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In these days of mining excitement both in Ontario and British Columbia, it may be of interest to note the answer to a question, which has often been asked by solicitors acting for companies in provinces outside British Columbia, viz.: whether companies holding Dominion or Provincial charters, come within the provisions of the British Columbia Acts in relation to the registration of foreign companies. For the information of those who may have occasion to enquire into this matter, we would say that it is considered by the proper authorities in that behalf that such companies are entitled to such registration.

OBJECTIONABLE LEGISLATION.

The Consolidated Municipal Act, 55 Vict., sec. 531, provides that "every public road, street, bridge and highway shall be kept in repair by the corporation, and on default . . . the corporation . . . . shall be civilly responsible for all damages sustained by any person by reason of such default, but the action must be brought within three months after the damages have been sustained."

By 57 Vict., ch. 50, sec. 13, the right of the injured party is further hampered by a provision which takes away his right of action "unless notice of the accident and the cause thereof has been served upon or mailed through the post office to the mayor, reeve or other head of the corporation, or to the clerk of the municipality, within thirty days after the happening of the accident, and provided also that the want or insufficiency of the notice [shall not] be a bar to the action if the court or judge before whom the action is tried is of opinion that there was reasonable excuse for the want or in-

sufficiency of such notice, and that the defendants have not thereby been prejudiced in their defence."

These enactments, which, like many others, derogate from the good old common law rule that suffered no wrong to be without a remedy, may perhaps be capable of justification, but what excuse can be offered for the recent unreasonable abridgment of the rights of individuals effected by 59 Vict., ch. 51, sec. 20? Under this latest amendment the notice must be given within seven days, when the action is against a city, town or incorporated village, and the saving clause allowing the court or judge in a proper case to dispense with the notice is repealed.

Not infrequently does it happen that in such cases the injured party is rendered insensible for a considerable length of time, or prevented by physical suffering from giving a thought to the question of recovering from the corporation, or perchance he may be lying without friends in some public hospital. Under such or similar circumstances it would indeed be a remarkable thing if an ordinary layman, even if he had heard of this vicious statutory provision, should take steps to comply with it. Great injustice is likely to result from this extraordinary legislation; it practically takes away in many cases the right of action altogether.

Perhaps the severest censure on the present state of the law lies in the fact that when the time for giving the notice was thirty days, the legislature recognized that cases would arise in which a reasonable excuse might be offered for non-delivery of the notice within the prescribed time, and provided for such cases, whereas now the time is less than one-quarter of what it then was, and the equitable provision, to which reference has been made, has been eliminated, leaving no discretion in the courts to relieve against the rigor of the enactment under any circumstances. This matter should receive attention at the hands of the Attorney-General next session.

THE SUPREME COURT OF CANADA

At the late session of the Parliament of Canada there was introduced in the Senate by the Minister of Justice "a bill to provide for the appointment of temporary judges to the Supreme Court of Canada in certain cases." The bill was considerably modified in its passage through the Upper Chamber, but in the form in which it reached the House of Commons it allowed the appointment of not more than two temporary judges at any one time to the Supreme Court, in case of the absence on account of illness, or on leave, of any judge of that Court, such temporary judges to be taken from the Superior Court judges of Canada, or, if required to replace a Quebec judge, the judge so appointed should be from that province. Such judges might hear any matters except those arising out of parliamentary elections. Senator Gowan, who was the first to speak against the measure, objected to temporary judges being appointed to what is practically a court of last resort for Canada (and in election cases is absolutely so). He remarked that such a course was without precedent and should only be resorted to in a case of strong necessity, and that the number of such judges, and the time for making such appointments, should be limited. These suggestions meeting with the favor of the House, were ultimately accepted by the Minister of Justice and incorporated into the bill.

This bill, as were also all other Government measures except the supply bill, was withdrawn, but as it will probably be introduced next session in the same form, it will be well to consider it in advance, and to look thoroughly into the raison d'etre of such a measure.

That there should be any necessity for such an Act at once pre-supposes—as Mr. Gowan remarked—a weakness in the Court. What this weakness was, and why it exists, is what now concerns us. The immediate cause was the absence on leave of two judges, one of whom it was then supposed, felt unable to and did not intend to sit again, while yet another judge, it was expected, would be engaged upon the Behring Sea arbitration.

As to why this weakness in the Court exists, we need but to

call attention to the constitution of the Supreme Court, which does not provide for the removal of a judge and we may quote the Hon. R. W. Scott, Q.C., Secretary of State, when, during the debate he says, "A judge will not retire except on his own mere motion. Judges have refused to retire because, as they allege, if they have served a given number of years they think they ought to retire on the full salary allotted to them." He then refers to the case of a judge who "continued to be unable to serve in the Court and yet refused to resign." At the same time we can all understand the objection of a judge, who, after long and faithful service, is asked to retire upon but a fraction of his previous salary.

This Court has long lacked the confidence of the Bar, both in the English speaking provinces and in Quebec, and the present state of affairs will minimize what confidence still exists. One remedy has been suggested, and it has its advantages, although it is not entirely satisfactory, viz., retirement at a certain age, so that a judge who is presumably incapable of doing his full share of work may be asked to retire. Leading men at the Bar, in receipt of large incomes, cannot be expected to accept the comparatively small salary of the Supreme Court bench, with the certain knowledge that when they retire this salary will again be cut down nearly one-half. It is only when such men have reached an age at which they no longer feel able to perform arduous professional work that they accept a judgeship, and we have therefore to seek men of less transcendent ability to constitute the Court. Is it from either of these two classes that we would wish to draw in order to constitute the highest Court in the land?

The late Sir John Thompson introduced a bill which struck at the root of the evil by allowing the full salary to retiring judges, but this measure met with so much opposition at that time that it was withdrawn. It remains to be seen whether, at the next session of Parliament, the Government will reintroduce the make-shift and objectionable bill of last session, or whether it will feel strong enough to grapple with the situation and bring in a measure to meet the difficulty, and so prevent any possible repetition of it.

THE BREHON LAW.

As the Anglo-Irish legislators, by a statute passed in Kilkenny in 1367, denounced the Brehon Law as "wicked and damnable": as Edmund Spencer, of "Faerie Queene" renown, asserts that it is in many things "repugning quite both to God's law and man's": as to it Sir John Davis attributed such desolation and barbarism in Ireland, "as the like was never seen in any country that professed the name of Christ": and as the notable assembly of American Irishmen lately holden in Chicago, after threatening to persecute England with the utmost rigor of their power, strongly advised the study of Gaelic literature, we, piqued by curiosity, and desirous of obtaining favor in the eyes of those who have power to injure, naturally devote our spare moments to the contemplation of those laws, which after surviving the ravages of time and of Saxons, Danes and Normans, remain to-day substantially what they were more than a thousand years agone.

We are told that to properly present them to others we must imbibe the Gaelic spirit to some extent, otherwise it is "the lark and not the nightingale"; that a heart attuned to the Gaelic pulse, and a mind capable of understanding (for the time at least) the Gaelic mode of reasoning, are required. So, if we fail, our readers must blame our grandsires and their Saxon blood, and not ourselves.

Mr. Lawrence Ginnell, of the Middle Temple, barrister-at-law, has lately given to the world a most interesting and readable introduction to these ancient laws: (The Brehon Laws—a legal hand-book, by Lawrence Ginnell, of the Middle Temple, barrister-at-law, London. T. Fisher Unwin, 1894). Briefly, yet clearly, he treats of their existing remains, the Legislative Assemblies of the olden days, and the classification of society in Ireland—the laws of distress—the criminal law—the law of marriage—fosterage and contracts. 'Tis true, 'tis pity, pity 'tis, 'tis true, however, that Mr. Ginnell appears to have been suffering acutely, while his book was passing through the press, from an attack of Anglomania. In a legal treatise it seems out of place to be hurling assegais at the pachydermatous Anglo-Saxon, who does not know he is hit.

The Ancient Laws and Institutes of Ireland are being published by the Irish Government; four large volumes have already appeared, a fifth is in the press. The oldest and most important portions of the Brehon Laws now existing are the Senchus Mor and the Book of Aicill. Ginnell says; "Most of the existing legal manuscripts are believed to have been written, that is, copied from old ones, between the beginning of the twelfth and the end of the fourteenth century. None of the originals, which were written in the fifth century now exist, nor are the existing manuscripts thought to have been copied directly from those originals. They are considered to be copies of copies." Sir H. S. Maine says, "It is far from impossible that the writing of the ancient Irish laws began soon after the Christianization of Ireland."

The Senchus Mor was, according to the introduction to it, compiled at the suggestion and under the supervision of that greatest of Scotchmen (or shall we say Briton, for Dumbarton for years before and after his birth belonged to the Britons), St. Patrick, in the time of King Laoghaire, when Theodosius was Ant.-Rig. or Monarch of the World, about A.D. 432; Maine, however, thinks there is not much temerity in refusing to accept the fifth century as the date of its compilation.

Perhaps the learned Brehon who first used the expression "Senchus Mor" knew exactly where he got it, and what he meant, but certainly the commentators and exponents who came after him had various and hazy notions on the subject, as appears from the book itself. Some find the root of the word in the Hebrew, others in Greek and some in Latin; apparently it means "The Great Book of the Ancient Law." The philological disquisition on the word is interesting but deep.

