has resulted from the course pursued; *held*, further, that the word "permanent" does not mean that the sickness is incurable. *Quære*, whether an affidavit of the deponent's ordinary medical attendant is admissible to shew such permanent sickness. *Semble*, per Willes, J., that it is.—*Duke of Beaufort* v. *Crawshay*, Law Rep. 1 C. P. 699.

DEVISE.—*See* WILL.

DISCOVERY.

On a bill for specific performance of a contract to sell to the plaintiff certain premises and machinery, alleging that the defendants had, since the contract, let the premises to third persons, who were using and injuring the machinery, the plaintiff is entitled to discovery to whom the property had been let, and for what term.—*Dixon* v. *Fraser*, Law Rep. 2 Eq. 497.

See EQUITY PLEADING AND PRACTICE, 1; PRODUCTION OF DOCUMENTS.

DOG.

1. In an action for negligently keeping a ferocious dog, it need not be shown that it had bitten another person before it bit the plaintiff; it is enough if the defendant knew that it had evinced a savage disposition, by attempting to bite.—*Worth* v. *Gilling*, Law Rep. 2 C. P. 1.

2. The plaintiff was bitten by a stray dog at a railway station. It appeared that, at 9 p.m., the dog tore the dress of another woman on the platform, of which the company's servants had notice; that, at 10.30, he attacked a cat in the signal box near the station, when the porter kicked him out, and saw no more of him; and that he appeared again at 10.40 on the platform, and bit the plaintiff. *Held*, no evidence to charge the company with negligence. *Smith* v. *Great Eastern Railway Co.*, Law Rep. 2 C. P. 4.

EASEMENT.

A. and B. were tenants of adjoining premises under the same landlord. B. was supplied by a pipe with water from A.'s well. Both premises were sold at auction, with others, in lots; one of the conditions being that each lot was subject to all rights of water and other easements (if any) subsisting thereon. A. and B. each purchased the lot of which they had respectively been tenants. *Held*, on bill by A. against the vendor, that B. had no easement or right of water, but merely a license from the landlord during his tenancy; and that A. was entitled to specific performance of his contract, without any reservation of such easement.—*Russell* v. *Harford*, Law Rep. 2 Eq. 507.

See WATERCOURSE.

ELECTION.

1. A female minor, having executed marriage articles, which contained a covenant by the husband to settle her interest in real and personal estate, including after-acquired property, on the usual trusts, died without having confirmed the articles, leaving her husband surviving and an only child. *Held*, that the child could not both claim under the articles an interest in the personal estate, and also claim, as heir to his mother, the real estate attempted to be settled, but must elect whether to take under or against the settlement.—*Brown* v. *Brown*, Law Rep. 2 Eq. 481.

2. A will, attested by two witnesses, devised land in England to A., the testator's heir, for life, with remainder to trustees; and also devised to them land in St. Kitts on trust, to sell and hold the proceeds on the same trust. A. received the rents of the St. Kitts' estates during his life; and the trustees made ineffectual efforts, with his concurrence, to sell them. A. died intestate. *Held*, that, if the will were not properly executed to pass land in St. Kitt yet that A. had elected to take under the will;

and that his infant heir was bound by his acts, and, under the Trustee Act of 1850, was trustee for the person claiming under the will.—*Dewar* v. *Maitland*, Law Rep. 2 Eq. 834.

3. A., having power to appoint a fund, on the marriage of his daughter B. appointed one-seventh to her; and, on the marriage of his daughter C. appointed another one-seventh to her. Afterwards, by deed-poll, without noticing the previous appointments, he gave one-sixth of the fund to B., another one-sixth to C., three other sixths to other children, leaving one sixth undisposed of. *Held*, that the appointments to B. and C., made by the deed-poll, were in substitution for those before made, and raised a case of election. — *England* v. *Lavers*, Law Rep. 3 Eq. 63.

Equity Pleading and Practice.

1. The United States, suing in an English Court, can only obtain relief subject to the control and pursuant to the rules of the court. Proceedings were therefore stayed in a suit by the United States till an answer should have been put into the defendant's cross-bill; but, *held*, that the President of the United States had been improperly made a defendant to the cross-bill, as the person to give discovery. *Semble*, that the bill of the United States should have been demurred to, because no public officer was put forward as representing their interests who could be called on to give discovery upon a cross-bill. — *Prioleau* v. *United States*, Law Rep. 2 Eq. 659.

