DIARY FOR JULY.

1. SUN..*5th Sunday after Trinity.* Dominion Day. Long vacation commences.
2. Mon ..County Court term begins. Heir and Devisee sittings begin.
6. Fri....Last day to serve notice of Appeal from Court Revision to County Judge.
7. Sat....County Court term ends. Col. Simcoe, Lieut.-Governor, 1792.
8. SUN..*6th Sunday after Trinity.*
14. Sat....Hon. W. P. Howland, Lieut.-Governor, Ontario, 1868.
15. SUN..*7th Sunday after Trinity.*
17. Tues..Heir and Devisee sittings end.
22. SUN..*8th Sunday after Trinity.*
23. Mon ..Union of Upper and Lower Canada, 1840.
24. Tues..Canada discovered by Cartier, 1534.
25. Wed..St. James. Battle of Lundy's Lane, 1813.
26. Thur..Jews first admitted to House of Commons,'58.
29. SUN..*9th Sunday after Trinity.*
30. Mon ..First English newspaper published, 1588.

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THE
Canada Law Journal.

Toronto, July, 1877.

The Supreme Court of Illinois has lately held that the rights of a mortgagee whose mortgage has been recorded in the books of registry is not affected by the fact that it had not been indexed, on the ground that the entry in the index is not a part of the process of record: *Mutual Life Ins. Co.* v. *Dake*, 4 Cent. L. J. 340.

In *Langmead* v. *Corkerton*, 25 W. R. 317, Sir George Jessel calls attention to a point that had been overlooked by several judges as to the authoritative weight to be given to decisions of the Lord Chancellor when sitting in the stead of other judges. In every such case he holds that the Chancellor takes the list of cases by virtue of his own original jurisdiction to try cases in the first instance, and his decision as Lord Chancellor is an authority binding upon every judge of first instance.

SURROGATE FEES IN CONTENTIOUS BUSINESS.

Until the other day, it was commonly supposed that there was no tariff fixed by the Committee of Judges appointed to regulate the practice and procedure of the Surrogate Courts. Upon that assumption, *Harris* v. *Harris*, 24 Gr. 459, was decided, as was also *Re Osler*, 7 Pr. R. 80. But, as was discovered upon an appeal from the judgment of the Master in this latter case, it happens that the commissioners passed some provisional orders in August, 1858, which, though promulgated and sanctioned by the Legislature as mentioned in the 18th sec. of the C.S. U.C. cap. 16, were not printed with the Surrogate Court rules.

One of these rules provides as follows: "The fees to be taken by attorneys and barristers respectively, practising in the Surrogate Court, in respect to business under the said Act, or under any Act of the Parliament of Upper Canada, or of this Province, giving power or jurisdiction to the said Courts or the Judges thereof, shall be the same as nearly as the nature of the case will allow as are now payable in suits and proceedings in the County Courts." Upon the appeal in *Re Osler*, the above rule was brought under the notice of Vice-Chancellor Proudfoot, who held that it was still in force and applicable to the case before him. His Lordship held that as the Judges had subsequently only drawn up rules applicable to non-contentious cases, and had not made provision for the costs in contentious cases, no full body of rules had been settled, and that this provisional regulation was still operative and determined the scale to be allowed in contentious matters as that of the County Court. Solicitors therefore will do well to delete the reports of the above judgments and make a reference to this recently discovered order, which gives a *quietus* to all elaborate disquisitions on the meaning of the meaning of the word "*Practice*" as used in the Surrogate Courts Act.

THE LAW OF DOWER.

(*Continued from page* 155.)

Since writing the former article on this subject the case of *Re Robertson* has been reported in 24 Gr. 442. The decision proceeds upon this, that where the widow has barred her dower in her husband's land, which is being mortgaged to secure the husband's debt, and that land is sold to realize the security after the death of the husband, then the widow is entitled as against creditors to dower out of any surplus proceeds of the land, computed on the whole value of the mortgaged lands. This, the most recent case in Ontario, is quite in accord with the last English decision on an analogous point by Bacon, V.C., the report of which in *Dawson* v. *Bank of Whitehaven*, L. R. 4 Ch. Div. 639, reached this country after *Re Robertson* was decided. On this head of dower, it may be taken that the authorities have settled the law conclusively.

Perhaps no part of the law of dower requires more elucidation and demands greater study than that which involves the doctrine of election. The foundation of the doctrine is that the widow shall not be allowed to claim under any testamentary instrument without giving full effect to it in every respect, so far as her rights are concerned. Where a benefit is given to her, expressly in lieu of dower by a will disposing of all testator's property, she must elect whether she will take that under the will and relinquish her dower, or retain her dower and abandon her rights under the will. But where a testator gave his wife an annuity "in lieu of all dower, etc.," and his personal estate was not disposed of, it was held that she was not precluded from participating in such personalty as one of the next of kin: *Taverner* v. *Grindley*, 32 L. T. N.S. 429. With this accords the judgment of Strong, V.C., in *Davidson* v. *Boomer*, 18 Gr. 479, where he says, "the widow as one of the persons to whom the Statute of Distributions gives the personal estate in the case of a failure of a gift of personalty, takes both the annuity and her statutory share, as the testator is only to be considered as purchasing the thirds for the benefit of his legatees. But in cases of realty, the testator is deemed to have purchased the dower for the benefit of whomsoever the estate may go to, whether it passes under the will, or part of it, through the invalidity of the will, devolves upon the heirs."

Where, however, the exclusion from dower is not expressly stated on the face of the will, the courts have held that such exclusion may arise constructively by clear and manifest implication. The result of the cases as stated by Lord Redesdale is that "the instrument must contain some provision inconsistent with a right to demand a third of the lands to be set out by metes and bounds:" *Birmingham* v. *Kirwan*, 2 Sch. & Lef. 452. It has been judicially determined that the effect of certain provisions in a will indicating the testator's intention as to the mode of occupation and enjoyment of the property are necessarily inconsistent with the claim of the widow to disintegrate the estate. Thus the existence of a power to lease in the will puts the widow to her election: *Patrick* v. *Shaver*, 21 Gr. 123, and *Armstrong* v. *Armstrong*, Ib. 351. The like result follows where the testator directs his estate to be equally divided between his wife and another: *McGregor* v. *McGregor*, 20 Gr. 451.

There is still a third class of cases where the Court has had regard to the circumstances of the testator to assist in the construction of the will,—where, for instance, at the date of the will the estate of the husband is insufficient to answer the wife's dower, and also an annuity given to her out of the land. In such cases, the Court will refer it to the Master to ascertain the state and value of the testator's property at the time the will was made, and where it appears that the testamentary allowances made to her will more than exhaust the rents and profits of the real estate, if she also takes dower, the Court will put the widow to her election. This was done in *Becker* v. *Hammond*, 12 Gr. 485, and also in *Lapp* v. *Lapp*, 16 Gr. 159, and further reported in 19 Gr. 608.

There is a good deal of confusion in the authorities upon the question as to the proper effect to be attributed to a will in which the intention to devise unincumbered of dower is applicable only to certain parcels of the land. The earlier cases are in favour of the exemption not being extended by inference to other property embraced in the will, as in *Birmingham* v. *Kirwan*, already cited, but this appears to be considerable modified by more recent decisions which are referred to in *Stewart* v. *Hunter*, 2 Chan. Cham. R. 338. In *Hutchinson* v. *Sargent*, 16 Gr. 78, it was laid down that wherever a testator's intention as to one part of his property is shewn to be that it should not be subject to dower, it follows that neither that nor any other part of the devised property is subject to dower. This is perhaps stating the true rule rather broadly. It may be found that the cases are to be reconciled by holding that where different estates are devised to different beneficiaries, the intention to divest one of the widow's dower does not indicate an intention as to all; but that where there is one devise of the whole, an intention to exclude the claim for dower as to any part will operate as to the whole. But upon this matter, it would seem that the law remains to be settled.

We have but glanced at the many interesting and important practical questions which arise upon this subject, and we again hope it may not be long before we shall have a Canadian monograph on the law of dower.

CURIOSITIES AND LAW OF WILLS.

(*Continued from page 159.*)

The American Republic, after the Revolution, retained all the good things belonging to the mother country that they possibly could, and among others the English common law, which now forms the substantial foundation of the law in

every state except Louisiana. The English law, therefore, relating to the execution and probate of wills as administered in the Ecclesiastical Courts prior to the last quarter of the last century, (subject to certain statutory modifications suitable to the times and the men) governs similiar subjects throughout the Union; and the old country precedents, decisions and rules have authority and force in the special courts of the Republic having a like jurisdiction, be they Probate Courts, Orphans Courts or Surrogate Courts.

According to Mr. Proffatt, man by nature has no right to interfere in the disposition of his property after he shuffles off this mortal coil; in the golden age what was left went all to his family, he who "heaped together a little pile" being deemed to be only a tenant for life. This, by the way, is well brought out in the Gentoo Code; here the old Sanscrit legislator in shewing who is to inherit proceeds with great ease through the most complex relations, and threads the degrees of affinity with as much dexterity as one of his nation's jugglers shews in keeping up half-a-dozen balls at once; he winds up by declaring that "if there be no grandfather's grandfather's father's brother's grandson, the property goes to the grandfather's grandfather's grandfather's daughter's son: if there be but one grandfather's grandfather's grandfather's daughter's son he shall obtain it all: if there are several grandfather's grandfather's grandfather's daughter's sons, they shall all receive equal shares." Shades of the commoners of Charles II, who drafted the Statute of Distributions, what think ye of this! What bunglers were ye! What mere journeymen legislators! How incomplete was your work! How limited must have been your notions of relationships and kinships!

To return, however, to our text. Our author traces the history of wills from the days of the Normans, through the times of the Danes, (King Kanute made a will) and the Anglo-Saxons, (extracts are given from the will of Alfred, who had some doubts as to whether his money amounted to £200 or not) down to the present age, in a graphic, easy and interesting manner, *calamo currente*.

Nuncupative wills are still permitted in the Republic in the case of soldiers in actual military service, or mariners and seamen at sea, and in some states, of persons *in extremis*. Julius Cæsar first allowed the military testament to soldiers, but ever since the days of Justinian it has been confined to those engaged on an expedition; sailors, too, must be actually serving on shipboard to enjoy this privilege. In New York it has been held, that a sailor employed on the Mississippi is not within the statute allowing these wills: *Re Givins will*, 1 Quck. 44, so we feel rather inclined to speculate how it would be under our own 36 Vict. cap. 20, where it speaks, "if any mariner or seamen being *at sea*." Would ploughing our beautiful inland lakes be considered *being at sea*? A cook on a steamship is within the act (4 Brad. 154).

There was a time, now happily for the lawyers gone by in most places, when Lord Hardwicke could truly say, "there is nothing that requires so little solemnity as the making of a will of personal estate; there is scarcely any paper writing which will not be admitted as such:" *Ross* v. *Ewar*, 3 Atk. 156. In the present day the law insists upon certain solemnities in the execution of every will to properly evidence the testator's act and intention, and without them the will is absolutely void. Still in some of the states (California for instance) a holographic will is valid without any formalities; for example the following document was held perfectly good:

"Dear old Nance,—I wish to give you my watch, two shawls and also $5000.

Your old friend

E. A. Gordon."

Pacific Law Rep. Nov. 9, 1877.

A will may of course be in any language, and written in ink or pencil, but one of the courts in Pennsylvania considered that a writing upon a slate could not be held to be a will because of its want of permanency. It appears that the requirements of the New York statute as to execution are of the strictest nature; four things are essential, the testator must sign at the end of the will in the presence of witnesses, declaring it to be his will at the time of signing, or acknowledging it, and the witnesses must be two in number, signing at the end at the request of the testator. All these things must take place at the same interview, one act immediately following the other without any interval or interruption: *Doe* v. *Doe*, Barb. 200. It must appear, too, that the witness must be able to prove all these essentials in case of dispute. There has been a great deal of hair-splitting in some states as to what is a signing in the presence of the testator as required by some statutes, and our author says that it would almost seem from the decisions that the validity of the act depended upon the range of the organs of sight of the devisor, or upon the agility of his movements, whether he will be able to turn his body to the foot of the bed or stretch his neck out of the door.

The youths of California, Connecticut and Nevada must be rather precocious for at the age of eighteen they are allowed to make their last wills and testaments. Notwithstanding the authority of Blackstone and Bacon's abridgement to the contrary the law now allows deaf and dumb persons to exercise the power of devising their estates "if the mind accompanies the will."