After St. Patrick had been for several years engaged in his missionary work in Ireland, he found the old pagan laws in use needed some modifications to reconcile them with the requirements of Christianity. He, therefore, convened an assembly of the people: the King was there and every Chieftain. Patrick preached the Gospel to them and the pagan seers were confounded by the wisdom and miracles of the

preacher, and agreed to obey the laws he would promulgate. Then Dubhthach recited all the laws of the Brehons, and those which did not clash with the Word of God were confirmed by the ecclesiastics and the chief men of Erin. The laws in existence appear to have been all right except as to matters pertaining to the Faith and the Church; and this is the Senchus Mor.

Some have attributed the origin of these laws to the influence of Cai, an imagined contemporary of Moses, who had learned the law of Moses before coming from the East. Of course this myth deserves no consideration (Ginnell, p. 31). The Senchus Mor is sometimes called Cain Phadraig, Patrick's Law. It also went by the name "Nofis," the "knowledge of nine persons," because nine persons arranged the book, three bishops (including Patrick) three kings and three Brehons, two doctors of law, and the third a bard. Before the art of writing was general the laws were in rhyme, and probably when first inscribed in the Senchus Mor they rhymed. Bearla Feini was the dialect used. (There being but little type in that classic language in our printer's office, we cannot give our readers a specimen of the original text.)

Much interesting information concerning the language and laws of ancient Ireland and the influence of St. Patrick upon the latter is given in "The Story of St. Patrick," by Joseph Sanderson, and in "Ireland: the Irish, their Christianity, etc.," by J. B. Finlay (New York, 1895), works which should find their way into every library. They are most interesting reading, and throw much light upon the early history of Ireland, and give all the lore connected with its great titular saint, worthy of preservation.

The legal works of early days contain much on subjects never now treated of in such books. For instance, the writer of the Senchus Mor tells us at considerable length concerning the creation of the world, and Moses was not consulted in his account any more than he was by the writer of the Gentoo Laws, when he discoursed on the same topic. The Senchus Mor says that the moon is 244 miles from the sun. But the highly esteemed Coke, in his Institutes of the Laws of Eng-

land, was just as fond of going off to outside fields as were the Brehons.

Fosterage was practiced by all classes in ancient Ireland, and helped materially to strengthen the natural ties of kinship and sympathy which bound together the chief and the clan. English writers for centuries deemed this one of the curses of Ireland. The Senchus Mor treats at great length of this relationship; it seems to search out, ransack and provide for every domestic possibility. Foster parents were bound to teach their foster children things suitable; girls of the less wealthy cast were taught the use of the quern and the sieve, to bake and to rear young cattle; their more favored sisters, to sew, cut out and embroider. Rich boys were instructed in the use of weapons, horsemanship, swimming and chess-playing. The colors of the garments to be worn by these children are given; here, too, we find what was to be their victuals. Stirabout is given to them all, but the flavoring which goes into it is different, namely, salt butter for the sons of the inferior grades, fresh butter for the sons of chieftains, honey for the sons of kings. The food of each continues the same respectively until the end of one year, or three years (according to the kind of fosterage). Stirabout made of oatmeal on buttermilk or water is given to the sons of the Feini grades, and a bare sufficiency of it merely, and salt butter for flavoring. Stirabout made on new milk is given to the sons of the chieftain grades, and fresh butter for flavoring; and a full sufficiency of it is given to them; and this stirabout is made of barley-meal. Stirabout made on new milk is given to the sons of kings, and it is made of wheaten meal, and honey for flavoring.

(*To be continued.*)

R. V. ROGERS.

CAUSERIE.

"Let me have audience for a word or two!"
—*As You Like It, Act V., Scene 2.*

There is an interesting case reported in England in 12 Times Law Reports, p. 153 (*In re Dunbar, Dunbar* v. *Wentworth*), which maintains the correctness of the following canons or rules of the law of Domicil stated by Mr. A. V. Dicey in the first edition of his book on that subject published in 1879: "Rule 6. Every person receives at (or as from) birth a domicil of origin." "Rule 9. The domicil of every dependent person [*i.e.*, an infant or married woman] is the same as, and changes (if at all) with, the domicil of the person on whom he or she is, as regards domicil, legally dependent." "Rule 19. Residence in a country is not even prima facie evidence of domicil, when the nature of the residence either is inconsistent with, or rebuts the presumption of, the existence of an intention to reside there permanently (animus manendi)." In this case the Venerable Archdeacon Charles Gordon Cumming Dunbar and his daughter, B., sought to obtain a declaration as to the domicil of the late wife of the Archdeacon, who died in January, 1891, leaving a will in English form, and made in England, by which she purported to leave property in Bavaria and elsewhere to her sister, the defendant, and others, to the exclusion of her husband and daughter. If it were declared that the wife was a domiciled Scotswoman at the date of her decease, then the Archdeacon and his daughter would each be entitled to one-third of her real and personal estate, notwithstanding such testamentary disposition of the same.

Upon the facts of the case, it appeared that while the Archdeacon's domicil of origin was undoubtedly Scotch, his history after he arrived at man's estate was so painfully illustrative of the truth of the Biblical remark that "here we have no continuing city," that it was about as easy to predicate his place of abode at any given time as it would be to do the same by the Wandering Jew. In his eleventh year he was sent from his father's home at Duffus, in Morayshire, to

school at Winchester. When he was sixteen he left Winchester and went under the care of a private tutor at Devizes. During these years he spent his vacations at Duffus. In 1863, at the age of nineteen, he went for his health to India and Ceylon, and in 1867, while still abroad, he took deacon's orders in the Church of England, and a year later was ordained a priest. He was then appointed chaplain to the Bishop of Colombo, and afterwards chaplain to H. M. forces. Falling ill, he got two years' leave, went back to Duffus for six months, and afterwards hibernated in the south of France. He then returned to England and held a curacy at All Saints', Lambeth, until 1871, doing occasional duty the while elsewhere in London. In 1871 the colonial Bishop to whom he had formerly acted as chaplain came to England, and our clerical nomad renews his chaplaincy, and ambles at the Bishop's heels about the Continent. In 1872 we find him taking a wife, who, in the course of time, verified the nursery rhyme and proved the "plague of his life!" In 1873, his daughter, and co-plaintiff, was born in England. About this time he took charge of a church at Hastings, Sussex; but in 1875, upon medical advice and the solicitation of his better half, who evidently didn't like "the Dutch, nor those who behaved as such," he accepted the post of Archdeacon of Grenada in preference to being made Bishop of Pretoria. During all the years that he lived in England as bachelor and benedict he resided either at clergymen's houses or in furnished apartments, with the exception of a few months when he took a house and furnished it in London; moreover he was accustomed to spend some months out of every year at his home in Duffus, and a room was kept for him there. Grenada not suiting the Archdeacon's health at all, and his wife's temper absorbing a superabundance of heat from the tropical solar rays which blazed upon the island, he concluded it wise to return to the Old Country. He went to Duffus for a year. He was then offered a church in Glasgow, but owing to Mrs. Dunbar's invincible disinclination to sojourning amongst the dour-visaged and commercialized Scots of the northern metropolis, he was forced to decline the offer. However, he

went to London, and was for some time on duty at Woburn Chapel, Tavistock Place. At this time the pot of domestic infelicity boiled over entirely, and Mrs. Dunbar left her husband. He retained the custody of their daughter, and in 1879 Mrs. Dunbar took unsuccessful proceedings for judicial separation and the custody of the child. The child lived in the homestead at Duffus from 1880 to 1885, where her father occasionally visited her. In 1885 the Archdeacon held services for about two months at Lancaster Hall, Notting-hill. In 1886 he was engaged at Dagenham, Essex; in 1887 he frequently officiated at a chapel in Aldborough Hatch, and between 1890 and 1892 acted as assistant to the vicar of St. Mary's, Waltham-stow. An elder brother of the Archdeacon, Capt. A. H. Dunbar, was heir-apparent to their father's baronetcy, and as he was without issue, the Archdeacon stood a good chance of succeeding to the estates in Scotland. In 1891 Mrs. Dunbar died abroad, having previously made the will above mentioned.

The application was heard by Romer, J., in the Chancery Division, who decided, upon the facts as stated, that the Archdeacon's domicil at the time of his wife's decease was Scotch, as was his wife's. The learned Judge appears to pay much regard to the possibility of the Archdeacon succeeding to his father's estate as a reason why the animus manendi should not have prevailed with him in respect of any of his many places of sojourn outside of Scotland.

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The wisdom of the advice of Hudibras against engaging in the enterprises of war—

> "Ay me! what perils do environ
> The man that meddles with cold iron!"—

has received abundant demonstration in the courts of England and the United States of late. Accounts of the proceedings in the trial of Dr. Jameson for his alleged offence against the Foreign Enlistment Act, enabled the daily papers to resist the usual tendency to midsummer shrinkage in their foreign news columns; and earlier in the year Captain Wiborg, and

two subordinate officers of the Danish steamer "Horsa," were indicted in a Pennsylvania court for an offence against section 5286 of the Revised Statutes of the United States, in that they had, within the territory or jurisdiction of the United States, provided means of transportation for a military expedition against the dominion of the King of Spain in Cuba, with whom the people of the United States were then at peace. The facts in both cases are well known. The former case was chiefly remarkable, first, for its desirable result from a diplomatic standpoint, and, secondly, for the omission on the part of the defence to raise the most important question involved in the proceedings: whether the provisions of the Foreign Enlistment Act may be invoked against a British subject who has engaged in a military expedition against a foreign state with which Her Majesty is at peace, in the absence of hostilities between such state and some other foreign state with which Her Majesty is at peace? In *Wiborg's Case* the captain and both of the subordinate officers were convicted in the court of first instance, but on appeal to the Supreme Court of the United States, the judgment was reversed so far as the conviction of the two officers was concerned, and a new trial granted as to them. The conviction of Wiborg was affirmed. The opinion of the Supreme Court was delivered by Chief Justice Fuller. The case is reported in 18 Criminal Law Magazine, 426, and is well worthy of perusal by those who are interested in the doctrine of neutrality in international law.