2. When a large number of persons have similar legal claims, all depending on the same question, against one, he can, by a bill filed against some, restrain the proceedings of all, till the validity of the claims has been decided. — *Sheffield Waterworks* v. *Yeomans*, Law Rep. 2 Ch. 8.

3. Interrogatories to the plaintiff may be filed after notice of motion for decree, and filing of the plaintiff's affidavits, and proceedings will be stayed till the plaintiff answers, if there has been no excessive delay. — *Brancker* v. *Carne*, Law Rep. 2 Eq. 610.

4. Charges for settling the minutes of orders are allowed, though no minutes are issued.—*Reece's Estate*, Law Rep. 2 Eq. 609.

5. In administration suits, in which the gross value of the estate amounts to £1,000 when the suit is begun, the higher scale of costs applies.—*Reece's Estate*, Law Rep. 2 Eq. 609.

6. If the defendant resists *in toto* a claim a little too large, he must pay the costs up to the hearing.—*Jeffryes* v. *Agra & Masterman's Bank*, Law Rep. 2 Eq. 764.

And see different titles throughout.

Estoppel.—*See* Judgment.

Evidence.—*See* Appeal, 2; Deed, 1; Deposition, *Discovery*; *Production of Documents*; Will, 3.

Execution.

Land conveyed to a board of health for the purposes of the Public Health Acts, and used as a reservoir for supplying water to the district, can be taken under a writ of elegit on a judgment obtained against the board in the name of their clerk.—*Worral Waterworks Co.* v. *Lloyd*, Law Rep. 1 C. P. 719.

See Judgment; Practice, 5.

Executor.—*See* Administration; Will, 6.

Falsa Demonstratio.—*See* Will, 15.

Foreign State.—*See* Equity Pleading and Practice, 1.

Forgery.—*See* Contract, 5.

Freight.

1. The consignee of goods, before their arrival, indorsed the bill of lading, but not so as to pass the property, to a wharfinger, in these words: "Deliver to A. or order, looking to him for all freight, without recourse to us." The ship owners accepted the indorsement, and, in pursuance of it, delivered the goods to A. *Held*, that they could not sue the consignee for freight.—*Lewis* v. *McKee*, Law Rep. 2 Ex 37.

2. A charter-party provided that the ship should have a lien on cargo for freight at £3 10s. per ton, to be paid on delivery at L. The charterers shipped part of the cargo themselves under a bill of lading from the ship-owners containing this clause: "Freight for the said goods payable in L., as per charter-party;" the charterers, for valuable consideration, indorsed this bill of lading to A., who did not know the contents of the charter-party, but understood that freight was £3 10s. per ton. *Held*, that, as against A., the shipowner had a lien only for the freight due for the goods included in the bill of lading at £3 10s. a ton, and not for the whole chartered freight.—*Fry* v. *Chartered Mercantile Bank of India*, Law Rep. 1 C. P. 689.

3. The defendant chartered a vessel of three hundred tons for a voyage from a foreign port home, with a full cargo at 84s. per ton; but, he not being able to furnish the cargo, the owners agreed to cancel the charter-party, and to procure another cargo, on the defendant guaranteeing "a sum of £900 gross freight home." The cargo shipped under this agreement fell short of the guaranteed sum by £343. The vessel was lost. *Held*, that the contract was

broken at the moment of the shipment of the cargo, and therefore the owners could recover the £343, notwithstanding the loss of the vessel. —*Carr* v. *Wallachian Petroleum Co.*, Law Rep. 1 C. P. 636.

4. The assignee of a particular freight has a claim prior to a registered mortgagee of the ship and of all freight to be earned by her, who was prior in date, but who gave no notice, and took no steps to enforce his mortgage, till the assignee had notified the charterer, and the cargo had been partly discharged.—*Brown* v. *Tanner*, Law Rep. 2 Eq. 806.

See Charter Party; Ship.

Guardian.