"There is no investigation in the whole domain of law that is attended with so many lamentable phases, where the foibles, indeed, the ludicrous side of human nature are more exposed than in the inquiries as to the testamentary capacity of testators, for it happens that those who will most carefully and tenderly screen a man's weaknesses, vagaries and eccentricities whilst he is living, will if a contest takes place in which they are interested after his death, most readily reveal in all their nakedness and boldness of outline the infirmities and superstitions of the deceased." The American decisions agree with the English, that to set aside a will on the ground of monomania it must be proved, first, that it is wanting in natural affection and duty; and secondly, that there was a morbid delusion actually existing at the time of the making in respect to the persons cut off, or prompting the provision's of the instrument. Mere eccentricity will not invalidate a will.

Mr. Wm. Kinsett was an eccentric individual, he preferred cremation to burial, and so left his body to the directors of the Imperial Gas Company, London, to be placed in one of their retorts and consumed to ashes; if the directors would not do this, he directed that his remains should be interred in the family grave, St. John's Wood Cemetery, *to assist in poisoning the neighborhood.* Some judges have taken upon themselves to refuse to grant probate of wills because the testator had evinced great fondness for the lower animals; in one case an old maid kept fourteen dogs of both sexes, providing them all with kennels in her drawing-room (Taylor, Med. Jur. 658). Another old maid maintained in her house a colony of cats, each of which had regular meals and was furnished with plates and napkins. Such strange fondnesses are by no means certain indications of insanity (Red. on Wills, I p. 84). We are given some curious

New York cases in which the rule regarding monomania is discussed. Mr. Thompson's will (2 Brad. 449) was a voluminous document and by it he gave tokens of his regard and respect to many of his kith and kin, but the bulk of his estate —some half a million, he left for charitable and religious purposes. To set aside the will it was shewn that he had held pertinaceously many vulgar superstitions; that he believed in the black art, practised magic, fraternised with disembodied spirits, worked spells, prepared amulets and cabalistic inscriptions for the cure of human ills; that he professed to know where Captain Kidd's treasures were hid; said he once saw the devil in the shape of a large bull; that he believed in dreams, in the philosopher's stone, in clairvoyance, spiritualism, mesmerism, magic glasses, and that he had a whistle with which he obtained anything he desired. On the other hand it was proved that this remarkable genius was a shrewd and intelligent man of business, was largely engaged in commerce, had accumulated great wealth, was connected with numerous monetary institutions, and was a regular attendant at a Presbyterian church. As there was nothing to connect any of these aberrations or infatuations with the provisions of the will, and as they had not affected the dispositions of it, the court held that it was perfectly valid and unimpeachable on the ground of monomania.

A Mr. Benard believed in metempsychosis, that an emperor might be sojourning in any animal he met, and once remonstrated with a person who had said it would be humane to kill an injured kitten because there was in it a human soul. In a suit to set aside his will on the ground of insanity, the judge remarked, that if the court is to ascribe insanity to a man because of his opinions or belief as to the future state, the logical deduction would necessarily be that the major portion of mankind are of unsound mind or monomaniacs.

Mr. Proffatt tersely remarks, that "people generally understand quite well what is meant by a legacy in a will;" so we may pass quickly over his clearly written chapter on the subject. Some of our readers will be sorry to learn that a condition, that if one's wife or daughter shall marry a Scotchman, she shall forfeit all benefit under the will, and the estate shall go to someone else, is a good and valid provision *Perrin* v. *Lyon*, 9 East. 170. A man may bequeath a legacy to his wife, provided she remains his widow, and it is a good conditional bequest; but such a condition as to a legacy given by a stranger is not good.

(To be continued.)

SELECTIONS.

NOTES ON CORONERS.

The office of coroner is of very ancient institution,—so remote, indeed, that its origin is not clearly known. It is certain that coroners existed in the time of Alfred, for that king caused to be executed a judge who sentenced a prisoner to death upon the coroner's record, without allowing him to traverse.* The office could formerly be held in England only by men of high dignity, and a statute passed in the reign of Edward I. provided that none but lawful and discreet knights should be chosen. Coke calls the chief justice of the King's Bench the chief coroner of the kingdom. As his name indicates, the coroner was originally an officer representing the Crown. His functions were those of a conservator of the peace, and in other respects of a ministerial deputy of the Crown. In the absence or incapacity of the *scyre-gereſa*, or shirereeve (our present sheriff), who

* Vin. Abr. 242.

was the deputy of an earl, the coroner took his place, He once had the custody of the rolls of the pleas of the crown, from which he was called *custos placitorum coronæ.;* and in the reign of Henry II. his title was *serviens regis.*

Part of his duties were fiscal, to "inquire of wrecks and royal fishes, such as whales, sturgeon, and the like." The statute* "De officio coronatoris" commanded him to assay all weights and measures according to established standards. The statute continues: "Also it is our pleasure, that as soon as any felony or misadventure do happen, or treasure be found unlawfully hid in the earth; or of the rape of women, of the breaking of prison, or man dangerously wounded, or of other accident happening,—the coroner immediately, upon notice, issue his mandate" to summon a jury. From which it will be seen that his functions were somewhat various.

An important branch of his duties as a fiscal officer was the forfeiture of deodants. *Omnia quæ movent ad mortem sunt deodanda;* all personal chattels, such as horses, wagons, cattle, ships, &c., which contributed to the death of any person, were sedulously pronounced "accursed things," and by a pious fraud of the church were forfeited to be distributed *in pios usus,*—usually paid for masses for the benefit of the deceased's soul. Infants being deemed incapable of sin, no deodand was necessary to purchase propitiation, provided the thing were at rest and the infant fell from it; but if the thing moved to his death, then it was a deodand. Some curious distinctions arose in course of time in the construction of the law upon this portion of the king's royal revenue. When a moving carriage caused the death, both horses and carriage were forfeited; but if the deceased fell from a wheel when not in motion, the wheel only was a deodand. If a man in watering his horse were drowned, it being the fault of the animal, the horse was forfeited; but if the man were drowned by the violence of the stream, the horse would not be a deodant. Where a man fell from a ship in salt water and was drowned, no deodand was due; but if he fell from a ship or boat in fresh water, the vessel was forfeited.*

Juries soon learned, however, that when a husband and father was killed in falling from his cart, it was something of a hardship for his family, already deprived of their support, to forfeit the horses and cart in addition to their other loss, and therefore it became the custom to find that only some small portion, as the left fore-wheel of the cart, contributed to the death.† When a person was drowned in a well, the well was to be filled up.

In cases of *felo de se,* forfeitures included all goods and chattels, of the suicide, and sonsequently became of serious importance to the surviving family. And it is in allusion to the tortuous devices resorted to by claimants to save the forfeiture that Shakespeare puts into the mouth of the grave-digger the sapient speech about Ophelia's being drowned, not by herself, but by the water. The curious student may discover the original of this "crowner's quest law" in *Hales* v. *Petit,*‡ where it is solemly argued on one side that Sir James Hales is drowning himself had committed an act of felony during his lifetime, and, *per contra,* that the felony not being complete until death consummate, he committed none while alive, and therefore no forfeiture was due.§ Finally, the coroner's duty was to take cognizance of certain pleas of the crown, and to make inquiry in cases where "any be slain or suddenly dead or wounded." He held, as it were, the court of first instance; for formerly, in England, the coroner's jury performed the function of our grand jury: their investigation was the preliminary hearing of the case, and when their verdict accused any one, the "inquisition" was the indictment upon which the accused was tried; and accordingly the old reports contain instances of arrangement on inquisitions, traversing, and quashing. They were worded as carefully as indictments now are, and were in all respects treated as such.

These consequences now no longer result from the inquest. While the coroner in England still binds over a person inculpated by the verdict to appear at the next assizes, there is neverless instituted at the same time a parallel proceeding in

* 4 Edw. I.

* 1 Hawk. P. C. c. 26, §6.
† Jervis, Cor. 204.
‡ Plowd. 260.
§ Wallace Reports, 108.

the courts, and if an indictment is there found, the accused is tried on that alone. If the courts fail to return an indictment, however, he is still obliged to appear at the assizes, and there be discharged. In this country, the coroner's inquest has no such consequences; indeed it has no consequences at all. No prosecution is ever based upon it; it is not used or referred to at the subsequent trial. And although a coroner is by statute authorized to cause the arrest of one accused by the verdict, it is only to bring him before some magistrate for examination. Practically, however, this power is very rarely invoked, as the suspected person is almost always in custody before the coroner has any knowledge of the case.

The coroner's jury is as ancient as the coroner himself. But formerly its members were the accusers or witnesses rather than the judges, and were summoned from the neighborhood as persons likely to be acquainted with the facts. They might formerly, from their own knowledge, and without having any evidence brought before them, return a verdict. Though still sworn to return a true inquisition according to their knowledge and such evidence as should be laid before them, they are no longer witnesses; nor, indeed, ought a juror to communicate facts within his knowledge to his fellow-jurors, unless he testifies under oath; and the better practice in such a case is to inform the coroner before the impanelling of the jury that he desires to testify, and not to serve as a juror. If the phrase "your knowledge" in the oath has any meaning at all now, it probably has reference to such information as the jurors shall obtain from occular inspection of the body, the premises, the instruments used, or other things brought to their attention.

Sudden deaths, not accompanied by suspicious circumstances, it was not within the coroner's province to inquire of. "The dying suddenly," says Jervis, "is not to be understood of a fever, apoplexy, or other visitation of God; and coroners ought not in such cases, nor indeed in any case, to obtrude themselves into private families for the purpose of instituting inquiry, but should wait until they are sent for by the peace officers of the place, to whom it is the duty of those in whose houses violent or unnatural deaths occur to make immediate communication. But under whatever circumstances, this authority must be exercised within the limits of a sound discretion; and unless there be reasonable ground of suspecion that the party came to his death by violence and unnatural means, there is no occasion for the interference of the coroner." The Court of King's Bench have repeatedly censured coroners for holding frequent and unnecessary inquests for the sake of enhancing their fees, where there was no reasonable probability or suspicion that the deaths occurred from violence or unnatural causes, as where bodies were washed ashore, evidently drowned by the ordinary perils of the sea. In one case, where a woman died of a fever resulting from amputation, and a coroner threatened to hold an inquest and extorted money for abstaining from it, for which offence he was sentenced to pay a fine of £100 and to imprisonment for six months, Mr. Justice Grose, in passing sentence, said that the coroner, under these circumstances, had no pretence or authority for taking any inquest at all; but, if the case warranted his so doing, he was equally criminal in having extorted money to refrain from doing his office.* And Lord Ellenborough, in *Rex* v. *Justices of Kent*, observed that there were many instances of coroners having exercised their office in the most vexatious and oppressive manner, by obtruding themselves into private families, to their great annoyance and discomfort, without any pretence that the deceased had died otherwise than by a natural death, which was highly illegal.†

If this is the construction of the English statute, whose words are that the coroner is to make inquiry upon such as "be slain or suddenly dead or wounded," *a fortiori*, would it apply in this country, where, as in Massachusetts, the statute authorizes inquests "upon dead bodies of such persons *only* as shall be supposed to have come to their death by violence;" ‡ and the Revised Statutes, from which this provision is copied, stated further, "and not when the death is believed to have been occasioned by casualty."§

It is well known that coroners now

* 1 East, P. C. 382. † 11 East, 229.
‡ Mass. C. S. 275, § 1. § Rev. Stat. c. 140, § 1.

frequently hold inquests when the death can by no possible construction be brought within the terms of the statute. But this attempt at enlarging their office and fees is by no means a new or recent device on their part. So long ago as the reign of Henry VIII. the endeavor to extend the statutes to cases of palpable misadventure, as well as of homicide, caused the legislature to enact that if a coroner should take fees for holding inquests in cases of accident, he should suffer a penalty of forty shillings for every person dead by misadventure.*

It is amusing to read now-a-days that anciently the office was of such great dignity that no coroner would condescend to be paid for serving his country; indeed, the Statute of Westminister 1, c. 10, which is an affirmance of the common law, enacted that a coroner demanding remuneration to do his duties should suffer a great forfeiture to the king;† and for not having lands and tenements sufficient in the county to maintain the state and dignity of his office,‡ and for being *communis mercator*,§ coroners were in those days removed.