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It is the breadth of mind of such lawyers as Augustine Birrell, Q.C., M.P., that gives the lie to the intellectual small-fry of the profession, who croak about the impossibility of a successful lawyer devoting any serious attention to literature and art. Such leisure as Mr. Birrell has been able to snatch from his onerous parliamentary and professional duties he has employed in the production of a series of literary works that have placed him in the very foremost rank of modern essayists. In addition to this he has recently published a work on

the Duties and Liabilities of Trustees, whereof the Law Magazine and Review says "its author has succeeded admirably in his task. It may save many a law-suit." Ne sutor ultra crepidam is a maxim that it may be all very well for the average man to heed, but if the shoemaker is able to do somewhat towards shaping the souls of his neighbors as well as their *soles*—why should he stay his hand?

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It is cheerful to note that the Venezuelan Boundary Commission at Washington has shaken off its dog-day languor, and has resumed its learned deliberations. The procedure of this august tribunal it seems is just as unique as the manner of its creation. At its last session we are told by the newspapers that "among the documents laid before the Commission were advance sheets of a book entitled 'The Boundary Question between British Guiana and Venezuela,' devoted to a defence of the British claim, by Joseph Strickland!" It is to be hoped that the Commission will not consider itself as having exhausted the range of authoritative documentary evidence upon the question until "Gulliver's Travels" and the geographical romances of Jules Verne have been put in. It is rare that we hear of so omnivorous an appetite for instruction.

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Lord Abinger, who had little wit or taste for repartee, was often made the target of some cruel thrusts by his livelier contemporaries. Early in his career, an enquiry was made of one of his professional brethren as to what the latter thought of Scarlett's standing at the Bar. "Oh," was the quick reply, "you know Scarlett is not deep-*read*!" But this was kind in comparison to the withering *mot* of Lord Alvanley on the occasion of Abinger's second marriage at the age of seventy-four to a widow lady named Ridley, who was young enough to be his daughter. On learning of the match Alvanley exclaimed: "Ridley, Mrs. Ridley? Why, if she's old enough for Abinger she must be the widow of the good bishop who was burnt!"

CHARLES MORSE.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

(Registered in accordance with the Copyright Act.)

COMPANY—PREPAYMENT OF CALLS—"DISCOUNT," MEANING OF, IN COMMERCIAL DOCUMENT.

In the case *In re Land Securities Co.*, (1896) 2 Ch. 320, it became necessary to determine the proper meaning of the word "discount" where used in a commercial document which provided that the shareholders in a company, on prepaying the calls on their shares, should be entitled to a discount of four per cent. per annum. It was contended on behalf of the liquidator of the company that the word "discount" meant the "true discount," calculated on the principle of ascertaining what amount invested at four per cent. at the time of payment would produce the amount of the calls at the time they were actually due: and that the difference between the sums so ascertained and the amount of the calls, was the true discount. On the other hand, the shareholder contended that the word "discount" in commercial documents means simply a rebate of interest for the period which a payment is made in advance; and the Court of Appeal (Lindley, Lopes and Kay, L.JJ.) adopted this view and reversed Williams, J., who decided in favor of the liquidator.

COMPANY—BORROWING POWERS—UNCALLED CAPITAL—CHARGING UNCALLED CAPITAL—ARTICLES OF ASSOCIATION—ALTERATION OF ARTICLES BY SPECIAL RESOLUTION.

Jackson v. *Rainford Coal Co.*, (1896) 2 Ch. 340, was a motion for an interim injunction by two shareholders of the defendant company to restrain the company from borrowing money upon the security of its uncalled capital, and to restrain it from passing any resolution authorizing it so to do, as being ultra vires of the company. Two questions were raised by the motion, first, whether the original articles of association autnorized the company to borrow upon the security of its uncalled capital; and if not, whether it was competent for

the company to pass a special resolution to authorize it. The original articles of association provided that the company might borrow upon mortgage of its freehold or leasehold property, works and "other property and effects," or upon bonds or debenture notes of the company, or "in such other manner as the company may determine." Chitty, J., was of the opinion that the concluding words, "or in such other manner," etc., were wide enough to authorize the company to borrow on the security of its uncalled capital, although the words "other property and effects" were not, and that in any case, the company had power to pass a special resolution empowering it to borrow on the security of the uncalled capital. By consent the motion was turned into a motion for judgment, and the action was dismissed with costs. It was argued that the words "in such other manner" were limited by the words "bonds or debenture notes," but Chitty, J., says as to that, "These words come at the end, and so far as I see there is no 'other manner' in which the company could borrow on the property and effects—the property in its widest sense—except by borrowing on uncalled capital." The reasoning does not seem altogether conclusive on this point, nor altogether consistent with the cases where the ejusdem generis rule of construction has been applied.

Contract—Option to purchase—Time limit—Three months' notice—Lunatic—Notice by unauthorized agent—Ratification.

Dibbins v. *Dibbins*, (1896) 2 Ch. 348, involves the consideration of a simple point. By articles of partnership it was provided that on the death of one partner the survivor should have the option of purchasing the deceased partner's share, upon giving notice in writing of his intention so to do within three months from the death. One of the partners died; the survivor was of unsound mind, and a solicitor, purporting to act on his behalf, gave notice within three months of the death of his intention to purchase. An order was subsequently made in lunacy authorizing a notice to be given on the lunatic's behalf, and a second notice was given, but after the three months had expired. The plaintiffs in the action who were the executors of the deceased partner claimed a declara-

tion that neither notice was a sufficient compliance with the terms of the articles, and that the lunatic had lost the right of exercising the option, and Chitty, J., so held. It was admitted that the first notice was of no validity when given, but it was claimed that the second notice was a ratification of the first and gave it validity. *Bolton* v. *Lambert*, 41 Ch. D. 295, was relied on in support of that view, but Chitty, J., points out that that was not a case like the present, where the option must be finally exercised within a certain time; and that it is well settled that an invalid act cannot be ratified after the time for doing the act has expired, and that in such cases the doctrine of relation back cannot apply.

WILL—REPUGNANCY—RESTRAINT ON ALIENATION—CHARGE.

In the case of *In re Elliot, Kelly* v. *Elliot*, (1896) 2 Ch. 353, the construction of a will was in question. The testator gave his plantations in Spain, and all other his estate, to the plaintiff absolutely, subject to the payment of his debts, and after appointing her executrix, the will proceeded "on any sale by (the plaintiff) of the said plantations, I will and direct her to pay to my brother the sum of £1,000 out of the proceeds of such sale, also the further sum of £500 out of the proceeds of such sale" to the testator's sister. The plantations were, according to the law of India, personal estate. The plaintiff had paid all the testator's debts, and the question presented for the decision of Chitty, J., was whether she was bound to proceed and sell the plantations for the purpose of raising the legacies of £1,000 and £500, and he decided that she was not, and that the gift of the legacies out of the proceeds of any sale made by her, was an attempt to fetter her right of alienation, and was repugnant and void, and within the principle of *In re Macleay*, L.R. 20 Eq. 186.

WILL—CONSTRUCTION—"SHARES"—"DEBENTURE STOCK"—FALSA DEMONSTRATIO—LEGACY.

In re Weeding, Armstrong v. *Wilkin*, (1896) 2 Ch 364. A testatrix bequeathed all her shares in two specified railway companies. She never had any shares in either of the companies, but she did have at the date of her will, and at the

time of her death, debenture stock in both of the companies. The question for North, J., to decide was whether the debenture stock passed under the gift of shares. He held that it did, though he admitted that if the testatrix had at any time between the date of her will and the date of her death acquired shares, the construction would have been otherwise, for in that case there would have been no ambiguity, as the testatrix would have had property which the words of the would aptly describe.

POWER - CONSTRUCTION—JOINTURE—PORTIONS.

In re De Hoghton, De Hoghton v. *De Hoghton*, (1896) 2 Ch. 385, is another case arising upon a will. By the will in question certain estates were devised in strict settlement subject to a trust for accumulation of the rents and profits for twenty-one years from the testator's death, and every person becoming tenant for life was empowered (1) to appoint any rent charge for any wife for her life, or any less period; (2) to charge the devised estates with portions in favor of younger children; (3) to charge the said estates in the meantime with an annual sum not exceeding £4 per cent. interest on the expectant portions of the children for their maintenance and education. The first power was referred to in the will as a power of jointuring. Stirling, J., held that a jointure is prima facie an estate for the life of the wife to take effect on her husband's death, and therefore that the first power did not warrant an appointment to a wife to take effect in the lifetime of her husband; and that the third power authorized the appointment of interest on portions appointed in favor of younger children to be paid to their father as their guardian for their maintenance, notwithstanding that the father was of ability to maintain them without such payment.

RAILWAY COMPANY—EXPROPRIATION OF LAND—PAYMENT OF PURCHASE MONEY INTO COURT—COSTS OF GETTING MONEY OUT OF COURT—COSTS OF OBTAINING LETTERS OF ADMINISTRATION.

In the case of *In re Lloyd and the North London Railway Act*, (1896) 2 Ch. 397, Stirling J., held that where a railway company expropriated land for the purpose of its railway, and

paid the purchase money into Court, and, for the purpose of obtaining payment of it out of Court, it became necessary for the beneficiaries to take out letters of administration in order to perfect their legal title, the railway company were bound to pay the costs so occasioned.