The court refused to interfere with the foreign guardian, duly appointed, of subjects of a foreign country, when he wished to remove his wards from England, where they had been sent to be educated, in order to complete their education in their own country; the court refused to discharge an order appointing English guardians, but gave the foreign guardian exclusive control of the children. — *Nugent* v. *Vetzera*, Law Rep. 2 Eq. 704.

See Administration, 1.

Husband and Wife.

1. If a wife has an equity to a settlement out of a fund, the amount settled on her (which, *semble*, will, in the absence of special circumstances, be half the fund) will be directed to be settled on her and her children, with remainder, in default of issue, to her husband.—*Spirett* v. *Willows*, Law Rep. 1 Ch. 520.

2. A woman, by an ante-nuptial settlement, assigned all the personal estate to which she might at any time thereafter become entitled in any way whatsoever, on the trusts of the settlement; and her intended husband covenanted to settle any personal estate whatsoever that should devolve on or vest in her. After the marriage, a legacy was given to the wife, with a direction to the executors to pay such part thereof to the wife as she might require for her separate use, independent of her husband, and to be free in all respects from his debts and engagement. *Held*, that the settlement did not affect such part of the legacy as the wife required to be paid to her on her separate receipt. — *Mainwaring's Settlement*, Law Rep. 2 Eq. 487.

See Alimony; Election, 1; Separate Estate; Trustee, 3.

Infant.—*See* Election, 1; Guardian.

Injunction.

The court of equity will not refuse an injunction to restrain an action at law merely on the ground that the plaintiff has pleaded an equitable plea to the action, if the court of law cannot give such relief on the plea as the court of equity can give.— *Waterlow* v. *Bacon*, Law Rep. 2 Eq. 514.

See Equity Pleading and Practice, 2; Vendor and Purchaser.

Interest.—*See* Mortgage, 3.

Interrogatories. — *See* Equity Pleading and Practice, 3.

Judgment.

A. having sued B. for £28, B. paid A. £10 on account of the debt. A. afterwards signed judgment, for default of appearance, for £28 and costs, and issued execution for the amount, under which B. was arrested, and paid the sum demanded. B. having sued A. for maliciously, and without probable cause, signing judgment and issuing execution, *held*, that while the judgment stood for the full amount, B. was estopped to deny the correctness of the judgment or the execution. — *Huffer* v. *Allen*, Law Rep. 2 Ex. 15.

Jurisdiction.

It being only a question of law arising on a trial that can be stated for the opinion of the court for Crown cases reserved, that court has no jurisdiction if the prisoner has pleaded guilty; and the question is whether the prisoner's act described in the depositions supports the indictment. — *The Queen* v. *Clark*, Law Rep. 1 C. C. 54.

Lease.

T. took land of R. from R.'s agent, by parol agreement, all parties knowing that the land was to be built on. A ground-rent was fixed. T. laid out £1,800 in building. T., in a subsequent application for other land for building, declared himself willing to take such other land as "tenant at will." This land also was allotted him at a fixed ground-rent. When buildings were erected on R.'s land, those who had so taken the land were entered on the books as tenants. All sides admitted, that, where such takings were made, the tenants would never be disturbed while the ground-rent was paid. When the tenant wished to transfer the land to another, the entry of the name in the agent's book was altered. Often the land was surrendered, and the new tenant accepted, much as in the transfer of a copyhold. The tenancies were very numerous. T. alleged that there was believed to exist, and that R.'s agents had, by their words and conduct, encouraged such belief, a "tenant right tenure" on the estate, and that one who had so taken and built on R.'s land was entitled to demand the grant of

lease for sixty years. Such leases had been granted, but there was no direct evidence of their having been granted on any such claim of right. A railway company, however, being desirous of obtaining some of R.'s land held under parol agreement, on the payment of a ground rent, had refused to purchase unless such leases were granted; they were granted, and then the tenants received compensation. *Held* (Lord Kingsdown *dissenting*) that these circumstances did not show the existence of any thing more than a tenancy from year to year, and did not establish any title to compel the grant of a lease. and that, the landlord having brought ejectment against T., equity could neither compel the grant of a lease nor enjoin the ejectment.—*Ramsden* v. *Dyson*, Law Rep. 1 H. L. 129.

Legacy.—*See* Will.

Libel.