Ever since the days of Shakespeare, coroners and their proceedings have been a butt and laughing-stock. Unfreville, who wrote with devout sobriety, and was himself a coroner, is obliged to warn coroners that notice of a violent death should be received regularly from the peace officer, and to plead that it should not be secured "meanly by himself or emissaries to run or hunt after the dead, as I fear is too commonly the practice." And elsewhere he is forced sorrowfully to acknowledge that "the office itself is in desipse." He wrote over a century ago; but it may be questioned whether his good advice has been followed. That this ridicule is only too well earned, countless anecdotes of coroners and their juries attest. One of the latest is the following from England, taken from a recent number of the *Medical and Surgical Journal*:—

"A drunken man struck a furious blow at his brother, and fell dead, the blow not being returned. A *post-mortem* examination was ordered, and the surgeon was able to give positive evidence that the man died of apoplexy, without a sign of personal injury. In spite of this evidence the coroner directed the jury to find a verdict of 'manslaughter,' and then delivered himself as follows: 'E. R., these twelve gentlemen have made a very careful inquiry into the death of your brother, and, considering the provocation you received, have thought it their duty to bring in a verdict of manslaughter instead of murder, and it is therefore my duty to commit you to prison on that charge; but I wish you to remember, that although you may escape the punishment of death, yet I have no doubt that in the sight of God a man who kills his brother is more guilty than one who does not.'"

These well-authenticated cases call for our pity no less than our wonder that such proceedings are allowed to continue. It is as if a demented harlequin robed in motley rags sat in state with a tinsel crown and sham sceptre, and issued his mandates of ponderous import to his imaginary subjects. Few only laugh at them, no one ever heeds them.

One of the most marvellous features about this whole matter is the good-natured forbearance and indolence with which the office and its abuses have been tolerated, without any serious attempt at their reformation or total extinction. It had been apparent for centuries that the office was practically of no use; that its functions had in course of time been absorbed by courts of justice and other agencies better fitted for their discharge, and that their continuance in the coroner was of no service to the cummunity; that the grossest ignorance paraded itself in the anciently honored and important office; that it had grown to be a prolific source of corruption and abuse: and yet it was not until last year that the outrageous proceedings in two cases in Great Britain, and several others in this country, awakened public attention to the need and importance of a charge. Once thoroughly aroused, men see the great peril and scandalous reproach to the administration of law which exist under the present system, and are, at last, fairly prepared to lay the axe at the root of the evil once and for all time.

The two cases in Great Britain well illustrate two opposite kinds of abuse which flourish under the present law, the first due to the gross ignorance and incapacity of the average coroner as a judicial investigator, the other to the officious zeal which under the claim of duty obtrudes itself upon the privacy of a mourning household, without cause or justification.

* 1 Hen. 8, c. 7.
† 2 Inst. 176, 210.
‡ 2 Inst. 132.
§ 2 Inst. 32.

Charles Turner Bravo was a young barrister, of strong constitution and sound health, who had recently been married to a widow possessed of a handsome income. One day after dinner he was taken suddenly and violently ill, and showed all the symptoms of metallic poisoning. To the physicians who were called he resolutely denied having taken such a poison, though Mrs. Cox, a companion of his wife, afterwards told them that he had confessed to her that he had taken it, and implored her not to tell his wife. In the course of the next day he died. Chemical analysis of the vomited food and of the contents of the intestines conclusively proved it to be a case of poisoning by tartar emetic. At his last meal Mr. Bravo had partaken of all the food in common with his wife and Mrs. Cox. The only thing which he alone had used was a bottle of Burgundy.

The resolute denial of the deceased *in extremis* to his physicians that he had taken poison, although informed in the most solemn terms by Sir William Gull that the consequences of his denial might be to throw suspicion on some one else, and the apparent absence of motive for an act of self-destruction, occasioned doubt as to his having committed suicide. The coroner, however, adopted from the first the theory of suicide, heard only a portion of the testimony. No examination was suggested of the wine remaining in the bottle, nor was it accounted for; no inquiry was made as to where the tartar emetic was procured; the wife of the deceased was not examined; and the coroner positively declined to examine one of the physicians who had been in attendance, and who offered to testify.

The necessary result of this perfunctory proceeding was a verdict that the deceased died from the effects of antimonial poison, but how or by whom the poison was administered there was no evidence to show. In other words, the only fact found by the verdict was that which the medical inquiry satisfactorily established, that the death had resulted from poison; and the only purpose for which an inquest is ever justifiable,—to ascertain whether a crime had been committed or not, was left wholly out of sight.

Certain suspicious circumstances in the case and the position taken by the medical gentlemen in attendance on the deceased caused the whole matter to become notorious; and such was the public indignation aroused by this palpable farce and miscarriage of justice, that the attention of the government was drawn to the case. The Attorney-General moved the Court of Queen's Bench to quash the inquisition, and have a special commission appointed to hold another inquest. The Solicitors of the Treasury were set at work upon the case, and after many weeks of a most searching and careful investigation, during which all manner of collateral inquiry was indulged in, attended on both sides by eminent counsel, the second verdict was returned to the effect that Mr. Bravo did not commit suicide; that he did not die by misadventure; that he was wilfully murdered by having tartar emetic administered to him, but that there was not sufficient evidence to fix the guilt upon any person or persons. If a crime was here committed, the failure of the coroner to inquire into facts clearly connected with the death—such as examining the contents of the bottle from which Mr. Bravo alone had partaken at his last meal—probably defeated the ends of justice; if it was not a case of crime, but of suicide or accident, the hurried and slipshod manner in which the first inquiry was conducted aroused a painful suspicion, and occasioned a long and expensive, and, as it proved, fruitless investigation. In either view of the matter, proper care and a decent regard for the important interests involved would have insured the utmost care at the first hearing, and obviated the needless and scandalous second inquest.

Sir Charles Lyell, the eminent geologist, died after a lingering illness, resulting mainly from his advanced age. Some time previous to his death he had stumbled on the staircase, and fallen in such a manner as to inflict some injury, which probably, in his already weak state, hastened his decease. He had been attended by eminent physicians, who regularly certified the cause of his death. The body, encased in a leaden coffin and an oaken box surrounding it, was lying in his house ready for interment. At this moment Coroner Hardwicke, stimulated by an over-zealous officiousness, ob-

tained admittance to the house, and declared his intention to hold an inquest. Though remonstrated with, and fully informed that there was nothing in the facts calling for such a proceeding, he insisted upon holding the inquest, and, it is said, with his own hands aided in tearing open the oaken box and the leaden casket, and thereupon proceeded to view the body. This was too much for even tradition-loving England, and such a storm arose in consequence of this outrage, that even the previous good character and entirely blameless life of Dr. Hardwicke did not save him from most severe condemnation. Unless verbal changes have occurred in the statutes on the subject, it will be seen that this case comes directly within the principle laid down in the case above cited.*

In Prussia, Austria, France, and other countries of Europe, the coroner is unknown. In France the Procureur, the prosecuting officer, proceeds to the place where a crime has been committed, and makes the investigation. He has the power to summon witnesses and take their testimony in writing, which is read to and signed by them; to prevent egress from the house or departure from the neighborhood, when he deems it necessary; and to seize all papers and other articles supposed to be connected with the crime. He is authorized to take with him to the place of the crime one or two persons deemed by their art or profession capable of appreciating the nature and circumstances of the crime, and, where a violent or suspicious death is the subject of inquiry, he is aided by one or two health officers, always physicians, who are to report on the causes of death and the condition of the body. He is the person subsequently charged with the prosecution of the criminal.† In Austria this function likewise devolves upon the public prosecutor.

In Prussia the judge of first instance, assisted by a surgeon, an actuary, and two officers of the court, makes the investigation. The procedure there is as well by hearing testimony for and against the accused as by repeatedly questioning the accused with a view to obtaining a confession.‡ In Scotland, though the name of "crowner" is still known, a Procurator Fiscal, corresponding to the Procureur of France, performs the duties of the first investigation. None of these countries have a jury on the preliminary examination.

Cogent reasons in favor of these systems exist, and in some of the late discussions in England the Scotch method has been strongly advocated. Certainly the practice in these countries is more logical and reasonable than that of England and our country. Laying aside for a moment the traditional and historical associations of the office, in our day *the sole purpose of the coroner's office in the detection of crime.* That is a subject matter for legal inquiry. But a portion of that inquiry, where a dead body is found, is necessarily, first, to determine whether a homicide has been committed at all, or whether the death is in the ordinary course of nature. This feature is clearly matter for medical science, to be decided upon an inspection and examination of the body. The fact that a homicide has been committed being established, the only remaining question is, how and by whom was it done. This involves the testimony of witnesses to external facts, and the taking of testimony is a judicial duty. Until crime is suspected, the question is medical; the moment crime is suspected, it is wholly legal. What the crime is under the law; whether the manner and circumstances of its commission constitute one degree or another; what testimony is admissible and properly bears upon the issue,—these are all legal questions, unmixed with medicine. Nothing can be more logical than to impose the duty of making this inquiry upon the ordinary agencies intrusted with the discharge of judicial functions. In England and our own country we do intrust all subsequent steps in the conduct of the criminal cause to the judicial tribunals. Indeed, we employ the tribunal of last resort and the highest law officer of the State to conduct it. We guard with the utmost care the rights of the accused, by allowing him the right of challenge, the assistance of counsel, and the process of the State to compel the attendance of witnesses. In these latter stages we are duly conscious of the grave trust committed to

* 1 East, P. C. 382. † Teulet, Les Codes 1860.
‡ Mittermayer's Feuerbach's Lehrbuch.

our charge. But in the earliest and often most important part of the inquiry, when the deed and its traces are fresh, we commit the care of the case involving the life of a fellow-being and the welfare of the State, to an officer not attached to the courts, and forming no part of the judicial system, generally not even a lawyer, much less skilled in the delicate and intricate questions that may and must arise in every such inquiry. And this is done in England and here, not upon any logical ground or for any valid reason, but from a blind reverence for tradition and antiquity, and in spite of all reason, logic, and common prudence. No one of us would think of committing his private affairs to a person wholly unskilled; and yet, as States, we lazily follow the old beaten track, suitable enough for a time when a single officer was intrusted with the greatest variety and diversity of duties, and for an age when a verdict of "died by the visitation of God" was all-sufficient to account for what want of perseverance and skill failed to dicover.

The most potent word as yet spoken on this subject in Great Britain is the admirable address of Mr. Herschell, before the Social Science Congress at Liverpool, in which he shows clearly the folly and danger of the present system, and advocates the establishment of a mixed tribunal, consisting of one medical man and one or two lawyers, to conduct these preliminary examinations.

The coroner's jury, it is agreed on both sides of the water, is a wholly useless and somewhat objectionable body. In the first place, the manner of their selection in this country by a constable is not calculated to produce good material; and, in fact, the ignorance and worthlessness of this body in point of character and intellect are proverbial. But when, in addition, it is remembered that they add nothing to the value or efficacy of the proceeding; that any intelligent professional man can reach a correct result more easily and much sooner unimpeded by twelve or six uninformed men than with them; that, so far as any results flow from their work, it is altogether useless, *nothing whatever* being done with a verdict after it is found, as it is neither the basis of, nor any assistance in, any later proceedings, and the criminal courts proceed wholly without respect or reference to it; that it protects no one, as there is at that stage no one accused; that, therefore, it is no safeguard, and that in the slow, cumbersome process before it much precious time is lost, often to the detriment of justice; when, finally, it is considered that the publicity of the proceedings, the loose and vague manner of conducting them, and the vast mass of irrelevant and often highly improper matter which the coroner, ignorant of the rules governing the admission of valid evidence, suffers to be dragged into the case, tend directly to thwart justice, and, in our age of eager reporting, manifestly to demoralize and corrupt the public mind,—it is not apparent what benefits we deprive from a further retention of the jury. They aid in nothing, they retard and endanger much, and are a great expense.

In England, and in New York and several other of the United States, coroners are elected. In Massachusetts they are appointed by the governor and council. In Connecticut the office does not exist, a constable performing its duties.

The grave and responsible powers lodged in the hands of an officer, combining in his person the function of a medical expert, a witness, and a judge, are sufficiently apparent to made us watchful of their further abuse. The uselessness of their present procedure, compared with the truly valuable results to the cause of public health and safety which would follow a scientific distribution of their incongruous functions, is a sufficient warrant for abolishing the office as at present constituted, and dividing its duties between the professions respectively fitted for their discharge.

The coroner now exercises his choice in calling in a medical man to make the examination and autopsy. In the absence of sufficient legislation to prevent untrained persons from practising medicine, this method of carrying on the examination is no guarantee of special fitness, and is calculated to inspire distrust.