TRUSTEE—BREACH OF TRUST—CONTRIBUTION OR INDEMNITY AS BETWEEN TRUSTEES—STATUTE OF LIMITATIONS—TRUSTEE ACT 1888 (51 & 52 VICT., ch. 59), sec. 8, s.-ss. 1 (*a*) (*b*)—(54 VICT., ch. 19 (O.), secs. 11, 13).

Robinson v. *Harkin*, (1896) 2 Ch. 415, involves two or three nice points affecting the liability of trustees to their cestui que trust, and inter se. The action was brought by a trustee and the cestui que trust against the defendant, who was a co-trustee, in respect of a breach of trust, in which both the plaintiff trustee and the defendant had concurred. The plaintiff trustee had allowed the trust fund to remain in the hands of the defendant for investment, and the defendant entrusted it to an "outside broker," (*i.e.*, one not a member of the Stock Exchange) who misappropriated a portion of it. This took place about 1885. The defendant, besides denying liability, also claimed that, if he were found liable, the plaintiff trustee was liable also to contribute to the payment of the loss, and the plaintiff trustee in answer to this claim asked for leave to plead the Statute of Limitations. Stirling, J., held that the defendant was liable, on the ground that the defendant was guilty of a breach of trust in handing over the whole fund to the broker for investment: but that the plaintiff trustee, who had delegated the execution of the trust to the defendant, was liable equally with him for the loss, and he refused the plaintiff trustee leave to set up the Statute of Limitations as a defence to the claim for contribution, because on the authority of *Wolmershausen* v. *Gullick*, (1893) 2 Ch. 514, he held that the statute did not begin to run until the liability of the defendant for the breach of trust had been established by the cestui que trust.

CONTRACT FOR LEASE—STATUTE OF FRAUDS (29 CAR. 2, ch. 3, sec. 4)—PART PERFORMANCE—POSSESSION TAKEN BEFORE, BUT CONTINUED AFTER PAROL CONTRACT.

Hodson v. *Heuland,* (1896) 2 Ch. 428, was an action for specific performance of a contract to grant a lease of land. In April, 1895, the plaintiff applied for a lease of the premises; the defendant verbally agreed to grant him a lease for three years; before any agreement as to terms was arrived at the plaintiff was let into possession. In May following a draft lease was prepared by the plaintiff's solicitor, which was submitted to the plaintiff and returned approved "subject to any alterations," which were immaterial. A lease and counterpart were subsequently engrossed, and the latter was signed by the plaintiff, but the lease was not signed by the defendant. The plaintiff continued, and was at the time of the bringing of the action, still in possession, and had paid rent in accordance with the terms of the lease. Kekewich, J., gave judgment for the plaintiff, holding that the plaintiff's continuance in possession (though originally given before the terms of the lease had been arrived at) was a part performance sufficient to let in parol evidence of the contract. The case appears to be somewhat unique, from the fact of the possession having originally commenced before any contract was in existence—but notwithstanding that the possession was antecedent to the contract, yet after May, 1895, the learned judge considered the continuance in possession was unequivocally referable to the contract. He says: "I find the plaintiff in possession on May 2nd; he is either a trespasser or tenant, either in by wrong, or in by right, and I am entitled to inquire which. The answer to the inquiry would be that he is in because the defendant let him into possession on the terms of a contemplated agreement, which was concluded on the following day."

CHAMPERTY—AGREEMENT WITH HEIR—IMPROVIDENT BARGAIN—CONTRACT TO REVEAL TO HEIR HIS RIGHT TO PROPERTY—RATIFICATION—RESCISSION.

Rees v. *DeBernardy,* (1896) 2 Ch. 437, is a somewhat novel case. The plaintiffs were the personal representatives of Mrs. York and Mrs. Walters, and the action was brought to

set aside an agreement made by the defendant with Mrs. York and Mrs. Walters, under the following circumstances: The defendant had discovered that the two women, who were old and illiterate, were entitled as heiresses at law of a person who died in New Zealand, to a property said to be worth £6,000, and had made a bargain with them that in consideration of his informing them of the existence of the property and their title to it (of both of which facts they were unaware) they agreed to give him one-half of the net amount of the property. At the same time the defendant verbally arranged to recover the property for them and induced them to employ his solicitor in the matter. The property was in the hands of the public trustee in New Zealand, and the title of the two women was clear, and no litigation was contemplated. £1,800, a portion of the property, was received in their lifetime and divided on the terms of the agreement. The two women having died, the action was brought by their personal representatives to set aside the agreement. Romer, J., was of opinion that the agreement was fraudulent and procured by defendant from the two women by improper means and without professional advice, and was improper and void on that ground, and although he was of opinion that if the agreement had been simply to communicate the information on the terms of getting a share of the property, it might, apart from the question of improvidence and fraud, have been valid, yet that where, as in this case, the agreement also includes a bargain to recover, or actively assist in recovering the property, then the contract becomes champertous and contrary to public policy, and he therefore held it to be void on that ground also; although the document actually signed did not disclose that the recovery of the money was any part of the bargain, yet the evidence satisfied the learned Judge that that was really a part ot it. He was also of opinion that the acceptance by the two women of the half of the £1,800 was no acquiescence in, or ratification of the contract, and did not deprive them of their right to rescind, as they continued in ignorance of their rights up to the time of their death, and that the defendant could not successfully

resist the plaintiffs' claim to relief on the ground of his having revealed the information, and therefore was unable to be placed in his old position. As to this the learned Judge says, "The rule as to restitutio in integrum is really this, that the person seeking relief by way of rescission cannot succeed if restitution is prevented by his act or default."

COMPANY—PROSPECTUS—FRAUDULENT MISREPRESENTATION—SHAREHOLDER—FORFEITURE OF SHARES.

Aaron's Reefs v. *Twiss*, (1896) A. C. 273, is an appeal from the Court of Appeal of Ireland, and is an instructive case to those about to speculate in gold mining shares. The action was brought by the plaintiff company to recover calls on shares, the defence being that the defendant had been induced to subscribe for the shares by reason of fraudulent misrepresentations contained in the prospectus of the company. The fraudulent representation was denied by the plaintiff, but found as a fact by the jury; the plaintiffs contended, however, that even if there were fraud, the defendant was precluded from now repudiating his liability on the shares on that ground by reason of laches. The shares were allotted to the defendant in 1890, and he paid the deposit money therefor in the following September. On March 5th, 1891, a call was made payable on the 19th of that month; the defendant failed to pay up, and he was notified if he did not pay by 4th May the shares would be forfeited—the articles of the company providing that a member whose shares were forfeited for non-payment of calls, should remain liable for calls previously made. On the 5th May, 1891, the shares were forfeited for non-payment of calls, and in September, 1891, this action was commenced, the defendant not having previously repudiated liability as a shareholder on the ground of any fraud in the prospectus. Notwithstanding the finding of the jury that material statements in the prospectus were fraudulent, the Irish Court of Appeal was divided in opinion, two of the judges being of opinion that there was neither fraud nor untruth in the prospectus, and that if there were the defendant was barred by laches from objecting to the

validity of the contract to take shares on that ground. The other two judges of appeal sustained the judgment of the Court below in favor of the defendant. The House of Lords (Lord Halsbury, L.C., and Lords Watson, Herschell, Macnaghten, Morris and Davey) dismissed the appeal—holding that by the forfeiture of the shares the defendant ceased to be a share holder and became a mere debtor to the company, and that having done nothing to affirm the contract, it was quite open to him to defend the action on the ground of the fraud in the prospectus. It was contended that as the prospectus referred to a contract which intended subscribers might have inspected, and from which the true state of the facts could have been ascertained, that therefore the company was not responsible for the erroneous impression produced by the prospectus, but their Lordships were of opinion that, notwithstanding the reference in the prospectus to the contracts, that the company was nevertheless responsible for any misstatements, or concealment of facts, which ought to have been disclosed in the prospectus. Lord Watson declares that even if the director believed that the representations made in the prospectus were true when the defendant subscribed, yet as he did not pay the allotment money until six months after the allotment, when from further information received they must have known the prospectus to be false and misleading, it was a fraud on the defendant then to receive his money and issue the shares without any explanation of what had come to the knowledge of the company since the date of the prospectus. He also points out that the authorities relating to rescission by a member of a registered company with a view to having his name removed from the list, rest upon considerations which involve the interests of creditors of the company, and his socii; and have no application to a case like the present, unless it could be shown that on the 5th of May, 1891, the defendant had lost his right to repudiate the shares, of which there was no evidence.

B.N.A. ACT, secs. 91, 92—DISTRIBUTION OF LEGISLATIVE POWERS—PROHIBITION—LIQUOR LAWS—53 VICT., ch. 56 (O.) sec. 18.

Attorney-General of Ontario v. *Attorney-General of Canada*, (1896) A. C. 348, is the decision of the Privy Council (Lord Halsbury, L.C., and Lords Watson and Davey and Sir R. Couch) on the special case stated in reference to the relative powers of the Dominion Parliament and the Provincial Legislatures to pass prohibitive legislation in regard to the manufacture and sale of intoxicating liquor. This case has been already discussed at considerable length in these columns (see ante p. 430), and it is not necessary therefore here to say more than that the validity of the Ontario Statute, 53 Vict. ch. 56, sec. 18, is upheld; that their Lordships have come to the conclusion that the right to prohibit the manufacture and sale of intoxicating liquor rests in the main with the Dominion Parliament, but that within certain limits (which do not include the right to forbid the sale or exportation of liquor out of the provinces), the Provincial Legislatures, in so far as the subject is not affected by Dominion legislation, have power to prohibit retail transactions in, and the consumption of, liquor, within the ambit of the province.

