DIARY FOR OCTOBER.

1 Thurs..Master & Reg. in Chy.,Clks. & Dep. Clks. Crn. to make ret. of fees.
2 Fri.....Last day for notice of prim. exams.

4 SUN...18*th Sunday after Trinity.*
5 Mon...County Court Term begins.

8 Thurs..Chicago fire, 1871.
10 Sat ....Quebec Conf., 1864. Last d. for Master and Reg. in Chy., Clks. and Dep. Clks. Crown to pay over fees. to Prov. Treas. Co. Ct. Term ends.
11 SUN...19*th Sunday after Trinity.*

15 Thurs..Law of England introduced into Upper Canada, 1792.

18 SUN...20*th Sunday after Trinity. St. Luke.*

21 Wed...Battle of Trafalgar, 1805.

23 Fri....San Juan Boundary Award made, 1872.
25 SUN...21*st Sunday after Trinity. St. Crispin.* Charge of the Light Brigade, 1854.

28 Wed...*SS. Simon and Jude.* Leave art. with Sec. Law Soc. (28 V. c. 21, s. 5.) Treas. (32 V. c. 36, s. 92.)
31 Sat.... *Hallowe'en.* Local Clk. to certify N. R. taxes to Co.

CONTENTS.

THE

Canada Law Journal.

Toronto, October, 1874.

We call attention to the reports of some more election cases in other columns. The well-considered and able judgment of His Honor Judge Gowan in *Booth* v. *Sutherland* will be read with interest, in connection with the London case, and the suggestive remarks of Chief Justice Hagarty as to whether a candidate is disqualified by corrupt acts on the part of his agents, a point which will come up for decision in the latter case.

The beginning of the inevitable end of law reform in England has been lately announced by the Lord Chancellor, who stated in the House of Lords that he hoped, on behalf of the Government, at the commencement of next session, to make a proposal for a codification of the common law. This will be in effect a condensation and consolidation of the standard text-books upon the *lex non scripta*, and is altogether "a consummation devoutly to be wished."

An objection was made in the English Divorce Court lately to the reception of an affidavit on the ground that it was made on Sunday. Reference was made to *Doed. Williamson* v. *Roe*, 3 D.&L., 328, *Mackalley's case:* 9 Co. R., 66, b, and 29 Car. ii., c. 7, s. 6, which Lord Holt thought was intended to restrain all sorts of legal proceedings on this day, (Lord Raym, 705.) But Sir James Hannen considered none of these authorities were in point, and overruled the objection: 18 Sol. J., 642.

Editorial Items.

The *Albany Law Journal* advertises a treatise on the Law of Nuisances, soon to be published, written by H. S. Wood, a member of the Albany Bar, which, we are told, is a "*comprehensible* and exhaustive treatise upon this branch of the law." We shall welcome such an addition to legal literature, and in the present age of fast reading and rapid book-making the fact that this volume will be comprehensible is no small merit.

Eight Election cases have, up to this time, been tried, and the candidates have one and all succumbed to the legal test. Not much in the way of interest to the legal profession has to be noted, but a large amount of bribery and corruption has been laid bare, and much doubtless, never came to light at all. So far, the only cases that seem worth reporting are the London case, the South Renfrew case, the Cornwall case, and the West Northumberland case. The first brings up the question as to whether a candidate is disqualified by acts of his agents under Sec. 18 of the Election Act of 1873 and some other points of interest, and the last two as to costs. We can only make space for the first two in this issue.

The Autumn Assize list and the new Rules of the Queen's Bench and Common Pleas, which appear at the end of this journal, mark an epoch in the administration of justice in Ontario. They tell us of the revival of Trinity Term—the transaction of Court business by a single Judge, instead of by a Bench of Judges as before—the hearing of causes, which heretofore could only be heard in Term, twice a week during the year—the formation of two new circuits, and the presence at these two circuits of the two new Justices of Appeal. What with these changes, and the new practice introduced by the Administration of Justice Act, and the innumerable other Acts of the Dominion and the Ontario Legislature, in addition to the Reports to be read, marked, learned, &c., it behoves a lawyer in this Province to "look alive." But from the nightmare of case law, at least, they will be relieved by Mr. Robinson's coming digest, whilst there is good hope that the wheels of litigation will move smoothly, oiled by the provisions of the Acts for the administration of justice.