The medical officer should be a permanent appointed official, of high character and standing, whose duty it should be to make the preliminary examination of a dead body, and decide whether the death was violent or natural. In the

former case, he should at once notify a judicial officer, who should thenceforth take charge of the examination, leaving for the physician no other duty than that of testifying at the subsequent trial. The vast excess of inquests held over all reported statistics of crime is a strong indication that the existing coroners are very deficient in medical knowledge. In Boston, during the last fiscal year there were held four hundred and twenty-three views and one hundred and ten inquests. In Manchester, during the years 1863–1873 there were three thousand five hundred and five inquests held, in which the jury found that the parties had died "from natural causes." This monstrous number of apparently needless inquests caused the Watch Committee to report the fact to the City Council. Not only would this abuse be prevented by the appointment of competent and reputable medical men, who, by an intelligent examination, would in most cases be able to decide at once that the death was natural, and no further investigation needful, but their records would furnish a valuable contribution to the literature of medico-legal science.

On whom the remaining duty of taking the testimony and determining the law should devolve, is a question upon which there may be different opinions. Should the district attorney who has charge of the later conduct of the case officiate? Should it be a justice of some court? In favor of the first proposition, it may be said that since it is merely an inquiry into the facts and not a trial, and since the district attorney is the person who most needs the information subsequently, we may in that respect adopt the prevailing practice of continental states in Europe. Moreover, as an accusation is often as ruinous to a reputation as actual proof of guilt, there is this advantage also in the Scotch system, that the inquiry is carried on quietly until some ground for open action exists. A case which illustrates the benefits of this system is that of a Scotch physician, who, being annoyed by the settlement and popularity of a quack near him, instituted proceedings against him under the Medical Practitioners' Act. The quack thereupon notified the Procurator Fiscal that a patient of the doctor's had died in consequence of malpractice. The remains were disinterred, and furnished positive proof that the charge was false. A public inquest, whether inculpating or exonerating the physician, would certainly have proved his ruin, especially if, as might have been the case in Massachusetts, the quack himself had been the coroner who instituted and conducted it. The same advantage would be secured, however, in a proceeding before a justice of some court where only material evidence would be admitted, and the mass of incompetent and pernicious matter that is always brought out before a coroner would be wholly excluded.

But one consideration seems to be decisive against this proposition: our system of criminal prosecution is at variance with that of the countries where this practice prevails, and the very fact that with us a neutral body intervenes between the prosecutor and the accused, which, by a perfectly well-established law of human action, necessarily heightens the zeal of the prosecutor, must for ever prevent us from uniting the prosecutor and judge in one person. Every person familiar with the administration of criminal law knows the tendency of a prosecutor to consider every accused person guilty. Our judiciary wisely recognize this in assigning the various justices by turn to preside over criminal trials, instead of appointing one permanent criminal judge.

Judicial functions must not be intrusted to a partisan; and a public prosecuting attorney represents the State, which is a party. A judge must be the unbiassed guardian of the interests of both parties, —of the accused no less than the State. The danger just pointed out was forcibly illustrated at the second inquest in the Bravo case, where Mr. Serjeant Parry felt compelled to remonstrate against the evident purpose of the Crown counsel to fasten guilt upon three certain persons.

On the other hand, there seems to be no good reason why the preliminary processes of a criminal investigation should not be intrusted to the agencies charged with its subsequent conduct. As previously mentioned, the criminal courts of first instance, before binding over a suspected person, are obliged to hear the whole testimony *de novo*, unless the prisoner chooses to waive the examination.

And the only difference between this examination and that carried on before a coroner is, that in the court there is an accusation, whereas before the coroner there is as yet none. The coroner's proceeding, therefore, has the one advantage over the court's, that witnesses can be summoned and compelled to testify before any prosecution is instituted. But nothing can be simpler than to transfer this right also to the courts. As the hearings before the coroner are, after the view, held out of sight of the body and remote from the place of the crime, the evidence being brought together by police-officers mainly, it seems equally feasible to conduct the hearing in a court-room, especially as the proposed change, giving the physical examination wholly into the hands of responsible medical men, makes it unnecessary for the judge to view the body.

The district attorney, being the public prosecutor, should have charge of the search for the facts, and, when gathered, should lay them before the magistrate, who, without a jury, should make a report of his finding, and, if he finds cause therefor, should thereupon institute the prosecution.

The proposed changes, therefore, are :

1. The abolition of the coroner's jury.

2. The abolition of the office of coroner as at present constituted, and the division of the coroner's functions between—

a. Medical officers to make the physical examination and testify to its results.

b. Judicial officers to bear the testimony and apply the law.

3. The appointment of permanent medical officers of high character and standing for the former duty.

4. The transfer of the latter duty to the courts of first instance or the commiting magistrates.—*American Law Review.*

WHAT ARE CRIMINAL FALSE PRETENCES?

In England and in nearly all, if not all, of the American states, there are statutes against what is called obtaining goods by means of false pretences. By some of these statutes this offence is made a misdemeanor, by others a felony. The statute 24 and 25 Vict., ch. 96, sect. 88, provides that: "Whosoever shall, by any false pretense, obtain from any other person any chattel, money or valuable security, with intent to defraud, shall be guilty of a misdemeanor." The statutes upon this subject are generally of a similar character; and are the outgrowth of the common-law doctrine upon the subject of cheats. They have been enacted to meet the wants of "the extended trade and more refined culture of modern times," which "require a certain degree of universal confidence to be placed in the mere verbal representations of men." It may be safely affirmed as a question of morality, that any attempt by one party to influence another by artifice or trick, and to induce him to part with his goods without receiving a true equivalent therefor is vicious. But it must not be understood that every immoral attempt to obtain an advantage in trade is criminal. "These statutes," says a learned author, "are construed in reference to the spirit and reasons of the common law; and they do not, therefore, extend, as the non-professional reader might suppose, to every imaginable kind of false pretence;" Bishop's Cr. Law, vol. 1, § 1019. What, then, are false pretences within the statute? In *Regina* v. *Lince*, 12 Cox's Cr. Cas. 451, the pretence charged was that the prisoner lived at a certain beer-house and was the landlord thereof, and this was held to be within the statute; the evidence showed that the prisoner did not say he was the landlord, but only that he lived at the house; and the prosecutor testified that he was influenced by the belief that the prisoner was the nephew of his servant as well as by his assertion that he was the occupier of the beer-house; the prisoner was found guilty and the case was reserved for the opinion of the court of criminal appeal. Upon the appeal it was held that the pretence proven was sufficient to sustain the conviction, and that it was immaterial "that the prosecutor was influenced by other circumstances than the false pretence."

In *Regina* v. *English*, Ch. J. Cockburn held that it was criminal to falsely pretend, with intent to defraud, that a certain field was a good and profitable brick-field; and that it was sufficient to show that the prosecutor was partly influenced to do 22 what he did by the pretence: Cox's Cr. Cas. 171.

In *Regina* v. *Jennison*, 1 Leigh & Cave 157, the prisoner had falsely represented to a woman that he was unmarried, and promised to marry her, by means of which he obtained money from her. It was held that the false promise was not the subject of an indictment, but that the false pretence was. See *Rex* v. *Young*, 3 Term R. 98; *Rex* v. *Airy*, 2 East 30; *Regina* v. *Capeland*, Car. & Marsh. 516.

The secretary of an Odd Fellows' lodge falsely represented to a member that he owed the lodge a sum of money, and so obtained the money; and it was held that he was rightly convicted of obtaining money by false pretences: *Reg* v. *Wooley*, 1 Den. C. C. 559.

To falsely pretend that one lives with and is employed by another, is within the statute: *People* v. *Johnson*, 12 Johns. 292. In *People* v. *Dalton*, 2 Wheeler's Cr. Cas. 161, the defendant had falsely pretended that he was a grocer and resided at a particular place, and it was held to be criminal.

A false statement by a buyer of goods that he was solvent and never had a note protested, was held a criminal false pretence: *People* v. *Haynes*, 11 Wend. 557. This case was afterwards reversed, but not upon this question; s. c. 14 Wend. 547. See *Commonwealth* v. *Davidson*, 1 Cush. 33.

In *Thomas* v. *The People*, 34 N. Y. 351, the pretence charged was that the defendant was a chaplain in the army, and it was held sufficient.

It is a pretence within the statute to falsely represent that a bank check is good and of the value stated on its face: *Maley* v. *The State*, 31 Ind. 192.

Pretences as to a person's pecuniary condition, or his business, situation, residence, or standing in life, have all been held criminal, if made falsely with intent to defraud; and the cases cited furnish illustrations. The general principle to be deduced from these cases is: that whenever a person falsely represents, as an existing fact, that which is not an existing fact, with knowledge of the falsity of the representation, and with intent to defraud, and so obtains anything of value, the offence is complete.

Some of the American cases lay down the doctrine that the pretences, to be criminal, must be of a character calculated to deceive a man of ordinary caution: *State* v. *Simpson*, 3 Hawks 620; *People* v. *Haynes*, 11 Wend. 557; *State* v. *Magee*, 11 Ind. 154.

The construction of the statute given by these cases is certainly open to criticism. It is not warranted by the language of the statute, which speaks of "any false pretences," and it requires the selection of an ideal intelligence, and tests all cases by the inquiry, whether the pretences are such as are likely to mislead the person possessing this intelligence.

If by means of any false pretences one person obtains the property of another with intent to defraud, it ought to be said, as was said in *Greenough's Case*, 31 Verm. 279, "it is no good reason for the offender to allege that, by the use of due diligence or ordinary care, the imposition might have been prevented."

If the principle, that want of caution on the part of the victim is a sufficient shield for the swindler, is sound, there is no reason why it should not be extended to other offences. In an unguarded moment a rascal obtains another's money by a trick; the owner of a horse leaves his stable door unlocked, and a thief steals the horse; when the first is prosecuted he says: "This man was a fool; if he had exercised ordinary caution, I could not have imposed upon him;" and the law acquits him; when the horse-thief is put upon trial, he says: "If the owner of this horse had used ordinary caution and locked his stable door I could not have stolen his horse;" and must not the law acquit him also? To be consistent it must. The illustration demonstrates the absurdity of the doctrine. It is nothing more than the introduction into the criminal law of the principle that negligence on the part of the victim constitutes a defence for the criminal. The true principle is: "If the prosecutor believed the pretence, and parted with his property relying on it, there is no need he should have acted in the transaction with ordinary care and caution;" Bish. Cr. Law, vol. 2, § 440.

It is practicably impossible "to estimate the weight of a false pretence only by its effect. It is not an absolute thing, to be handled and weighed, as so much

material substance; it is a breath issuing forth from the mouth of man, and no man can know what it will accomplish only as he looks at its effect. * * * And no man of business was ever found so wary as not to commit at some time in his life a mistake therein, which any jury of twelve men would say on their oath could not be done by a man of ordinary judgment and discretion;" Bish. Cr. Law, vol. 2, § 416.

In *Young's Case*, 3 Term R. 98, Ashhurst, J., thought the interpretation of the statute could not be restrained "to such false pretences only, against which ordinary prudence cannot be supposed sufficient to guard." And this it seems is the view taken by the English courts at this day. See Russell on Crimes, vol. 2, p. 288; and Mr. Greaves's note.

In *Jones* v. *The State*, 50 Ind. 473, the court states the true doctrine upon this subject when it says, the laws "are not made for the protection of the shrewd and vigilant man only, but for the entire community." But with singular inconsistency the learned judge who wrote the opinion continues to say: "In the enactment of criminal laws the legislature adopts, as a standard of intelligence, neither the highest or the lowest, but the medium." What is the medium? Such a standard is purely ideal. Where is that man to be found who possesses the exact medium between the highest and the lowest intelligence? In the application of such a rule the result will vary according to the views of the individual who occupies the position of judge. One may think the means employed calculated to deceive a person of ordinary caution; another may think none but a fool would be imposed upon by such means. If such a standard is adopted is the law a protection for the "entire community?" Where is to be found the protection for that unfortunate class who are below the medium in intelligence? If the law is designed to protect the entire community, then the lowest in intelligence as well as the highest, the most imprudent, incautious and credulous are within its pale as well as the shrewd and vigilant; and it is safe to say that the former more frequently than the latter need the protection of the law. If the law is designed to protect only those who are of medium intelligence and of ordinary prudence and caution, then all who are below this standard are at the mercy of every trickster, and may be cheated *ad libitum*.