PRACTICE—NON-SUIT—POLICY OF INSURANCE—EVIDENCE OF NON-COMPLIANCE WITH CONDITION.

Hiddle v. *National Fire and Marine Insurance Co.*, (1896) A.C. 372, is an appeal from the Supreme Court of New South Wales, and turns upon a point of practice. The action was brought upon a policy of fire insurance, and the plaintiffs' evidence established that they could have complied with the condition requiring them within fifteen days of the loss to give a detailed account of their loss "as the nature and circumstances of the case will admit," much more fully and completely than they had done. The Judge at the trial thereupon non-suited the plaintiffs, and the sole question was whether the non-suit was right. It was contended that whether the plaintiffs had given a proper account was a question of fact which ought to have been submitted to the jury; but their Lordships of the Privy Council (Lords Watson, Hobhouse, Davey and Sir R. Couch) upheld the judgment

of the Court below. Lord Davey, who delivered the judgment, says, "Their Lordships accept the rule laid down by Wills, J., in the case of *Ryder* v. *Wombwell*, L.R. 4 Ex. 38, and they think that the non-suit was proper, although there may have been some evidence to go to the jury, if the proof was such that the jury could not reasonably give a verdict for the plaintiffs."

The Law Reports for September comprise (1896) 2 Q.B., pp. 257-352; (1896) P. pp. 233-255, and (1896) 2 Ch., pp. 449-524.

CRIMINAL LAW—EVIDENCE—ADMISSION.

In The Queen v. *Erdheim* (1896) 2 Q.B. 260, was a case stated by a Recorder on a point of evidence. The prisoner was indicted for misdemeanors under the Debtors' Act, 1869, and in support of the prosecution parol evidence was given of certain admissions made by the prisoner upon his examination in bankruptcy proceedings. The Bankruptcy Act, 1883, provides that the bankrupt may be examined upon oath, and it shall be his duty to answer all questions which the Court may allow to be put to him, and that the notes of the examination shall be taken in writing and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him. In the present case the debtor had been examined on five different days, and then the examination had been adjourned sine die and never resumed: the examination had been taken in shorthand, had never been read over to, or signed by the debtor. Evidence of the examination was given by the shorthand writer. It was objected that this was inadmissible on the ground first that the examination had never been completed, and second, that it had never been read over, or signed by the debtor. The Court for Crown Cases Reserved (Lord Russell, C.J., Pollock, B., and Hawkins, Cave and Wills, JJ.) ruled that the evidence was admissible, the first objection going merely to its weight, and not its admissibility; and the provision of the statute as to the

reading over and signing of the deposition not being in the opinion of the Court any bar to the proving of the admission by other means.

DONATIO MORTIS CAUSA—GIFT OF CHATTEL ALREADY IN POSSESSION OF DONEE—DELIVERY OF GIFT MORTIS CAUSA.

Cain v. *Moon*, (1896) 2 Q.B. 283, raises an interesting point on the law relating to gifts mortis causa. The deceased was entitled to a deposit note for £50 standing to her credit in a London bank. The deposit had been made in 1890. In 1893 the deceased had an illness, and after her recovery in June of that year the deceased handed the deposit note to the defendant, saying that it was for defendant's kindness during her illness, and from that day the note remained in the defendant's possesison. On Sept. 30, 1895, the deceased was seriously ill, and defendant paid her a visit and the deceased said, "everything I possess and the bank note is for you, if I die." The deceased died in the following October, and it was held by Lord Russell, C.J., and Wills, J., that the Judge of the County Court who tried the action was right in his conclusion that there had been a valid gift of the deposit note as a donatio mortis causa. The principal ground relied on was that antecedent delivery of the note to the defendant was insufficient to support the gift. Lord Russell, however, says, "I concede that there must be a delivery to the person to be benefited of the subject of the donatio mortis causa; but in my judgment, there is no reason why an antecedent delivery should not be effective." The case is unique, as there appears to have been no previous decision on the point.

PRACTICE—DISCOVERY—LIABILITY TO PENALTY—PRIVILEGE.

Re County Council Derbyshire v. *Derby*, (1896) 2 Q.B. 297, involves a point of practice. The plaintiffs instituted the proceeding to obtain an order restraining the defendants from permitting sewage to flow into a certain river, and in aid of their proceedings sought to examine the defendants for discovery. By the Acts under which the plaintiffs were proceeding it was provided that any person disobeying an order made thereunder should be liable to a penalty of £50 a day

for every day's default, and the defendants claimed that the proceedings were in the nature of criminal or penal proceedings, and therefore that they were privileged from examination for discovery, but the Court of Appeal (Lord Esher, M.R., and Smith, L.J.), however, determined that the proceedings were not criminal, and that as no penalty necessarily followed from the making of the order sought, but only as a consequence of the defendants disobeying it, and then only in the discretion of the Court, if it should be satisfied that disobedience was without reasonable excuse, that fact constituted no ground for relieving the defendants from making discovery.

POST OFFICE DIE FOR MAKING FICTITIOUS STAMP—POSSESSION "WITHOUT LAWFUL EXCUSE"—POST OFFICE PROTECTION ACT, 1884, (47 & 48 VICT., ch. 76) sec. 7 (c.)—(CR. CODE, sec. 435 (c.).)

Dickins v. *Gill*, (1896) 2 Q.B. 310, was a prosecution under the Post Office Protection Act, 1884, sec. 7 (*c.*) (Cr. Code 435 (*c.*),) against the defendant for having in his possession "without lawful excuse" a die for making a fictitious stamp. It appeared by the evidence that the defendant was the proprietor of a newspaper circulating among stamp collectors, and had caused a die to be made for him abroad, from which imitations of a current colonial postage stamp could be made. The only purpose for which he had actually used it was for making on an illustrated catalogue illustrations in black and white, and not in colors of the stamp in question. This catalogue was sold as part of his newspaper. On a question stated by a magistrate as to whether this evidence showed "a lawful excuse," Grantham and Collins, JJ., were unanimous that it did not.

PRACTICE—EXECUTION—MARRIED WOMAN—SEPARATE PROPERTY—EXAMINATION OF THIRD PARTY IN AID OF EXECUTION—ORD. XLII., R. 32—(ONT. RULE 928).

Hood Barrs v. *Heriot*, (1896) 2 Q.B. 338, is a case, judging from its frequent appearance in the reports, in which the plaintiff is bound to settle the law on the liability of married women as far as he possibly can. Having recovered judgment against the defendant (a married woman) in the form settled in *Scott*

v. *Morley*, 20 Q.B.D. 132, he obtained an order for her examination as to her separate estate. On this examination she disclosed that she had made an assignment of the arrears of income on her separate property which were due to her, and the plaintiff then issued a subpœna for the examination of the alleged assignee. The Court of Appeal (Smith and Rigby, L.JJ.) were of opinion that there was no jurisdiction to examine any one but the debtor under Ord. xlii. r. 32, and upheld the order setting aside the subpœna. We may note that under Ont. Rule 928, in a similar case, the examination of an assignee seems to be expressly authorized, and therefore that this decision cannot be taken as determining the practice under like circumstances in Ontario.

WILL—CONSTRUCTION—LEGACY—CHARITABLE BEQUEST—"CHARITABLE, PHILANTHROPIC, OR———"—BLANK IN WILL.

In re Macduff, Macduff v. *Macduff*, (1896) 2 Ch. 451, a testator bequeathed money "for some one or more purposes, charitable, philanthropic, or———." Two questions were argued, first as to whether the blank left in the will did not invalidate the bequest for uncertainty, and secondly, assuming that it did not, whether the words used were sufficient to constitute a valid charitable bequest. The Court of Appeal (Lindley, Lopes and Rigby, L.JJ.) agreed with Grantham, J., that the blank created no difficulty, but that the will was to be read as if instead of leaving a blank the testator had said "or of such other nature as I may hereafter name by codicil," and that the omission to name any other purpose left the bequest to be devoted to the purposes actually named. And on the second point they also agreed with him, that the word "philanthropic" was not necessarily a charitable purpose, and that the words used were too indefinite to support the gift. Lopes, L.J., cites from Sir W. Grant, M.R., in *James* v. *Allen*, 3 Mer. 17, 19, the rule applicable to the case. "The whole property might consistently with the words of the will have been applied to purposes strictly charitable. But the question is what authority would this Court have to say that the property must not be applied to purposes however benevolent,

unless they also come within the technical denomination of charitable purposes? If it might, consistently with the will, be applied to other than strictly charitable purposes, the trust is too indefinite for the Court to execute."

SOLICITOR AND CLIENT—COSTS—TAXATION—COMMON ORDER—MONEYS RECEIVED BY SOLICITOR FOR CLIENT—COUNSEL FEES.

In re Le Brasseur, (1896) 2 Ch. 487, was an application by a client who was a barrister, to tax his solicitor's bill of costs. The common order for taxation was obtained, which included the usual direction to the solicitors to give credit for all sums of money by them received from or on account of the client. The client claimed that under this order the solicitors were bound to bring into their account certain counsel fees received by them for business (unconnected with the bill of costs) in which the client had been retained by them as counsel; but the Court of Appeal (Lindley, Lopes and Rigby, L.JJ.) agreed with Kekewich, J., that the solicitors could not be required to render any account of such fees. The Court of Appeal lays it down that the account which the solicitor is to render under the common order includes, and is confined to, all moneys which the solicitor in the character of solicitor or agent of his client has received, or is legally or equitably liable to pay over to the client, and against which (if sued by the client) he could set off his costs when taxed. The Court of Appeal reiterate the doctrine of *Kennedy* v. *Broun*, 13 C.B. (N.S.) 677, that the fees of counsel are an honorarium, and no action lies to recover them, and that the Court cannot and ought not to assist a barrister in recovering his fees.