A legal journal of good repute on the other side of the "herring pond," in copying an article which appeared in our columns some months ago, describing a Court scene in Ohio, speaks of it as "A *Canada* Law Court." It may be desirable to instruct our generally well-informed friend that Ohio is one of the United States of America, and that the Dominion of Canada has not as yet annexed it. We are thinking of doing so, however, and when we do, shall be glad to assist a few of the junior editors of journals in England and Ireland to vacancies in some of the classes in geography for small boys. We may mention as an item of interest in the meantime, that as far as extent of country is concerned, the British Isles and Ohio together are somewhat in the same proportion to Canada as Switzerland is to Russia. The ignorance of some of the "tight little Islanders" about matters situated a trifle beyond the length of their own noses is truly wonderful, though by no means a novel subject of merriment.

An occasional correspondent in Nova Scotia speaks of the crowded dockets there and the accumulation of arrears, owing partly to the fact that there has been a vacancy on the Bench since the beginning of the year, which had not, at the time he wrote, been filled up. The names of Hon. W. A. Henry, Q.C., and Messrs.

J.W. Johnston, Q.C., H.W. Smith, Q.C., A. James, Q.C., and others have also been spoken of in connection with the vacancy. In the mean time the press are discussing the best means of disposing of the arrears, and the lawyers are having a hand in the fight, which has unfortunately assumed something of a personal character.

Our brethren have also, like ourselves, had some differences in regard to the appointment of Queen's Counsel and precedence at the Bar, and a question of precedence has been raised in Court. A large number of Queen's Counsel were appointed by the late Dominion Government in Nova Scotia. The Local Government had not made any such appointments since the Union was effected; but last winter an Act was passed by the Local Legislature to regulate the precedence of the Bar. This was apparently intended to deprive such Q. C.'s as were appointed by the Dominion Government since 1867 of the precedence claimed by them by virtue of their patents, and to give them only that which they would have had in case they had not received "silks." A motion was made to test the question, but the Court intimated that, apart from other considerations, the Act was not sufficiently clear to warrant a positive expression of opinion at the time, and the matter now stands until the first day of next December Term, when it will no doubt be fully discussed.

STATUTES OF CANADA, 1874.

The Dominion statute-book for last session has lately made its appearance. It is almost equal in bulk to that of the previous year, although not quite up to the measure of the last volume of the Ontario statutes. While some of the Acts are of importance in a commercial and financial point of view, and while others indicate the rapid progress and development of the Dominion in its multiform interests and multiplying resources, yet comparatively few of the chapters are of immediate practical consequence to the legal profession in this Province. Some there are, however, to which we think it well to call the attention of our readers.

Chapter 25 provides for the assimilation of the laws in the different provinces with regard to the liabilities and rights of carriers by water. It requires them to receive and convey all goods and passengers offered for conveyance, unless there is sufficient cause for not doing so; it makes them responsible not only for goods received on board vessels, but also for goods delivered to them for conveyance; it exempts them from liability in case any loss arises from fire or dangers of navigation, or from robbery or irresistible force, and also from any defect in the nature of the goods themselves,—provided that such damage happens without their actual fault or privity; special provisions are made for loss of valuables, and the carriers are declared to be liable for the loss of "personal baggage," but not ordinarily to a greater extent than five hundred dollars. The exemptions from liability are similar to those contained in the English statute 26 Geo III. c. 86, which extends to cases of fire and robbery, and the others are such as are usually found in a bill of lading. It would probably be held that none of the words are large enough to cover a loss occasioned by the depredations of rats on the cargo: see *Kay* v. *Wheeler*, L. R. 2 C. P. 302. The statute will declare the law in the absence of any particular stipulation between the parties, but of course it will not prohibit them from making such special arrangement as to the carriage of goods or passengers as they may agree upon.