1. A letter having been written by a churchwarden to the plaintiff, the incumbent, accusing him of allowing books to be sold in the church during service, and of turning the vestry into a cooking room, the correspondence was published in the defendant's newspaper, with comments on the plaintiff's conduct. *Held*, that this was a fit matter for public discussion; and that the publication was not libellous, unless the jury thought the language was stronger than the occasion justified.—*Kelly* v. *Tinling*, Law Rep. 1 Q. B. 699.

2. The plaintiff sued the defendant for having published in his newspaper a series of gross libels on the plaintiff as incumbent of a church. It appeared, at the trial, that the first libel originated in the plaintiff having preached and published two sermons on the appointment of a Roman Catholic as chaplain to the jail, and the election of a Jew as mayor; that the plaintiff had, soon after the libels had commenced, alluded, in a letter to another newspaper, to the defendant's paper as the "dregs of provincial journalism;" and that he had also published a statement, that some of his opponents had been guilty of subornation of perjury in relation to a charge of assault against him. The verdict was for a farthing damages. *Held* (by Blackburn and Meller, JJ.; Shee, J., *dissenting*), that though, on account of the grossness and repetition of the libels, the damages might well have been heavier, the court ought not to set aside the verdict.—*Kelly* v. *Sherlock*, Law Rep. 1 Q. B. 686.

Lunatic.

The court found that a lunatic owned certain real estate in fee, and that certain persons were his heirs. On his death intestate, *Held*, that the court, sitting in lunacy, would not order the committee of the person to deliver to the heirs the estate which he had taken possession of under an adverse claim, except that part of which he had been put in possession by the court; and that neither he, nor the committee of the estate, nor the latter's solicitor, were liable to account, in lunacy, for rents accrued since the lunatic's death.—*In re Butler*, Law Rep. 1 Ch. 607.

Malicious Prosecution.—*See* Judgment.

Married Woman.—*See* Husband and Wife.

Marshalling of Assets.

1. A testator being entitled to real and personal estate absolutely, and having a power of appointment over settled personal estate in favor of his children, after giving certain specific and pecuniary legacies, gave certain pecuniary legacies to the children, and then appointed the settled property, charged with the latter legacies, to a grandchild. He also devised and bequeathed his residuary personal and R.'s real estate, subject to the payment of the legacies given by his will. *Held*, that the legacies to the children were demonstrative, and to be paid primarily out of the settled property, whether the appointment to the grandchild was good or not.—*Disney* v. *Crosse*, Law Rep. 2 Eq. 592.

2. Since the Wills Act, a general pecuniary legatee has a right of marshalling as against the residuary devisee of real estate.—*Hensman* v. *Fryer*, Law Rep. 2 Eq. 627.

3. Money borrowed by an intestate on his note, but secured by deposit of title-deeds of real estate, in terms as collateral security, is by 17 and 18 Vic. c. 113, to be paid out of the real estate.—*Coleby* v. *Coleby*, Law Rep. 2 Eq. 803.

4. The heir who has paid the debts and funeral expenses as matter of bounty cannot afterward claim to be repaid out of the personal estate.—*Coleby* v. *Coleby*, Law Rep. 2 Eq. 803.

Master and Servant.

1. The rule that a master is not liable to a servant for injuries caused by the negligence of a fellow-servant is not affected by the fact that the servant guilty of negligence is a servant of superior authority, whose lawful orders the other is bound to obey.—*Feltham* v. *England*, Law Rep. 2 Q. B. 33.

2. The plaintiff was a porter at a station of the A. Railway Company. The B. Railway Company also used the station; and their servants, while there, were subject to the rules of the A. company, and to the control of their

station master. The plaintiff, while at his usual employment, was injured by the negligence of the defendant's engine driver. *Held*, that the plaintiff and the engine driver were not fellow servants.—*Warburton* v. *Great Western Railway Co*, Law Rep. 2 Ex. 30.

3. By statute, commissioners were to make and maintain a drain and sluice; by the negligence of their servants, the sluice burst, and the plaintiff's land was damaged. In an action against the commissioners in the name of their clerk, *Held*, that the commissioners were liable, though they were a public body, discharging a public duty, without reward and without funds.—*Coe* v. *Wise*, Law Rep. 1 Q. B. 711.