There is no principle which will support such a construction of the statute against false pretences. The criminal quality of an act resides in the intention, and does not depend upon the means adopted to accomplish it. If the criminal intent is manifest, it will not do to say the act is not criminal because the means employed to accomplish it were not such as are ordinarily calculated to produce the result intended.

If I kill a man with felonious intent, shall I say I am not guilty of murder solely because I employed an agency not ordinarily calculated to produce death?

It may be more difficult to derive the intent from the act in such a case, but the intent once established, the act is criminal in the same degree as if the means employed had been such as are ordinarily adequate to the end sought. So it may be more difficult in a case of false pretences to derive the intent to cheat from pretences not ordinarily calculated to deceive; but when the intent is established, the accused cannot exonerate himself by saying that the person cheated ought not have relied upon the pretences. This exposition of the law may not commend itself to that class of persons who think it neither immoral nor unlawful to resort to artifices, tricks and false pretences in their dealings with their fellowmen; but to honest, candid men, who believe that perfect integrity in business transactions is a jewel that should be preserved untarnished, the construction of the statute contended for in this paper will appear just, not only according to its letter, but upon the broadest principles of morality.

Using the language of one of the most eminent judges that ever sat in any court, "I am yet to learn that a law which punishes a man for obtaining the property of his unsuspecting neighbor, by means of any wilful misrepresentation, or deliberate falsehood, with intent to defraud him of the same, is establishing a rule of morality which will be deemed too rigid" for respectable and fair business men.

—*American Law Register.*

NOTES OF CASES.

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

QUEEN'S BENCH.

Morrison, J.] [June 9.

ALLAN v. McTAVISH.

38 Vict. cap. 16, sec. 11—Statute of Limitations—Covenant in mortgage.

Demurrer—Declaration on covenant to pay money on mortgage. Plea, that the plaintiff's claim did not accrue within 10 years. *Held*, that the new Statute of Limitations, 38 Vict. cap. 16, sec. 11, applied to this case and that the plaintiff could not maintain the action.

Galt for plaintiff.

Ferguson, Q.C., for defendant.

REGINA v. WALKER.

Master and servant—38 Vict. cap. 20, sec. 19, O.

Where an apprentice absents himself without leave from his master's employment, the application to compel him to make up the time and for punishing him in case he refuse to make up the time, must be made after the term of service expire. In this case a conviction having been made during the currency of the articles it was quashed.

Bigelow for the apprentice.

Robinson, Q.C., and *Roaf*, contra.

CANADA REPORTS.

ONTARIO.

(Reported for the *Law Journal* by H. T. Beck, M.A., Student-at-Law.)

CHANCERY CHAMBERS.

McTAVISH v. SIMPSON.

Service, admission of.

An admission of service after hours will be taken as service on the following day, although no hour is mentioned in the written admission, if the party served give verbal notice at the time, or at least with due promptness, that he will consider the service as of the next day.

[May 9.—Mr. Stephens.]

This was a motion to set aside a notice of hearing as served too late or in the alternative to postpone the hearing on the ground of absence of witnesses. Notice of hearing was served after 3 o'clock p.m., on Saturday, 28th April, for the sittings to be held on May 13th. Service had been admitted on Saturday without any objection being taken as to the hour, but shortly afterwards the plaintiffs were notified that the defendants would consider the service as of Monday.

Bain for plaintiff.

Mr. Barwick (Bethune, Osler & Moss) contra.

The Referee thought that as the defendants were prompt in notifying the plaintiffs, their admission of service as of Saturday was not binding on them.

RE FLEMMING.

Lunacy, Declaration of.

Before the Court will declare a person a lunatic it will in general require medical testimony to the fact.

[May 15.—Proudfoot, V. C.]

This was an application for a declaration of lunacy, and for the appointment of a committee of the lunatic's estate. Affidavits of persons intimate with the party sought to be declared a lunatic, and which stated that the party was of unsound mind were read.

Proudfoot, V. C., before whom the motion was made, was of opinion that there was not sufficient evidence of lunacy, there being no affidavit of any medical man filed on the application.

McDONALD v. BEARD.

Lunatic—Committee—Guardian.

The power of the Court to appoint a guardian for a lunatic is unaffected by 34 Vict. cap. 18, sec., 15.

[May 15.—Mr. Stephens.]

Hodgins for the plaintiff applied for an order appointing a guardian for the defendant, a lunatic.

Kennedy, contra, contended that by 34 Vict., cap. 18, sec. 15, the inspector of asylums is *ex officio* the lunatic's committee. The inspector should have been made a party and would fully represent the lunatic.

The Referee thought that the power of the Court in such a case was unaffected by the act.

LINDSAY v. LINDSAY.

Order to produce—Non-production—Motion to commit—Service irregular—Terms.

An order to commit a party for disobeying an order will not be granted if it appears that there is any error or omission in the copy served.

[May 16.—Mr. Stephens.]

This was a motion to commit two defendants for not obeying an order to produce. The defendants' solicitor had been served with a paper which purported to be a copy of an order to produce. The original order was correct, but in the paper served as a copy the date was omitted, and the defendants' names were not inserted in

the style of the cause and there was another trifling omission.

Doyle contra.

Hoyles for plaintiff contended that the objections were merely technical, and that as the copy served was endorsed properly the defendants' solicitor could not have been misled. An affidavit was filed alleging that the defendants had refused to obey the order for the purpose of delaying the case. The Chancery sittings were being held and the plaintiff should not be delayed.

The Referee thought that on an application of this sort he could not grant an order unless a true copy had been served. The application was therefore dismissed, the plaintiff being allowed to amend the copy served *nunc pro tunc*, the defendants to have five days to file their affidavit, the plaintiff to pay the costs of the appli-application fixed at $6.

Allan v. Martin.

Vesting order—Mis-description.

A vesting order will be granted, vesting the property sold, without the execution of a new deed, when the original deed mis-describes it.

[May 16—Mr. Stephens.]

This was a motion for a vesting order for John Battlier a purchaser. A conveyance had been executed, but one of the parcels was mis-described. An affidavit was read to the effect that there were a great number of parties, and that in consequence great expense would be incurred in getting a new conveyance executed.

The Referee granted the order on the production of the conveyance, the certificate of the master as to the error, and an affidavit that the land was sold according to the description now alleged to be the correct one.

Vivian v. Mitchell

Commission—Parties, examination of—Evidence.

A commission to examine the parties will not issue where as in the case of fraud being set up, it might be conducive to the ends of justice, that either of the parties should be examined before the judge who tries the case, and their evidence is important.

[May 16.—Mr. Stephens.]

This was a motion on the part of the defendant for a commission to examine witnesses (including the parties to the suit) at Prince Arthur's Landing, or for the trial of the issues at the following sittings of the District Court at Prince Arthur's Landing. There was to be a sitting of the Court the following month. It was alleged that there would be a large saving of expense in having the evidence taken at the place mentioned. The plaintiff urged that as he was charged with fraud it was important that his evidence should be given before the judge who finally disposes of the case: *Price* v. *Bailey*, 6 Prac. R. 256.

Mr. Eddis (Boswell & Robertson) for plaintiff.

Howland for defendant.

The Referee under the circumstances thought that the order should go for a commission to examine all witnesses except the parties themselves.

COMMON LAW CHAMBERS.

Watts v. Canada Farmers' Insurance Co.

Pleading—Insurance policy—Assignment.

The conditions which must be complied with on the assignment of a policy of insurance only apply in the case of assignment prior to loss.

[April 20.—Mr. Dalton.]

This was a motion to strike out pleas or to reply and demur. The declaration was on a policy of insurance assigned to the plaintiff after loss. The fourth plea to the whole declaration alleged that the assignment should have been on the back of the policy, and should have been approved by the defendants' secretary, which condition had not been complied with. The fifth plea alleged a breach of a condition as to giving notice of the assignment: *Waddell* v. *Prov. Ins. Co.*, 21 U. C. Q. B. 620.

Miller for plaintiff.

Holman for defendant.

Mr. Dalton thought that the Act only applied to existing policies, prior to any right to recover damages, but that in this case there was in fact a sum of money due before the assignment. The order was therefore granted, striking out the fourth and fifth pleas.

Cavanagh v. Hastings Mutual Insurance Company.

Judgment, setting aside—Irregularity—Order, carriage of—Diligence.

The party obtaining an order is entitled to the carriage thereof unless he delay acting upon it. The filing with a deputy clerk of an order setting aside a judgment does not *ipso facto* set aside the judgment. It is the duty of the deputy clerk to set aside the judgment by noting the fact on the roll upon the filing of the order.

[April 23.—Mr. Dalton.]

This was an application to set aside an interlocutory judgment. An order had previously been made in the cause setting aside a judgment by default as final instead of interlocutory. No time to plead had been allowed by the terms of the order; the plaintiffs immediately upon the

order being made issued a duplicate order setting aside the final judgment and entered interlocutory judgment on the day after the issuing of the order.

Mr. Aylsworth (Bethune, Osler & Moss) contended that as the final judgment roll had been sent to Toronto the judgment could not be set aside merely by filing the order in the Deputy Clerk's office: *Hornby* v. *Hornby*, 3 U.C. Q.B. 274. The papers should have been re-transmitted from Toronto: *Felton* v. *Exrs. Conley*, 1 Prac. R. 319. A minute should be made on the final judgment roll, and a fee is payable therefor. A defence on the merits was also alleged..

Holman for the plaintiff cited Ch. Arch. 988 and justified his haste on the ground that he would have been thrown over the ensuing Assizes had he not acted immediately. He also submitted that the defendants had purposely refrained from asking time to plead, as a term in the order, as under those circumstances they could not have had the costs. The time for pleading had expired at the time interlocutory judgment was signed. The defendants might have filed their order and pleas, and their proceedings could not have been set aside: *Robinson* v. *Stoddart*, 5 Dow. 266 It was the duty of the Deputy Clerk to have the papers re-transmitted, and the plaintiff has fulfilled his duty in handing him the order.

Mr. Dalton—The facts of this case are as follows:—Final judgment had been set aside by me on Friday. The plaintiff obtained a duplicate order which he sent to Sarnia, and which was then filed with the Deputy Clerk. The defendants took out the order, which they sent by Friday's mail to Sarnia, but which did not arrive there until after the duplicate order obtained by the plaintiff and until after interlocutory judgment had been signed. The Deputy Clerk had sent all the papers to Toronto immediately upon the signing of the final judgment. The judgment, consequently, was in Toronto, although no doubt both parties supposed the papers to be in Sarnia. It devolved upon the defendants to set aside the judgment. The defendants were entitled to the carriage of the order, and they were not guilty of negligence. I would therefore set aside the judgment, even if the papers had been in Sarnia. I think, however, as there was a mutual mistake, I can give no costs. The order will be to set aside the interlocutory judgment without costs, and that the papers be re-transmitted to Sarnia.

Order accordingly.

Whitelaw v. National Insurance Co.—Whitelaw v. Phœnix Ins. Co.

Postponement of trial.

Held, That when the original holder of a policy of insurance has been indicted for arson it would not be in the interests of justice to postpone a suit by the assignee of the policy until after the criminal trial.

[April 28—Mr. Dalton.]

These were motions to postpone the trial in suits by the assignee of two policies until after the trial of the assured for arson. The assured had assigned in both cases after loss, and had been indicted for arson. The civil cases and criminal prosecution were all to be tried at the ensuing assizes. The defendants alleged that much evidence was, in the interests of justice, being kept concealed by the crown for the present, and if the civil cases were postponed until after the criminal, they would get the benefit of this evidence. The plaintiff cited *Johnson* v. *Wardell*, 1 H. & W. 219, and contended that if insured were convicted on account of not being able, as a prisoner, to make explanations, the plaintiff would be prejudiced by such conviction, and that the assured might, as a witness, in the civil suits, make such explanations as would remove any suspicions, if the civil suits were tried first. The defendants contended that if the assured was convicted, the plaintiff had no right to recover, and that the case cited was not a parallel case.

Osler for plaintiffs.

W. R. Mulock for defendants.

Mr. Dalton—I think that as a matter of justice the civil cases should be tried first; I therefore discharge both summons.

Summons discharged.

Nelles v. Grand Trunk R'y Co.

Jury notice, striking out--Corporation.

In general a jury notice will be struck out on the application of the defendants when the claim is for unliquidated damages against a corporation.

[April 29.—Mr. Dalton.]

This was a motion to strike out a jury notice in an action for damages for the killing of three horses by defendants' railway. The plaintiff contended that in such a case there was no danger of a jury giving excessive damages, and that questions of fact were involved.