REPORTS AND NOTES OF CASES

Dominion of Canada.

EXCHEQUER COURT OF CANADA.

THE QUEEN *v.* CANADA SUGAR REFINING CO., LTD

Customs law—When importation of goods complete in Canada for purposes of duty.

An importation of goods by sea is complete under the provisions of sec. 150 of the Customs Act (R.S.C. ch. 32, as amended by 52 Vict., ch. 14, sec. 12) so soon as the ship in which they are carried comes within the limits of the first port in Canada at which she ought to report her cargo.

[OTTAWA, Sept. 14—BURBIDGE, J.

By sec. 4 of The Customs Tariff Act, 1894, (57, 58 Vict., ch. 33) it is enacted that there shall be levied, collected and paid upon all goods enumerated in Schedule "A" to that Act the several rates of duties of customs set forth and described in the said schedule when such goods are imported into Canada or taken out of the warehouse for consumption therein. And by sec. 5 it is provided that all goods enumerated in Schedule "B" of the Act may be imported into Canada, or taken out of warehouse for consumption therein without the payment of any duties of customs thereon. By item 392, Schedule "A," all sugar above number sixteen Dutch Standard in color, and all refined sugars, were subject to a duty of sixty-four one-hundredths of a cent per pound; and by item 708, Schedule "B," sugar not elsewhere specified not above number sixteen Dutch Standard in color was free of duty. By 58-59 Vict., ch. 23, assented to on the 22nd of July, 1895, item 708, Schedule "B," was repealed, and item 392, Schedule "A," was so amended as to make sugar above sixteen Dutch Standard in color and all refined sugars dutiable at the rate of one cent and fourteen-hundredths of a cent per pound, and sugar not elsewhere specified, and not above that standard, dutiable at the rate of one-half of a cent per pound. And it was declared that the Act should he held to have come into force on the third day of May, 1895, that being the date of the passing of the resolutions on which the Act was founded.

By sec. 150 of The Customs Act (R.S.C. c. 32), as amended by 52 Vict., ch. 14, sec. 12, it is provided that whenever on the levying of any duty or for any other purpose it becomes necessary to determine the precise time of the importation of any goods, such importation, if made by sea, coastwise or by inland navigation, in any decked vessel, shall be deemed to have been completed from the time the vessel in which such goods were imported came within the limits of the port at which they ought to be reported, and if made by land or by inland navigation in any undecked vessel, then from the time such goods were brought within the limits of Canada.

The defendants imported for the purposes of their business in Montreal a cargo of sugar from Antwerp, "not above No. 16 Dutch Standard in color," per

S.S. "Cynthiana." In the course of the voyage, and as part of it, the steamer called at North Sydney, N.S., for coal. She arrived at that port and reported at customs on the 29th April, 1895. On the first day of May, 1895, after the vessel had cleared from North Sydney and before she arrived at the port of Montreal, the defendants attempted to enter the sugar free of duty under the tariff then in force, but the entry was refused by the acting collector of customs on the ground that the "Cynthiana" was not then within the limits of the port of Montreal. She arrived on the 4th day of May, 1895. On 3rd May the said new tariff resolutions came into force, imposing a duty of one-half cent a pound on sugar such as that imported, and which had at the date of the ship's entry at customs in the port of North Sydney been free of duty. The claim for duty was resisted by the defendants and a large portion of the cargo was thereupon warehoused by the customs authorities, and an information filed in the Exchequer Court asking for a declaration that the sugar was imported to the duty prescribed by the Act of 1895.

Osler, Q.C. and *Gormully*, Q.C., for claimants.

Hogg, Q.C., for Crown.

BURBIDGE, J.: What is meant in sec. 150 of the Customs Act by the expression, "the port at which the goods ought ro be reported"? What was the meaning of that expression as used by the legislature of the late Province of Canada in the 78th section of 10-11 Vict., ch. 31; for there is nothing to indicate that it has since been used in the corresponding provisions enacted by the legislature of that province, or by the Parliament of the Dominion in a sense differing from that which first attached to it. Where there are two or more ports at which the goods ought to be reported, does the expression mean the first port at which they ought to be reported? By sec. 25 of the Customs Act it is provided, as by sec. 10 of 10-11 Vict., ch. 31, it was provided that the master of a vessel arriving from sea or coastwise, and entering any port in Canada, must, as we have seen, not only report his vessel but the goods constituting her cargo. (See also 8-9 Vict. (U.K.), ch. 93, sec. 21; 10-11 Vict., ch. 31, sec. 10; C.S.C., ch. 17, sec. 11; 31 Vict., ch. 6, sec. 10; 40 Vict., ch. 10, sec. 14; 46 Vict., ch. 12, sec. 25). By sec. 27 of the Customs Act, it is made his duty at the time of making his report, if required by the officer of Customs, to produce to him the bills of lading of the cargo or true copies thereof, and to make and subscribe an affidavit referring to his report and declaring that all the statements made in the report are true. By sec. 31 of the Act it is provided that if any goods are brought in any decked vessel from any place out of Canada to any port of entry therein, and not landed, but it is intended to convey such goods to some other port in Canada in the same vessel there to be landed, the duty shall not be paid or the entry completed at the first port, but at the port where the goods are to be landed, and to which they shall be conveyed accordingly under such regulations, and with such security or precautions for compliance with the requirements of the Act as the Governor-in-Council from time to time directs.

A like provision is to be found in 10-11 Vict., sec. 12, ch. 31. (See also C.S.C., ch. 17, sec. 14, s-s. 5; 31 Vict., ch. 6, sec. 13, s-s. 5; 40 Vict., ch. 10, sec. 15. s-s. 5; and 46 Vict., ch. 12, sec. 45). But in such a case the report of

the goods at the first port of entry is not dispensed with. It ought, it is clear, to be made, and by the plain words of the Act the importation is then complete, and the duty, if the goods are dutiable, then attaches. The goods themselves then become subject to the control of the Customs authorities, and their conveyance to the port where they are to be discharged is subject to any regulation the Governor-in-Council prescribes, and security may be taken for compliance with the provisions of the Act, that is, among other things that the goods be landed, the entry completed and the duties paid. There is nothing to prevent the Customs authorities in such a case from putting an officer on board the ship, and in that way to retain possession of the cargo until entered or discharged in due course. That, it appears, was before the Union, the procedure required by law in the case of vessels arriving with a cargo at the Port of Saint John bound for the Port of Fredericton. (R.S.N.B., ch. 28, sec. 11; 23 Vict., ch. 22, sec. 1).

It seems to me, therefore, that the words of sec. 150 of the Customs Act, "within the limits of the port at which they ought to be reported," mean within the limits of the first port at which they ought to be reported. And that view is, it seems to me, strengthened by comparing the language of the Canadian Act with that used in the corresponding provision of the English Act, from which the former was adopted. (8-9 Vict. (Imp.) ch. 86, sec. 136).

By the English Act the time when an importation of goods is complete was detemined, as we have seen, by the coming of the ship in which such goods were within the limits of the port at which such ship should in due course be reported, and such goods be discharged. In the Canadian statute the words "and such goods be discharged" are omitted, and the time is determined by the coming of the vessel in which the goods are imported within the limits of the port at which the goods, not the ship, ought to be reported; and then another provision of the statute comes in and makes it the duty of the master of the ship to report not only his ship, but the goods imported therein at the port at which he arrives, that is, it seems to me, in such a case as that under consideration, at the first port at which he arrives.

The cargo of the "Cynthiana," of which the sugar in question formed part, was reported at the port of North Sydney. It is, I think, clear that it ought to have been reported there. The Master then made his report outwards and obtained his clearance for the port of Montreal. All that was done in accordance with the provisions of the statute. That is not denied. But some stress is laid upon the fact that in the report inwards at Montreal the Master makes oath that he last cleared from the port of Antwerp. That, however, we know not to be the fact. It is manifestly a slip or mistake in the affidavit verifying the report, and the case must be decided on the actual facts, not on an allegation that is known not to be true. I am of opinion, therefore, that the importation of the sugar mentioned in the information was complete according to the definition contained in sec. 150 of The Customs Act, when on the 29th of April the vessel in which it was imported came in the course of her voyage within the limits of the port of North Sydney, that being a port of entry at which such goods ought to be reported, and that the sugar is not subject to the duty of one-half a cent per pound imposed by the Act 58-59 Vict., ch. 23.

The conclusion I have come to on this branch of the case renders it unnecessary for me to express any opinion on the other questions debated in this case, and which had reference to the sufficiency of the entry of the 2nd of May, and to the question as to whether or not the intention of the Legislature to make the Tariff Act of 1895 retroactive had been so clearly expressed that effect should in such a case as this be given to it.

There will be judgment for the defendant company, and with costs.

NOVA SCOTIA ADMIRALTY DISTRICT.

THE QUEEN *v.* THE SHIP "FREDERICK GERRING, JR."

Maritime law—Seine fishing within the three-mile limit—Illegality.

The crew of a fishing vessel owned in the United States had thrown her seine more than three miles off Gull Ledge in the Province of Nova Scotia, but before they had secured all the fish in the seine both it and the vessel had drifted within the three-mile limit, where the vessel was seized by a Canadian cruiser while the crew was in the act of bailing out the seine.

Held, that the vessel was guilty of illegal fishing within the meaning of the Treaty of 1818 and the Imperial Act, 59 Geo. III., c. 38, and also under the provisions of chapter 94 of the Revised Statutes of Canada.