4. A section of a statute appointing commissioners to make and maintain a drain, provided that if any one should sustain damage, by or in consequence of any act of the commissioners or their servants, the damage should be ascertained by a jury. *Held*, that the section applied only to damage resulting from acts authorized by the statute; but that, even if it extended to authorised acts, it did not, on a review of the statute, apply to an omission or non-feasance by the commissioners' servants. *Quære*, whether the section would not oust the jurisdiction of the superior courts in cases to which it applies; *semble*, that it would.—*Coe* v. *Wise*, Law Rep. 1 Q. B. 711.

5. The owner of works carried on for his profit by his servants may be indicted for a public nuisance caused by their acts in carrying on the works, though done without his knowledge, and contrary to his general orders.—*The Queen* v. *Stephens*, Law Rep. 1 Q. B. 702.

Mistake.—*See* Release.

Mortgage.

1. The articles of a partnership empowered any partner to dispose of his shares, but gave a right of pre-emption to the others. A partner made an equitable mortgage of his shares, which was assented to by the others, and afterwards sold his shares to A., a co-partner. *Held* that all the partners were necessary parties to a suit for the foreclosure of the mortgaged shares; that, if A. did not redeem, the other partners might; that, if neither A. nor the other partners redeemed, the mortgagee was entitled to foreclosure, and to an account of the profit made since filing the bill, and of the existing debts and liabilities of the partnership, and to have the share of such debts and liabilities attributable to the mortgaged shares ascertained.—*Redmayne* v. *Forster*, Law Rep. 2 Eq. 467.

2. A creditor agreed to remit part of the debt, on the debtor's giving him, for the balance, a mortgage, with a proviso, that, if the mortgage debt were not paid within two years, the whole of the original debt should be recovered. The debt was not paid within the two years. *Held* that the proviso was a penalty against which equity would relieve, and that the mortgagee could recover only the smaller sum.—*Thompson* v. *Hudson*, Law Rep. 2 Eq. 612.

3. Property was conveyed to trustees to raise £75,000, and pay off prior mortgagees, whose debts, including arrears of interest, amounted to that sum. The trustees did not raise the £75,000, but allowed A. to pay the prior mortgages, and take transfers of them; and then, in consideration of such payments made a deed, purporting to assign to A. the £75,000 raisable, and to mortgage the property to A. for £75,000. *Held*, that A. could not charge interest on £75,000, but could only stand as mortgagee for the principal and interest due on the transferred mortgages.—*Thompson* v. *Hudson*, Law Rep. 2 Eq. 612.

4. A railway company took land, paying money into court, and giving bonds to the owner and his equitable mortgagees. The mortgagees were aware, though without formal notice, of the inquiry into the amount of compensation, but took no part in it. The compensation awarded, which was less than the amount in court, and not sufficient to pay the mortgagees, was transferred to a suit begun by them, and ordered to stand as security. *Held*, that the mortgagees had no lien on the sum in court, but that they were not bound by the inquiry, and were entitled, in default of payment, to an assignment by the company and landowner of the land.—*Martin* v. *London, Chatham and Dover Railway Co.*, Law Rep. 1 Ch. 501.

5. Pending a suit for raising portions out of a settled estate, the tenant for life took some of the leases abroad. Afterwards, he brought into court, by its order, all the title deeds and leases. The portions having been raised by mortgage, he applied to have the deeds and leases given up to him. *Held*, by Knight Bruce, L. J., that they ought not to be delivered to him without the mortgagees' consent. *Per* Turner, L. J., *semble*, that they should be delivered to him, on his giving security for their safe custody and production.—*Jenner* v. *Morris*, Law Rep. 1 Ch. 603.

See Contract, 4; Deed, 2; Freight, 4; Marshalling of Assets, 3.

Negligence.—*See* Dog, Master and Servant, 1-3; Ship, 1.

REVIEWS.

Parliamentary Government in England,—Its Origin, Development, and Practical Operation. By Alpheus Todd.*

(From the Law Times)

Partly historical, partly legal, this work will claim a place in the general as well as in the professional library. It is not a book of practice; it will not be often referred to for the ordinary business of the office, but it is one of those treatises upon matters so intimately connected with the law—forming its foundations, in fact—which every lawyer who desires to master the science of his profession, to trace its history, and understand the meaning of many things which occur in his daily experience, and of which the form remains while the spirit has fled, will peruse with the profoundest interest and with no small amount of profit.