Holman for plaintiff.

Mr. Aylsworth (Bethune, Osler & Moss) for defendant.

Mr. Dalton thought that this was such a case as was contemplated by the legislature in passing the act, and granted the order.

Order accordingly.

Haldane v. Beatty.

Fi. fa's, setting aside—Administrator pendente lite—Executors.

An administrator *pendente lite* has no power to issue execution when the executors have proved the will.

[May 5.—Mr. Dalton.]

This was a motion to set aside writs of *fieri facias* under the following circumstances:—One B. had obtained probate as executor under a will. W., widow of the deceased, who took no interest under the will, filed a bill to set the will aside. A decree was subsequently made, setting aside the will, and the plaintiff was, by order of the court, appointed administrator *pendente lite*. Another bill was filed to obtain the court's construction of a second will, and B., who was executor, obtained probate of this will. W, who had an interest in the estate of the deceased under the second will, made affidavit that B. was worthless and beyond the jurisdiction, and that if the estate came into his hands there was a great probability of its being squandered. Application was made to Proudfoot, V. C., who however refused to order the plaintiff to hand over the estate to B.

Donovan, for the plaintiff, contended that if the plaintiff paid over any money without the order of the court his sureties would be liable; that as he was administrator during the continuance of the suit he had a right to issue execution; that it would require an order of the court rescinding the order appointing him, and that the issuing of probate from the Surrogate Court to another did not divest him of his power as an officer of the court.

O'Donohoe, for the defendant, contended that as the costs of the suit had been taxed and the suit terminated, the plaintiff's office was therefore at an end.

Mr. Dalton thought that the plaintiff had no legal right to issue execution, whatever the rights of the parties might be in equity. The order was accordingly granted, setting aside the writs of *fieri facias*.

Regina v. Bell.

Magistrate, powers of—32-33 Vict. cap. 28 & 32.

A conviction under 32-33 Vict. cap. 28 & 32 C. is bad where a fine and costs are imposed and in default imprisonment.

[May 11.—Harrison, C. J.]

John Paterson applied for the discharge of a prisoner under a writ of *habeas corpus*, who had been fined in the Police Court $50 and costs, or in default imprisonment, for keeping a house of ill-fame. He contended that the Justices of the Peace who sat in the absence of the Police Magistrate had no power to act under 32-33 Vict. cap. 32. The magistrate had no power to impose a fine and inflict imprisonment in default of the fine being paid. The only means of collecting the fine was by distress warrant: *Slater v. Wells*, 9 C. L. J. 21. Under 32-33 Vict. cap. 28, the fine was illegal as the act gives no power to impose costs.

Meek for the Crown, contra.

Harrison, C. J. thought that on the authority of the case cited, the conviction was clearly bad.

Conviction quashed.

Re S. & R., Attorneys.

Attorneys' bills—Costs of reference.

An order is not necessary in order to issue execution for the costs of taxing an attorney's bill.

[June 15.—Mr. Dalton.]

H. J. Scott applied for an order for the payment of costs of taxation of an attorneys' bill.

Mr. Dalton—Under the old practice when the master made his report it was made a rule of court, this however, is not now required, and the original order I think is sufficient authority for issuing execution for the costs taxed by the master.

Order refused.

Morris v. City of Ottawa.

Jury notice, striking out—Corporation.

When an action is brought to recover damages from a corporation the jury notice will in general be struck out.

[June 23.—Mr. Dalton.]

This was an application by the defendants to have the jury notice struck out in an action for damages. The plaintiff submitted as there was a plea raising the question as to whether the place in question was a public highway or a part of the market, a view would be necessary, and that there was no statutory provision for a view by a judge; that the damages claimed were moderate and purely a question for the jury, and that the judge had power to submit questions to the decisions of the jury and enter the verdict himself.

Spencer for plaintiff.

Mr. Aylsworth (Bethune, Osler & Moss) for defendant.

Mr. Dalton thought that this case the jury notice should be struck out.

On an application to Morrison, J., for a summons by way of appeal from Mr. Dalton's order the summons was refused.

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS

FOR NOVEMBER AND DECEMBER 1876, AND JANUARY 1877.

From the American Law Review.

(*Continued from p.* 176.)

2. A company purchased iron works of G., and subsequently raised money upon its debentures secured by mortgage of all its funds, property, and effects. A year afterwards the company borrowed money of G. under an agreement according to which G. was to carry on the company's business and receive all moneys due the company, and apply them with his own loan in taking up acceptances of the company, and in paying the wages of its servants, and running expenses; and out of the remainder repay himself his loan with interest. The company was ordered to be wound up under the supervision of the Court, with whose sanction further advances were made by G. upon the same terms as before. Subsequently the property was sold by order of the Court. *Held*, the claims of the debenture holders were to be paid in priority to the running expenses and the sums due G.—*In re Regent's Canal Ironworks Co. Ex parte Grissell*, 3 Ch. D. 411.

3. It is not the duty of a trustee of a fund, who has himself a charge upon it created by the *cestui que trust*, to communicate the charge to a person who gives him notice of a subsequent charge.—*In re Lewer. Ex parte Wilkes*, 4 Ch. D. 101.

Protest.—*See* Bills and Notes, 3, 4.

Proviso.—*See* Annuity, 3; Mortgage, 1.

Railway.—*See* Estoppel, 2.

Release of Damages.

Declaration to the effect that the plaintiff was injured by a collision upon the defendants' railway caused by the defendants' negligence. Answer, that the defendants paid the plaintiff a certain sum on account of his injuries and that the plaintiff gave a deed of release. Reply, that the defendants procured the plaintiff to execute said deed by fraudulently representing that said injuries were of a trivial and temporary nature, and that if they should afterwards turn out to be more serious than the plaintiff anticipated, he would still, even though he had executed the deed, be in a position to obtain and would obtain further compensation from the defendants in respect thereof: also that said injuries proved more serious than the plaintiff anticipated when he executed said deed. Demurrer. *Held*, that the plaintiff's reply was good on the ground that it stated that the deed was executed in consequence of the defendant's misrepresentations as to the nature of said injuries. *Semble*, that fraudulent misrepresentation as to the effect of a deed can be relied upon as a defence to an action upon the deed.—*Hirshfeld* v. *London, Brighton, and South Coast Railway Co.*, 2 Q. B. D. 1.

Remainder.

1. A testator devised real and personal property to his daughter for life, "and after her decease the property to be equally divided between her children on their becoming of age." The daughter was one of the witnesses to the will, and the gift to her was consequently void under the 15th section of the Wills Act. The daughter had children living at the decease of the testator. *Held*, that there was a vested remainder in said daughter's children which they were to receive upon the determination of said daughter's life-estate, whether terminated by death or forfeiture; and that the forfeiture of said life-estate under said act, accelerated the remainder so that it took effect upon the death of the testator.—*Jull* v. *Jacobs*, 3 Ch. D. 703.

2. A testator devised his real estate to his two grandsons for life, remainder to their sons in tail, remainder in case said grandsons died without issue, to the testator's three granddaughters as tenants in common in tail with benefit of survivorship; and in case all said granddaughters should die without issue, leaving their father and mother or either of them surviving, then the testator gave said real estate to said father and mother and the survivor of them for life, and after the decease of such survivor to P. in fee. One of said grandsons survived the testator and all said granddaughters, but died without issue. One of said granddaughters survived both her parents. *Held*, that the remainder to said father and mother was vested, not contingent, and that P. therefore was entitled to said estate in fee upon the death of said surviving grandson.—*Leadbeater* v. *Cross*, 2 Q. B. D. 18.

See Contingent Remainder.

Remoteness.—*See* Annuity, 2; Perpetuity; Settlement, 1.

Rent-Charge.

A rent-charge charged upon a reversion in fee expectant on the determination of certain outstanding terms is a "free land or tenement" within 8 Hen. 6, c. 7.—*Dawson* v. *Robins*, 2 C. P. D. 38.

Reservation.—*See* Grant; Prescription.

Residuary Gift.—*See* Appointment, 3; Legacy, 7.

Restriction.—*See* Annuity, 3.

Reversionary Interest.—*See* Settlement, 5.

Sale.—*See* Bills and Notes, 1; Fixtures; Jurisdiction; Mortgage, 1; Partition.

Satisfaction.—*See* Legacy, 4; Settlement, 3.

Scrip.—*See* Negotiable Instrument.

Settlement.

1. By marriage settlement freehold property was conveyed to trustees to the use of M. for life, remainder to the use of all or any one or more exclusively of the children, grandchildren, or other issue of M., to be born before the appointment as M. should by deed or will appoint. M. by will appointed to the use of his son in fee, but in case he should have no child who should attain twenty-one, then after the decease of said son to the use of M.'s grandson, B. *Held*, that the executory devise to B., the grandson, was

void for remoteness; and that M.'s son had an absolute fee-simple in the estate.—*In re Brown ana Sibly's Contract*, 3 Ch. D. 156.

2. H. by voluntary settlement assigned certain consols, mortgage debts, shares in a company, and furniture to trustees upon trust to pay her the dividends and allow her to use the furniture during her life; and after her death to invest and pay certain sums of money, part of the trust fund, in trust for certain specified *cestuis que trust*, and pay the residue of the trust moneys and deliver said furniture to F. By her will dated ten years after said settlement H. confirmed the settlement. F. died before H. H. retained possession of the securities for the mortgage debts, and part of such debts were received by her in her lifetime, and the remainder were received by the trustees. No legal transfer of said shares was made to trustees by H. *Held*, that the will perfected the settlement as being a testamentary settlement so far as regarded the shares, but not so far as regarded the mortgage debts received by H., and that the *cestuis que trust* who predeceased the testator could not take, and their shares went to the residuary legatee under H.'s will.—*Bizzey* v. *Flight*, 3 Ch. D. 269.

3. Personal property was settled in trust for such persons as W. should during coverture appoint, and subject thereto in trust for W. for life, and in case she survived her husband (which event happened) in trust for W. absolutely after the decease of her husband. Subsequently upon the marriage of her daughter, W. covenanted that £1,000 should be paid to the trustees of her daughter's settlement upon trust for the daughter for life, and after her decease in trust for her daughter's husband for life, with certain further trusts for children. W. by her will, which was expressed to be made in exercise of her above-mentioned power of appointment, bequeathed £1,000 upon trusts similar to those of the sum settled upon her daughter omitting the husband's life-interest. *Held*, that said personal property settled on the above trusts for W. was bound by her general engagements, and therefore by her covenant upon the marriage of her daughter; but that said bequest of £1,000 amounted to a satisfaction of said covenant.

W. received after her husband's death certain dividends, and railway stock, which she had purchased from the proceeds of a portion of said personal property. *Held*, that said dividends and stock did not pass under a bequest of residuary estate in W.'s said will.—*Mayd* v. *Field*, 3 Ch. D. 587.

4. A fund was settled on trustees upon trust to pay the income to A. for life, and after her death to her husband B. for life, and after the death of A. and B. upon trust to transfer the principal sum together with all dividends and interest which might be then due thereon unto and amongst all the children of A. and the issue of such children, in equal proportions, to be paid or transferred to such children as should be sons, at the age of twenty-one years, and to such children as should be daughters, at the age of twenty-one years or day of marriage whichever should first happen, the issue of any child whose parent should die before his or her share should become payable to be entitled to the share which his or her parent would have been entitled to if living. A. died leaving two children who had attained twenty-one, and a grandchild, the plaintiff, who was the son of a deceased child of A., who had attained twenty-one in A.'s lifetime. *Held*, that the plaintiff was entitled to one-third of said fund.—*Day* v. *Radcliffe*, 3 Ch. D. 654.

5. Upon the marriage settlement of A. and B. they covenanted that any real or personal estate to which A. (the wife) then was, or during the coverture should become, entitled, should be settled upon the trusts of the settlement. At the date of the settlement A. was entitled upon her death without issue to one moiety of a trust fund subject to a life-estate of B. *Held*, that A.'s contingent reversionary interest in said trust fund was bound by said covenant and did not pass to B., her husband.—*Cornwell* v. *Keith*, 4 Ch. D. 767.

6. P. being free from debts and liabilities settled, in 1858, £1,000 in trust to pay the income to himself until he should assign, charge, or otherwise dispose of the same by anticipation, or until he should be found or declared a bankrupt, and then upon trust to pay the income to his wife for life; remainder upon trusts for children with ultimate remainder in P. In 1873, P. entered into business, and in 1875 was adjudged a bankrupt. *Held*, that said settlement was void *in toto* as against creditors.—*In re Pearson. Ex parte Stephens*, 3 Ch. D. 807.