[HALIFAX, Aug. 5—MCDONALD, C.J.

The facts are sufficiently recited above.

W. B. A. Ritchie, Q.C., for plaintiff.

W. F. MacCoy, Q.C., for ship.

MCDONALD, C.J., Loc.J.: It is immaterial to inquire how the vessel reached the position in which she was seized. She was there found, and found fishing, and the legal consequences must result.

I must not omit to notice the contention of counsel for the defence that, admitting the seine to have been thrown, and the fish enclosed in it outside of the three-mile limit, it is not an offence against the Act to continue to bail the fish from the seine into the vessel after permitting her to drift across the prohibited boundary. I cannot accept his contention that the "fishing" and the "catching of the fish" was complete when the seine was successfully thrown. Further labor is required to save the fish from the sea, and reduce the property to useful possession, and until that be completed the act of fishing and "catching" fish is not in my opinion completed, and in the case before us the crew were in the act of bailing the fish from the seine into the vessel when the seizure was made. It would, I apprehend, be difficult, if not impossible, to enforce these Fishery Laws, [(1) Treaty 1818; 59 Geo. III. U.K., c. 38; C. 94, R. S. Can.] to which our people attach supreme importance, if those American subjects who so eagerly seek to compete with our people along our shores in this industry, and who are not, I fear, always over scrupulous in the observances of laws of which they have ample notice, should be permitted to plead accident or ignorance to a charge of infraction of these laws. Such a plea, however effective it may be to the executive authority of the country, cannot avail in this court.

There will be a decree condemning the vessel and cargo with costs.

Province of Ontario.

HIGH COURT OF JUSTICE.

MEREDITH, C.J.
ROSE, J. } [Sept. 14.

RE BRANTFORD & ELECTRIC POWER CO. AND DRAPER.

Landlord and tenant—"Buildings and erections"—Payment for—What included—Fixtures and machinery.

A covenant in a lease to pay for "buildings and erections" covers and includes fixtures and machinery which would have been fixtures but for 58 Vict., ch. 26, sec. 2, sub-sec. (C.) (O.).

Judgment of FALCONBRIDGE, J., affirmed.

Wilkes, Q.C., and *A. E. Watts*, for the appeal.

James Harley and *E. Sweet*, contra.

MEREDITH, C.J., ROSE, J.
MACMAHON, J. } [Sept. 15.

WOLFF *v.* MCGUIRE.

Landlord and tenant—Lease or agreement—Implied covenants—Tenant-like user—Waste—Permissive—Voluntary.

The plaintiff rented premises to the defendant for a month, giving the following receipt for the rent: "October, 20th, 1894. Received from A. G. McGuire the sum of $9 in full payment for rent of stable from the 25th October, 1894, to November 25th, 1894," and the defendant took possession. During the month, the premises being uninsured, were destroyed by fire. In an action by the landlord against the tenant for damages it was

Held, that the receipt was a lease and not an agreement for a lease, and that possession being taken under it the only covenant to be implied was that the tenant would use the premises in a tenant-like manner, and would not commit voluntary waste: and that the tenant was not liable for permissive waste and that an accidental fire without negligence is permissive, not voluntary waste.

Judgment of FALCONBRIDGE, J., affirmed.

McCarthy, Q.C., for the appeal.

Wallace Nesbitt, contra.

FERGUSON, J.] [Sept. 18.

LOCKARD *v.* WAUGH.

Costs—Taxation—Successful defence upon one ground—Costs relating to other grounds.

It was adjudged that the plaintiff should pay to the defendants so much of the costs of the action (upon a building contract), reference and appeal, as were occasioned by reason of the plaintiff claiming to be allowed, as against the defendants, anything for extra work, in addition to the sums allowed therefor by the architect.

Held, that in taxing costs under this direction the officer was in error in disallowing to the defendants the costs of witnesses called to show the value, etc., of the extras that had been disallowed to them by the architect's certificate, which was attacked by the plaintiff. The defendants were not called upon to stand upon a single item of evidence, though in the end it might appear that the item would have been sufficient for their purposes.

E. G. Rykert, for the plaintiff.

Aylesworth, Q.C., for the defendants.

FERGUSON, J.] [Sept. 18.

PIPER *v.* BENJAMIN.

Notice of trial—Irregularity—Close of pleadings.

A pleading in reply, which was more than a simple joinder of issue, was served by the plaintiffs on the 30th June, 1896. No further or other pleading having been delivered and no extension of time for further pleading having been granted, the plaintiffs, on the 4th September, 1896, between three and four in the afternoon, served a notice of trial for the 14th September, 1896.

Held, irregular.

S. W. McKeown, for the plaintiffs.

J. B. Holden, for the defendant.

ROBERTSON, J.] [Sept. 26.

IN RE CANADIAN PACIFIC R. W. CO. AND CARRUTHERS.

Interpleader—Bailees—Right to order—Inability to deliver specific property—Claim for unliquidated damages.

Where grain was shipped over a railway under a contract which provided that it might be deposited in the railway company's elevators, in common with other grain of like grade, and at its destination was claimed by the indorsee of the bill of lading, and also by an investment company claiming under a mortgage from the shipper, an interpleader order was made, upon the application of the railway company as carriers or bailees, notwithstanding that the specific grain could not be delivered, owing to its having been mixed with other grain in the elevator, as permitted by the contract, and notwithstanding that the investment company's claim was, as contended, one for unliquidated damages for conversion of the grain.

Attenborough v. *St. Katharine's Dock Co.*, 3 C.P.D. 450, followed.

Aylesworth, Q.C., for the railway company.

Marsh, Q.C., for the claimant Harris.

C. W. Kerr, for the claimants, the Scottish American Investment Co'y.

MACLENNAN, J.A.] [Oct. 3.

GRAHAM *v.* TEMPERANCE AND GENERAL LIFE ASSURANCE CO.

Appeal—Court of Appeal—Judgment on preliminary issue—Order of Divisional Court—Leave to appeal—Judicature Act, 1895, ss. 72, 73.

Having regard to the provisions of secs. 72, 73 of the Judicature Act, 1895, an appeal lies to the Court of Appeal, without leave, from the judgment upon the

trial of a preliminary issue directed by an Order in Chambers; but leave is necessary for an appeal from an order of a Divisional Court affirming an order in Chambers, where the appellant is the same party who appealed to the Divisional Court, and the order appealed from was pronounced after, although the appeal was taken and heard before the coming into force of the Act of 1895.

C. D. Scott, for the plaintiff.

W. H. Blake, for the defendants.

FERGUSON, J.] [Oct. 19.

JOHNSTON *v.* HENDERSON.

Auctioneer—Conversion of goods—Chattel mortgagee.

In an action for the wrongful conversion of goods brought by a chattel mortgagee against auctioneers, it appeared that the defendants, at the instance of the mortgagor, though in the name of another, sold the goods in the usual way of auctioneers' sales, under the hammer, at the house of the mortgagor, and gave possession to the purchasers, excepting some articles that were too heavy for immediate removal, professing to have dominion over the goods, and to pass the property and give possession to the purchasers.

Held, upon the evidence, that the chattel mortgage was, as between the mortgagor and the mortgagee, at the time of the sale by the defendants, in full force, and the plaintiff was the owner of the goods to the extent of the amount necessary to satisfy the unpaid balance owing to him, as against the mortgagor, or any mere wrong-doer, not being, or claiming under, a creditor of the mortgagor, or a subsequent purchaser in good faith; and that the defendants were liable for the conversion of the goods.

Cochrane v. *Rymill*, 27 W. R. 776, 40 L.T.N.S. 744, followed.

National Bank v. *Rymill*, 44 L.T.N.S. 768, and *Barker* v. *Furlong*, (1891) 2 Ch. 172, distinguished.

E. B. Ryckman and *A. T. Kirkpatrick*, for the plaintiff.

Charles Macdonald, for the defendants.

BOYD, C.] [Oct. 19.

ROBINSON *v.* DUN.

Libel—Mercantile agency—Confidential report—Privilege—Reasonable care.

In an action of libel brought by a trader against the conductors of a mercantile agency, it appeared that the libellous matter was sent to a few subscribers on their personal application. The information on which the statement complained of was founded in reality related to another trader of the same name as the plaintiff.

Held, that the publishing of the information was a matter of qualified privilege, but that the want of reasonable care in collecting the information was evidence of malice which destroyed the privilege.

Todd v. *Dun*, 15 A.R. 85, followed.

Cossett v. *Dun*, 18 S.C.R. 222, discussed.

Gibbons, Q.C., for the plaintiff.

W. Nesbitt, and *R. McKay*, for the defendants.

STREET, J.] [Oct. 23.

MOORHOUSE *v.* KIDD.

Principal and surety—Contribution between co-sureties—Failure to realize on security.

The plaintiff and defendant were co-sureties for payment of a debt, which the plaintiff paid, and claimed contribution from the defendant. At the time the sureties became bound, the debtor gave them as indemnity a second mortgage on lands in Manitoba. When the plaintiff paid the debt the mortgage deed passed into his custody. The defendant, when called upon for contribution, instead of paying, insisted that the plaintiff should realize upon the security or hand it over to the defendant to proceed upon, but the plaintiff refused to take either course. At this time the mortgaged property was sufficient to cover the first mortgage and the sum paid by the plaintiff; but when this action was begun it had become so depreciated in value as to be insufficient to cover the first mortgage.

Held, that the defendant was not relieved from liability by the plaintiff's neglect or refusal to sell the mortgaged property. The plaintiff, having paid the debt, stood in the creditor's place as a creditor of the defendant.