The first chapter is a masterly sketch of Parliamentary Government as it exists in England, followed by an historical introduction, in which the author traces its growth from the first dawnings of it down to the time of the Revolution of 1688, when the principle of ministerial responsibility was firmly established, William III. being the first really constitutional monarch. Thence to the Reform Bill Mr. Todd follows its fortunes, pointing out the effects of that great measure, by which the real power was transferred from the aristocracy to the middle class, as now it is about to be transferred from the middle class to the working class. The second part of this historical review is devoted to a sketch of the Constitutional annals of the successive administrations in England from 1782 to 1866, giving a brief account of the circumstances attending their appointment, resignation or dismissal, with notices of the various Constitutional questions, and illustrations of ministerial duty or responsibility which arose within that period.

The history concluded, Mr. Todd proceeds to an analysis of the elements out of which Parliamentary Government is constructed. First of these is the Sovereign, whose precise position and office in the machinery of the State is far more subtle and difficult to understand than is supposed by persons who have given but little thought to the subject. Between those who still cherish the notion that there is a divinity that doth hedge a king, and those who look upon the Sovereign as a mere ornament of the State, are the more rational and better informed, who know that the Sovereign has important functions still, which, though they do not directly control the Government, exercise a great indirect influence over the course of legislation, as described by Mr. Bagehot in his very able essay on the British Constitution contributed to the *Fortnightly Review*. But nowhere have the rights and duties of the Sovereign, and the connection between the Royal prerogative and Parliament, been so minutely traced and clearly exhibited as in the volume before us. This is not law, it is true, but it is so nearly allied to law that the lawyer who desires to know something more than its technicalities will welcome an instructor who will teach him so much that is useful to know in so pleasant a manner. There is but one fault: Mr. Todd is a Canadian lawyer, and the work was, we believe, written in Canada. He daily witnesses there democracy in practice, and he is not far from its operation on a wider scale in the United States. His experience has taught him to look upon democracy with intense dislike and dread, and in his great anxiety that England should profit by the example, and shun the hideous despotism into which the colonies have lapsed,† he continually interrupts his proper narrative with warnings, which, however valuable in themselves, are out of place in such a work, and savour too much of the leading article. He should have been content with an unimpassioned statement of facts, leaving inferences to the common sense of his readers.‡ With this exception the volume is one worthy of all praise, and if in the next edition Mr. Todd will blot out whatever is merely ephemeral, he will have given to historical and philosophical literature a book which the world will not willingly let die. We shall look with interest for the appearance of the second volume.

* We have already received this valuable work, but the following critique shows that our encomiums upon it are not greater than those which it has received from the English press.

† It may fairly be questioned whether, practically, the democratic element is so full of life in this country as it is even in England. This may be rather a startling observation, but under what circumstances, judging from the history of the past few months, could the British Parliament have passed a measure so much the reverse of democratic as our late Municipal Act. We presume that our contemporary by the use of the word "Colonies" (which are said to have lapsed into a "hideous despotism") refers to the United States; if so, true enough, otherwise, simply absurd.

‡ We must in a great measure disagree with our cotemporary; not merely because we, as Canadians (at one with the English nation as to the strength and beauty of a constitutional monarchy) agree with the sentiments of the author, but because the views of any one having the acknowledged ability of Mr. Todd, are especially entitled to weight, and are of great value in themselves, from the study which he has given to this particular branch of his subject—one which, we think, fall legitimately within the scope of the work.

APPOINTMENTS TO OFFICE.

CLERK OF THE CROWN IN CHANCERY.

EDWARD JOSEPH LANGEVIN, Esquire, to be Clerk of the Crown in Chancery, in and for the Dominion of Canada. (Gazetted July 13, 1867.)

CORONERS.

JOHN DAVENPORT ANDREWS, of Little Briton, Esquire, M.D., to be an Associate Coronor for the County of Victoria, in the Province of Ontario. (Gazetted July 13, 1867.)

TO CORRESPONDENTS.

"St. Lawrence" crowded out, will appear next month.