7. Real estate was devised to a woman with an expression of wish that in case the woman should marry, she should before marrying settle the estate for her own use for life, and to such uses as she should by will, and notwithstanding coverture, appoint. The woman married and had a child, and subsequently joined with her husband in a deed purporting to be in execution of said wish, whereby said estate was settled upon certain trusts for the wife, her husband, and their children. Subsequently the husband and wife mortgaged the estate without informing the mortgagee of the settlement. *Held*, that the settlement was for good consideration and was not void against the mortgagee under 27 Eliz. c. 4.—*Teasdale* v. *Braithwaite*, 4 Ch. D. 85.

See Appointment.

Shareholder.—*See* Partnership; Wills, 2.

Ship.—*See* Insurance, 3; Mortgage, 2.

Solicitor's Lien.—*See* Lien, 1.

Specific Appropriation.—*See* Bills and Notes, 1; Estoppel.

Specific Bequest.—*See* Legacy, 3, 5.

Specific Performance.—*See* Covenant; Vendor and Purchaser, 1.

Statute.

By statute any person who should "wilfully throw" rubbish into certain rivers, or "any drains, trenches, or watercourses thereunto belonging," was subjected to a fine. A tanner discharged his rubbish at a distance of four miles from one of said rivers, into a small natural stream which ran into such river. *Held*, that said "drains, trenches, or watercourses," comprised only artificial watercourses made by man; and that refuse thrown into the stream by the tanner in the course of his trade was not thrown in "wilfully" within the meaning of the statute; and that the tanner was not therefore subject to a fine.—*Smith* v. *Barnham*, 1 Ex. D. 419.

See Hotel-Keeper; Limitations, Statute of; Trade-Mark, 2.

Statute of Frauds.—*See* Fixtures; Frauds, Statute of; Vendor and Purchaser, 2.

Statute of Limitations.—*See* Limitations, Statute of.

Digest of the English Law Reports.

Stock Exchange.—*See* Negotiable Instrument.

Surety.—*See* Principal and Surety.

Tenant for Life.—*See* Devise, 3; Lease.

Tenement.—*See* Rent-Charge.

Title.—*See* Partition.

Trade-Mark.

1. H., a cigar-dealer in London, had a correspondent G. in Havannah, of whom he bought cigars H. employed an artist to design a label having a picture and motto upon it, and H. registered the label at Stationers' Hall. H. then wrote to G. requesting him to put this label upon the boxes of cigars he consigned to H., which G. accordingly did, adding the words "G., manufacturer of cigars, Havannah." G. subsequently sent boxes of cigars with said label upon them to his agents in England, and H. prayed an injunction restraining said agents from selling cigars with said label affixed. Injunction refused. There was no contract by G. that he would furnish any cigars to H., or that he would not furnish any cigars with said label to any one other than H.; and, as H. did not allege that he had any stock of said cigars on hand, it did not appear that he would be injured by G.'s selling cigars with said label to others. Moreover the label represented that said cigars were manufactured by G., as in fact they were; so that the public was not deceived nor H. injured.—*Hirsch* v. *Jonas*, 3 Ch. D. 584.

2. A word or combination of letters is not "a distinctive device, mark, or heading," within the Trade-Marks Registration Act, 1875, and cannot be registered as a trade-mark.—*Ex parte Stephens*, 3 Ch. D. 659.

Trader.—*See* Hotel-Keeper.

Trust.

1. A testator bequeathed £12,000 to two trustees upon trust to invest the whole, or such part as they thought proper, in the purchase of an advowson; and until J., the testator's son, should be presented to some benefice which should produce an annual income of £1,000 at least, or should die, upon trust to present some fit person to the benefice of which they should have purchased said advowson, and subject as aforesaid to hold said advowson in trust for J. and his heirs. And until said trustees made said investment, they were directed to invest and accumulate said sum for a period of twenty-one years from the testator's death, after which the income of said sum and its accumulations was to belong to J. And in case J. should die or be presented to a benefice as aforesaid before said trustees had purchased said advowson, said sum and its accumulations were to belong to J., his executors and administrators. Twelve years after the testator's death the trustees held said sum and its accumulations and had purchased no benefice. J. claimed to be entitled to the entire fund on the ground that he was the exclusive object of the trust. *Held*, that J. was not absolutely entitled to said fund.—*Gott* v. *Nairne*, 3 Ch. D. 278.

2. A trustee who had a life-interest in the trust estate committed breaches of trust by selling portions of the estate and applying the proceeds to his own uses, and subsequently went into bankruptcy. *Held*, that trustee's estate for life could not be appropriated to repairing the loss occasioned by said breach of trust as against the assignee in bankruptcy, who would take the trustee's legal estate as assets of the bankrupt. *—Fox* v. *Buckley*, 3 Ch. D. 508.

3. A testator, who held a trust fund secured by mortgage, devised his real and personal estate to his wife and her executors, administrators, and assigns, upon trust to leave the same in existing investments, or to sell and convert into money, and out of the proceeds to pay his debts and funeral expenses and certain legacies, and retain the income of the residue during her life; and subject as aforesaid, the remainder in trust for C. There was no express devise of trust estates. *Held*, that the mortgaged trust estate did not pass under the will.—*In re Smith's Estate*, 4 Ch. D. 70.

See Annuity, 3; Contingent Remainder; Lease; Legacy, 4; Priority, 3; Settlement, 4.

Vendor and Purchaser.

1. The plaintiff agreed to sell, and the defendant to purchase, certain freeholds and leaseholds, and by the terms of the agreement the defendant was not to investigate or make any objection in respect of the title to said freeholds prior to the year 1841. It was discovered before completion of the agreement that the defendant owned said freeholds subject to a leasehold interest in the plaintiff, and that part of the leaseholds belonged to the plaintiff in fee. The plaintiff filed a bill for specific performance of said agreement. *Held*, that said condition did not preclude the defendant from refusing to complete said agreement, as the parties had contracted under a mutual mistake as to their respective rights.—*Jones* v. *Clifford*, 3 Ch. D. 779.

2. D. agreed to purchase certain property specified in a written contract which did not contain any plan of the property; and at the same time D. signed a memorandum writtten on the back of a plan, as follows: "Plan of property sold to and purchased by D., 23d Oct., 1874. N. B.—The property included in the purchase is edged with red colour." *Held*, that said memorandum was sufficient to incorporate the plan in the contract, and that the description in the contract was controlled by the plan. *—Nene Valley Drainage Commissioners* v. *Duncley*, 4 Ch. D. 1.

See Bills and Notes, 1; Covenant; Partition.

Vested Remainder.—*See* Remainder, 2.

Vis Major.—*See* Act of God.

Water.—*See* Act of God.

Watercourse.—*See* Statute.

Will.

1. A testator executed a will and subsequently a codicil in duplicate, but the codicils bore different dates. One copy of the will and codicil was left by the testator at his banker's, and one copy he retained. Probate was granted of both wills and codicils, described as duplicates. *Held*, that evidence was admissible to show that the two codicils were not two distinct instruments, so as to give the legatee therein named cumulative legacies. *—Hubbard* v. *Alexander*, 3 Ch. D. 738.

2. A testator owning certain shares in different companies declared that the calls, if any, which might be or become due in respect of any shares constituting part of his personal estate, should be paid by the trustees of his will, out of the income and not out of the principal of his estate. The testator owned shares upon which calls were at the time of his death due, though not payable. *Held*, that such calls must be paid

from income. After the testator's death new shares in a company were allotted to and accepted by the executors in respect of shares owned by the testator in such company. *Held*, that calls upon such shares were payable out of the principal.—*Bevan* v. *Waterhouse*, 3 Ch. D. 752.

See Annuity, 1, 2; Appointment, 1, 3, 4; Charity; Contingent Remainder; Devise; Election; Illegitimate Children; Legacy; Perpetuity; Priority, 2; Remainder; Settlement, 2, 3; Trust, 3.

Words.

"*Device, mark, or heading.*"—*See* Trade-Mark.

"*Drains, trenches, or watercourses.*"—*See* Statute.

"*Family.*"—*See* Legacy, 6.

"*Foreign Bonds.*"—*See* Legacy, 10.

"*Free land or tenant.*—*See* Rent-Charge.

"*Hotel-keeper.*"—*See* Hotel-Keeper.

"*Meeting.*"—*See* Company.

"*Payable.*"—*See* Settlement, 4.

"*Wilfully.*"—*See* Statute.

REVIEWS.

Principles of the Criminal Law. By Seymour F. Harris, B. C. L., M. A., (Oxon) Barrister-at-Law of the Inner-Temple, &c. London: Stevens and Haynes, law publishers, Bell-yard, Temple Bar. 1877.

This volume is stated to contain a concise exposition of the nature of crime, the various offences punishable by English law, the Law of Criminal Procedure and the Law of Summary Convictions, with a table of offences, punishments, &c.

The author seems to think an explanation of the appearance of a new work on the Criminal Law necessary. This explanation is the want of a manual "which neither confines itself to the historical and philosophical view of the matter, nor descends into the minute particulars of the practice of the law." We think Mr. Harris is right in this respect, and his book will be found of much use to those who desire an easy and comprehensive introduction to this most important subject. It will, therefore, be welcomed by students, by practitioners in other branches of the law, and by the general reader. As a work of reference, however, to the criminal lawyer, or as a philosophical discussion of the subject it lays no claim, and it will not supply the place of such works as those of Russell, Roscoe, or Sir James Stephen.

A striking feature in the volume is the great clearness with which the subjects discussed are stated, as well as to the mode of their arrangement and subdivision, as to the language used. In a work of this kind this is essential. We can safely recommend the book before us to those for whom it is specially intended, and we should anticipate for it a ready sale.

Brice on the Doctrine of Ultra Vires. 2nd edition. London: Stevens & Haynes; Toronto: R. Carswell. 1877.

We are glad to see that a second edition of this very valuable work has been issued. There are an immense number of corporations at present in existence, and new ones are being continually formed for almost every object under the sun. This renders some knowledge of the extent of their powers a matter of necessity to every lawyer. Although only three years have passed since the first edition appeared, this book has already become the recognized text book upon the subject of which it treats. In the present edition the numerous cases which have been decided in England during the last three years have been incorporated, together with a large number of American, and we are pleased to see Canadian cases also. We are thus given a complete treatise upon the existing law as to the extent of the powers of corporations, and a digest of the cases upon the subject. It is unnecessary to discuss this work at greater length. It has now an established reputation, and has become a necessary part of any law library with any pretensions to completeness.

Banning on the Statute Law of the Limitation of Actions. London: Stevens & Haynes; Toronto: R. Carswell. 1877.

We have here a neat text book of some three hundred pages, divided into thirty-three chapters, and covering the whole of the law of limitations. The book is well arranged and carefully written. The cases upon the subject are referred to very fully. As the statutes in force in England and Ontario are very nearly the

same, the work will be as valuable here as in England, and we have no doubt will find a ready sale. It will be additionally acceptable in view of the recent important changes in the law on this subject.

BOOKS RECEIVED.

The Insolvent Act of 1875, and Amending Acts. Annotated by S. R. Clarke, Esq., Barrister, etc. Toronto: R. Carswell.

Commentaries on the Liberty of the Subject and Security of the Person. By James Paterson, Esq., M.A., Barrister, etc. London, England: Macmillan & Co.; Toronto: R. Carswell.

International Review. May–June and July–August. A. S. Barnes & Co.: New York and Boston.

British Quarterlies, Reviews & Blackwood. Leonard Scott Publishing Company, New York.

The contents of June *Blackwood* are as follows: A Woman Hater, part xiii; Sundry Short Poems, by J R. S.; Twenty Years of African Travel; Pauline, part v; How I Caught my First Salmon: A Canadian Sketch; Lord Derby's Despatch and the Debate; The Storm in the East.

CHANCERY AUTUMN CIRCUITS.

THE HON. VICE-CHANCELLOR BLAKE.

Toronto	Tuesday	Nov. 6th.

THE HON. THE CHANCELLOR.

HOME CIRCUIT.

Barrie	Tuesday	Oct. 16th.
Owen Sound	Tuesday	Oct. 23rd.
St. Catharines	Friday	Oct. 26th.
Hamilton	Tuesday	Oct. 30th.
Brandford	Thursday	Nov. 8th.
Simcoe	Wednesday	Nov. 14th.
Guelph	Tuesday	Nov. 20th.
Whitby	Thursday	Nov. 29th.