Re Parker, (1894) 3 Ch. 400, followed.

Chrysler, Q.C., for the plaintiff.

McCarthy, Q.C., for the defendant.

FIRST DIVISION COURT, MIDDLESEX.

MACKENZIE, CO. J.] [June 19.

BURNS *v.* LONDON STREET R. W. CO.

Accident—Contributory negligence.

The plaintiff's dog ran across the track within ten or fifteen feet of an approaching car. The car was moving at an immoderate rate of speed.

Held, that the case came within *Hay* v. *G. W. R. W. Co.*, 37 Q.B. 465, and the action of the dog was the cause of its death, and therefore the plaintiff could not recover.

MACKENZIE, Co.J.] [June 19.

WOODS *v.* CANADIAN PACKING CO.

Contract—Incomplete and not binding.

Action for damages for non-acceptance of one deck load of hogs.

On 9th July defendants wrote to plaintiffs the prices they would pay for hogs (as described), to be delivered on 19th inst., and add, "Kindly wire us right away if you will accept this offer." Next day plaintiff replied: "Offer satisfactory, but hogs are scarce, and it would be difficult to get up a load; however, I'll try to get a deck for you by the date mentioned. Will write you again later." The plaintiff did not accept the offer.

Held, that there was no mutuality, and no completed binding contract.

Harvey v. *Facey*, 1 Rep. 426, referred to.

Province of New Brunswick.

SUPREME COURT.

McLEOD, J. }
In Chambers. } [Oct. 5.

EX PARTE MCMANUS.

Habeas corpus—Practice—Justices' Court.

McManus was arrested on a capias issued out of a magistrate's court on a defective affidavit, and committed to gaol on the return of the capias, and at the trial his counsel appeared, objected to the affidavit, and addressed the jury. A verdict was given for the plaintiff. The matter was then taken up on a habeas corpus order to obtain prisoner's discharge. It was argued that the property remedy was by review under the Justices' Act, or by certiorari ; and also that the defective affidavit had been waived.

Held, that the prisoner was entitled to his discharge.

Fowler, for prisoner.

White, Solicitor-General, contra.

COUNTY COURT.

FORBES, J., }
In Chambers. } [Oct. 1.

DONALD ET AL. *v.* SEGEL ET AL.

Costs—Mechanics' Lien Act.

The sole question in this case was the amount of costs to which either or both parties were entitled in contested cases, the one side contending that costs must be limited to ten per cent. on the amount received, and the other contending that costs were in the discretion of the Judge in contested cases.

Held, that costs were in the discretion of the Judge in contested cases.

S. Alward, Q.C., supported the first contention, and *H. H. Pickett* the latter.

Province of Manitoba.

SUPREME COURT.

BAIN, J.] [Oct. 6.

CROTHERS *v.* MONTEITH.

Liquor License Act, R.S.M., ch. 90, sec. 35—Cancellation of license—Prohibition—Implied authority.

This was an action for an injunction to restrain the License Commissioners from acting upon a petition under sec. 35 of the Liquor License Act, R.S.M., ch. 90, to cancel the plaintiff's license, and the short points decided

relate to the construction of the following provision in section 35: "Provided, however, that once in every year after the first year of license a petition by eight out of the twenty nearest householders against any license can be presented, and will have the effect of cancelling such license."

Held, that the word "year" in this provision means the license year ending on the 31st May, and not the calendar year; also that by necessary implication the License Commissioners on receipt of such petition would have the right to hold a meeting after notice to the licensee, and to declare that his license should be cancelled.

Action dismissed with costs.

Wade, for plaintiff.

MacLean, for defendant.

TAYLOR, C.J.] [Oct. 9.

REGINA *v.* CAVELIER.

Criminal law—Sunday—Habeas Corpus—Evidence.

This was an application to show cause why a writ of habeas corpus should not be issued in the case of the prisoner who had been committed to the jail of the Western Judicial District for trial under a magistrate's warrant on a charge of stealing.

It appeared from the affidavit of the prisoner that the magistrate had committed the prisoner for trial after a preliminary inquiry held on a Sunday.

Held, following *Eggington's Case*, 2 E. & B. 717. and *Re Bailey*, 3 E. & B. 607, that the affidavit of the prisoner was receivable in evidence to show that the investigation and commitment had taken place on a Sunday.

Held, also following *MacKalley's Case*, 9 Co. 66, and *Waite* v. *Hundred of Stoke*, Cro. Jac. 496, that judicial proceedings should not be conducted on Sunday, and that the prisoner was entitled to his discharge without the actual issue of a writ of habeas corpus.

Crawford, Q.C., for the prisoner.

MacLean, for the Crown.

North-West Territories.

SUPREME COURT.

NORTHERN ALBERTA JUDICIAL DISTRICT.

SCOTT, J.] [August 25.

KELLY *v.* VERSTRAETE.

Pleading—Payment into Court—Embarrassing defence.

Action for the amount of an account for feed and care of horses and for the amount of a promissory note for the total sum of $113. The defendants, amongst other defences, pleaded "That they, while denying all liability, bring into Court the sum of $10, and say that this sum is sufficient to pay the plaintiff's claim and costs."

Scott, J.: I have already held the case of *Kelly* v. *Howey* in this Court (an action for tort), that such a defence is embarrassing, because Order 22, Rule 6, shows that the money paid in must be paid in respect of the cause of action, and not in respect of costs, because under sub-clause A, of Rule 6, plaintiff may accept the amount paid into Court in satisfaction of his claim, and in that event would be entitled to tax his costs. Mr. Bown, for the defendant, contends that there is a distinction between an action for tort and the present case, and here the payment is in respect of a certain portion of the claim, and it is a simple matter of subtraction to ascertain how much is paid on account of the debt, the costs being a fixed sum. I think, however, that in both cases the principle is the same. The order will go to strike out the paragraph objected to, defendant to have leave to amend as he may be advised, up to four days after vacation. Costs of the application to be costs in the cause to plaintiff in any event, on the final taxation.

S. S. Taylor, Q.C., for the plaintiff.

J. C. F. Bown, for the defendants.

BOOK REVIEWS.

Coote's Common Form Practice and Tristram's Contentious Practice of the High Court of Justice in granting Probates and Administrations, 12th ed., by Thomas Hutchinson Tristram, Q.C., D.C.L.; London, Butterworth & Co., 7 Fleet St. 1896.

It is unnecessary to refer at length to this standard work; no library can afford to be without it.

Since the publication of the last edition alterations in relation to the granting of probates and administrations have been made by the Colonial Probate Act of 1892, and by the Finance Acts of 1894 and 1896. Additional Rules and Orders issued in 1892 are also given, with much additional matter. Much, of course, in the volume is appropriate only to England, but it is scarcely less useful for this country. It is produced in the very best style, and is a credit to these well known publishers.

The Jewish Law of Divorce, According to Bible and Talmud, with some References to its Development in Post-Talmudic Times, by David Werner Amram, M.A., L.L.B., member of the Philadelphia Bar. Philadelphia; Edward Stearn & Co., Inc. 1896.

This is somewhat a new departure in the way of law books, but all matters connected with this strange race, with its extraordinary vitality, command attention, especially in view of the fact that the law of civilized countries are largely indebted to, if not founded upon, the Mosaic Code. Sir Henry Mayne, in his book on "Ancient Law," asserts that the study of Biblical records would have corrected the errors of the philosophers of France during the early part of the nineteenth century. "There was (he says) but one body of primitive records which was worth studying—the early history of the Jews; but resort to this was prevented by the prejudices of the time. Debarred,

therefore, from one chief security against speculative delusion, the philosophers of France, in their eagerness to escape from what they deemed a superstition of the priests, flung themselves headlong into a superstition of the lawyers." Few will disagree with the remarks of the learned writer of the book before us, when he says: "That the student of comparative jurisprudence can no longer neglect the remarkable legal system of the Hebrews, which had its rise before the beginning of the Roman law, and which still regulates the life and conduct of several millions of men in our own day."

Popular Science Quarterly. September, 1896, Ginn & Company, 9 & 13 Tremont Place, Boston.

This number contains various articles of special interest at the present time, as follows: Trade Union Democracy, Agricultural Discontent, Free Silver and Wages, Silver and Commerce, After Effects of Free Coinage, History of English Law. This quarterly is conducted with marked ability.

Littell's Living Age (Boston, U.S.)

The publishers announce certain "New Features," which will greatly enhance its value in the eyes of every intelligent reader. The first of these will appear in a November issue—to be continued monthly thereafter—in the form of a large supplement containing three departments, namely: Readings from American Magazines, Readings from New Books, and a List of the Books of the Month.

We are promised also during the coming year, occasional translations of noteworthy articles from the French, German, Spanish and Italian reviews and magazines.

With these improvements and its reduced price, $6 a year instead of $8, The Living Age must become more popular than ever.

FLOTSAM AND JETSAM

THEATRICAL.—A rather startling proposition of law is enunciated by the recent decision of an Australian Chief Justice, that allowing one's wife to go on the stage amounts to conduct conducing to her subsequent adultery (if any). The Sydney *Law Chronicle* comments thereupon as follows: "The case is all the more hard when one remembers that lately actors have been taken up a good deal by classes of society that formerly ignored them, and that the profession itself now bids fair to be classed as a liberal and learned avocation. While the decision stands, actors must consider themselves as being persons whom the law regards as extremely possible parties to a divorce suit, and one expects that a syndicate will be shortly formed to intervene or to appeal against this sweeping attack on the morality of the 'profession.' Moreover did the Chief Justice take judicial cognizance of the moral turpitude of the stage or had he evidence of it, and if so, when and how?"