THE HON. VICE-CHANCELLOR BLAKE.

WESTERN CIRCUIT.

Stratford	Tuesday	Sept. 11th.
Goderich	Tuesday	Sept. 18th.
Sarnia	Tuesday	Sept. 25th.
Sandwich	Thursday	Sept. 27th.
Chatham	Tuesday	Oct. 2nd.
Woodstock	Friday	Oct. 5th
Walkerton	Wednesday	Oct. 10th.
London	Tuesday	Oct. 16th.

THE HON VICE-CHANCELLOR PROUDFOOT

EASTERN CIRCUIT.

Lindsay	Tuesday	Sept. 18th.
Peterborough	Friday	Sept. 21st.
Cobourg	Tuesday	Sept. 25th.
Belleville	Tuesday	Oct. 2nd.
Kingston	Friday	Oct. 12th.
Ottawa	Wednesday	Oct. 17th.
Brockville	Wednesday	Oct. 24th.
Cornwall	Monday	Oct. 29th.

AUTUMN ASSIZES, 1877.

EASTERN CIRCUIT.

THE HON. MR. JUSTICE BURTON.

L'Orignal	Monday	Oct. 1st.
Ottawa	Friday	Oct. 5th.
Pembroke	Wednesday	Oct. 17th.
Perth	Wednesday	Oct. 24th.
Cornwall	Wednesday	Nov. 7th.

MIDLAND CIRCUIT.

THE HON. MR. JUSTICE MOSS.

Napanee	Monday	Oct. 1st.
Picton	Friday	Oct. 5th.
Belleville	Tuesday	Oct. 9th.
Kingston	Wednesday	Oct. 24th.
Brockville	Tuesday	Nov. 6th.

VICTORIA CIRCUIT.

THE HON. THE CHIEF JUSTICE OF THE COMMON PLEAS.

Whitby	Monday	Sept. 17th.
Lindsay	Monday	Sept. 24th.
Peterborough	Thursday	Oct. 4th.
Brampton	Wednesday	Oct. 10th.
Cobourg	Wednesday	Oct. 17th.

BROCK CIRCUIT.

THE HON. MR. JUSTICE PATTERSON.

Goderich	Tuesday	Oct. 2nd.
Owen Sound	Monday	Oct. 8th.
Woodstock	Monday	Oct. 15th.
Walkerton	Monday	Oct. 22nd.
Stratford	Monday	Oct. 29th.

NIAGARA CIRCUIT.

THE HON. MR. JUSTICE GALT.

Milton	Tuesday	Sept 18th.
Hamilton	Tuesday	Sept. 25th.
Welland	Tuesday	Oct. 23rd.
Cayuga	Tuesday	Oct. 30th.
St. Catharines	Tuesday	Nov. 6th.

WATERLOO CIRCUIT.

THE HON. MR. JUSTICE MORRISON

Barrie	Monday	Sept. 10th.
Berlin	Monday	Sept. 24th.
Simcoe	Tuesday	Oct. 2nd.
Brampton	Monday	Oct. 8th.
Guelph	Monday	Oct. 22nd.

WESTERN CIRCUIT

THE HON. THE CHIEF JUSTICE OF ONTARIO.

London	Tuesday	Sept. 4th.
St. Thomas	Tuesday	Sept. 18th.
Chatham	Tuesday	Sept. 25th.
Sarnia	Tuesday	Oct. 2nd.
Sandwich	Tuesday	Oct. 9th

HOME CIRCUIT.

THE HON. MR. JUSTICE GWYNNE.

Toronto, Tuesday, 2nd October (Nisi Prius.)

Toronto, Wednesday, 24th October (Oyer and Terminer).

FLOTSAM AND JETSAM.

The following is said to be a true copy of a will, which was submitted to a lawyer in Indiana lately :

Indianapolis, October 15th, 1867.

This certifies that Thomas Shannessey has made his last will to his wife, Catherine Shannessey, to dispose of said property as she thinks fit, if necessary to compel her to do so.

Thomas Shannessey,
X.
Witness Dennis O'Connell,
Michael Callahan.

Great Seals.—The Nova Scotians are by no means the first people who have been in trouble about a Great Seal. When the Prince of Orange, in 1688-9, took the reins of government in England, there was no Great Seal. It was part of his Catholic Majesty's luggage when he left Whitehall ; but James did not keep it for many minutes. With the impression on his mind that the government of the kingdom could not be carried on without it, he dropped it into the Thames with his royal hand. About a century later, when Lord Thurlow was High Chancellor, his house in Great Ormond-street was broken into on the 24th March, 1784, and the Great Seal of England was among the property stolen. It was never got back from the thieves, but was replaced the next day by a new one. Later, William IV. was very angry with Lord Brougham for taking the Great Seal to foreign parts in his valise. A young lady once made it her pleasure to obtain the Seal from the gallant old lawyer, and compelled him to go down on his knees to her on a rather public occasion, before she would restore it to his custody.—*Ex.*

Robes.—More confusion has arisen from the supposed operation of the Judicature Act. On the Queen's birthday—or, rather, on the day specially appointed for the celebration of Her Majesty's birth—judges and counsel were at cross purposes concerning their robes. Some judges wore the splendid scarlet and full-bottomed wigs ; others black gowns and ordinary wigs. Some Queen's counsel affected big wigs, and some little wigs. There are days in the Calendar which sorely puzzle the authorities at Oxford and Cambridge, leaving dons and scholars in doubt whether surplices or gowns should be worn in chapel. Society also occasionally presents problems in costume, not easily solved. But lawyers are supposed to rise above all difficulties ; and judges are expected to know in what robes they are to expound the law, as clearly and certainly as they are 'on assumption' able to declare the law itself. Judges often complain that they do not know from one day to another where they are to sit, and what business they are to do. This is very deplorable ; but not so bad as doubt and discrepancy as to the dress in which justice is to clothe her preachers.—*Ex.*

A Correspondent of the Albany Law Journal, writing from London on "The Crime of Murder in England," reaches the following conclusions : (1.) That the sensational manner in which crimes of violence are reported in American newspapers has impressed foreigners, and especially the English, with the idea that lawlessness prevails throughout every grade of American society, and that no man's life is safe, even in the streets of New York, unless he can defend it himself in any chance quarrel or contact with any bloodthirsty desperado, with a whole arsenal of pistols and knives. (2.) That for every man killed in the heat of affray in America, some man, woman or child is murdered in England barbarously, deliberately in cold blood. (3.) That in England the man who commits a murder is "past praying for," whenever the evidence is conclusive that he did kill. If A kills B to-day, a coroner's jury renders its verdict to-morrow. A is examined before a magistrate and committed the same or next day, tried next week, and hanged three weeks hence, within the walls of the county jail, unknown, unrecognized, unapplauded ; and a brief paragraph in the newspapers announces when, how and why he paid penalty to the law, and that is the last of him. (4.) That in England there are no long delays, and frequent postponements, and new trials, and reprieves, and public demonstrations of sympathy, and speeches upon the scaffold, and departures with great *eclat*, surrounded by an admiring staff of newspaper reporters, and celebrated, to the slightest detail, in columns of tumid newspaper sensationalism. (5.) That England punishes her murderers with certainty and fitting circumstance, while we either let them go free or waft them from the gallows to the clouds amid the pæans of admiring friends. (6.) That the English method of treating murderers is greatly superior to the American, with its delay, uncertainty, and, at the end, senseless and demoralizing publicity. If people must be killed, let it be done quietly, sadly, solemnly, as becomes the terrible example sought to be conveyed, and the great responsibility assumed.—*Ex.*

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Hilary Term, 40th Victoria.

During this Term, the following gentlemen were called to the Bar; the names are given in the order of merit.

Albert Clements Killam.
Thomas Hodgkin.
Cornelius J. O'Neil.
Francis Beverley Robertson.
Henry Ernest Henderson.
Hamilton Cassels.
Francis Love.
William Wyld.
Thomas Caswell.

The following gentlemen were called to the Bar under the rules for special cases framed under 39 Victoria, Chap. 3.

George Edmonson.
Frederick W. Colquhoun.
Edward O'Connor.
John Bergin.

The following gentlemen received Certificates of Fitness:

J. H. Madden.
H. Cassels.
J. W. Gordon.
J. Dowdall.
C. J. O'Neil.
T. M. Carthew.
T. J. Decatur.
T. D. Cowper.
A. W. Kinsman.
C. McK. Morrison.
C. Gordon.
F. S. O'Connor.
G. S. Hallen.

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

Graduates.

Charles Augustus Kingston.
John Henry Long.
James J. Craig.
William Fletcher.
Leonard Harstone.
Patrick Anderson Macdonald.

Junior Class.

Benjamin Franklin Justin.
John F. Quinlan.
John Williams.
Joseph William MacDowell.
Phillip Henry Drayton.
Thomas A. Gorham.
James R. Brown.
George J. Sherry.
Hector McKay.
D. Henderson.
Alexander Carpenter Beazeley.
John Bertram Humphries.
Lauren G. Drew.
Herman Joseph Eberts.
Solomon George McGill.
David Johnson Lynch.
Thomas Henry Loscombe.
John Vashon May.
George Moir.
J. H. Macallum.
Hugo Schliefer.
David Robertson.
Angus McB. McKay.
Charles Rankin Gould.
William James Cooper.
Edward Stewart Tisdale.
Francis Melville Wakefield.
Alexander Stewart.
Thomas Miller White.
John Arthur Mowat.
Henry Bogart Dean.
George Robert Knight.
Humphrey Albert L. White.
John Wood.
George Benjamin Douglas
Alexander Humphrey Macadam.
Hugh Boulton Morphy.
William Henry Brouse.
George J. Gibb.
Frederick E. Redick.
William Masson.
Edward Guss Porter.
Thomas Robert Foy.
Henry Albert Rowe.
Thomas H. Stinson.
Stewart Masson.
Francis Evans Curtis.
William Steers.
Robert Taylor.
Henry M. East
Armour William Ford

Wm. Martin McDermott.
Charles W. Phillips.
Wellington Smaill.
John Clyde Grant.
George Merrick Sinclair.
George Walker Marsh.
Edward Albert Foster.
Frank Russell Waddell.
Francis P. Conway.
Henry Dexter.
William T. Easton.
Albert Edward Wilkes.
James Lane.
John Henry Cooke.
Alexander Howden.
Douglas Buchanan.
John Alexander Stewart.
Arthur Mowat.
John McLean.
Robert Cockburn Hays.
William Aird Adair.
Ernest Wilbert Sexsmith.
John Baldwin Hand.
James Barrie.
George Frederick Jelfs.

Articled Clerks.

Noble A. Bartlett
Owen M. Jones.
Eugene Maurice Cole.
Ernest Arthur Hill Langtry.
John Oberlin Edwards.
J. A. Lougheed.

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

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

That all other candidates for admission as Students-at-Law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination upon the following subjects:—

CLASSICS.

Xenophon Anabasis, B. I.; Homer, Iliad, B. I. Cicero, for the Manilian Law; Ovid, Fasti, B. I., vv. 1 300; Virgil, Æneid, B. II., vv. 1-317; Translations from English into Latin; Paper on Latin Grammar.

MATHEMATICS.

Arithmetic; Algebra, to the end of quadratic equations; Euclid, Bb. I., II., III.

ENGLISH.

A paper on English Grammar; Composition; An examination upon "The Lady of the Lake," with special reference to Cantos v. and vi.

HISTORY AND GEOGRAPHY.

English History, from Queen Anne to George III., inclusive. Roman History, from the commencement of the second Punic war to the death of Augustus. Greek History, from the Persian to the Peloponnesian wars, both inclusive. Ancient Geography: Greece, Italy, and Asia Minor. Modern Geography: North America and Europe.

Optional subjects instead of Greek:

FRENCH.

A paper on Grammar. Translation of simple sentences into French prose. Corneille, Horace, Acts I. and II.

or GERMAN.

A paper on Grammar. Musaeus, Stumme Liebe Schiller, Lied von der Glocke.

Candidates for admission as Articled Clerks (except graduates of Universities and Students-at-Law), are required to pass a satisfactory examination in the following subjects:—

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

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

All examinations of Students-at-Law or Articled Clerks shall be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

THOMAS HODGINS, *Chairman.*

Osgoode Hall, Trinity Term, 1876.

Adopted by the Benchers in Convocation August 29, 1876.