Chapter 37 is entitled An Act for the suppression of voluntary and extra-judicial oaths. The preamble recites that "doubts had arisen whether or not such proceeding is illegal," *i. e.* the practice of administering and receiving oaths and affidavits voluntarily taken and made in matters not the subject of any judicial enquiry. But after the emphatic language of Draper, C. J., in *Jackson* v. *Kassel*, 26 U. C. Q. B. 345, it was rather superfluous to recite that the practice was of doubtful legality. The learned Chief Justice remarks, "There is a strong dictum in one of the late editions of Burn's Justice, that a magistrate taking an affidavit without authority is guilty of a misdemeanour. I have often called attention to this, and more often to the practice of Commissioners taking affidavits in matters not in the Court. There is a case reported, though I cannot put my hand on it, of a criminal information brought for this." Rather, then, may it be said that the reprehensible practice is one of undoubted illegality; but it was well for the Legislature to declare the law upon the subject so unmistakeably that magistrates and others who are not wont to read the reports may be left without excuse, if they continue to break the law in this respect.

It would have been advisable if some provision had been made in this statute for the taking of affidavits as to death, heirship, and the like matters, involved in the investigation of titles. This is a simple and inexpensive way of verifying isolated facts which has long been used in this Province, and we trust the effect of the statute may not be to necessitate the institution of proceedings under the Act for Quieting Titles, when such evidence of the transmission of interest in lands is required. It would have been well, also, if it had been expressly mentioned in the Act that affidavits called for by the usual conditions of fire-insurance policies were not intended to be interfered with by this statute.

Chapter 38 is intended to regulate the law of libel and render it uniform throughout all portions of Canada. It makes very slight change in the law of this Province relating to indictments or informations for defamatory libels, chiefly in so far only as it increases the severity of the sentence. The whole of the Act, with the exception of sections 5, 11 and 13, may be found substantially, and almost literally, in the Consolidated Statutes of Upper Canada, chapter 103. The excepted sections provide that on a plea of justification being pleaded the truth of the matters charged may be inquired into, but shall not form a defence unless it was for the public benefit that the matters charged should be published. (This language is taken from the English statute 6 & 7 Vict. cap. 96, sec. 6.) Further, that the right of the Crown to set aside jurors till the panel is gone through shall not be allowed to a private prosecutor. Lastly, that as between private prosecutor and defendant, costs shall be recoverable either by warrant of distress or by suit on the bill of costs as for an ordinary debt.

Chapter 47 relates to bills of exchange and promissory notes. It provides for sending notice of protest by addressing the same to the party at the place where the note is dated, unless the party has designated another address under his signature. Provision is also made for giving validity to unstamped or insufficiently stamped notes, even pending suit thereon. If it appears that the holder took the same without knowledge of the defects, and in technical phrase "innocently," then he can cure the objections and render the instrument valid by affixing double stamps as soon as he is aware of the error or mistake. We do not see that much change is made in the law by this latter enactment. It leaves it pretty much as it was under the section of the former Act which it repeals. It extends the law in permitting to be cured certain

other defects of form, as to date or erasure of the stamps or wrong date thereon,—but this only in the hands of an innocent holder.

We notice that the index of this volume still exhibits the time-honored nuisance of referring from one title to another before the required page can be found. Thus, for example, if one looks up "Promissory Notes," all one finds is "See Bills and Notes." Would it not be much better and simpler to give the page at once, and not add another element of bitterness to the much-vexed life of the busy practitioner?

RELATIVE IMPORTANCE OF CASE-LAW.

English Case-Law may be divided for the purposes of the present inquiry into Reported and Unreported decisions.

As to the reported decisions, a distinction has been made regarding the value to be attached to different reports of the same case, and particularly as to whether or not the decision has appeared in what are known as the Regular Reports. Again, as to reported decisions, a further subdivision may be made, based upon the difference in the tribunals where the decision has been given, as for instance in Chambers, at Nisi Prius, in Banc or in Appeal.

Dealing first and briefly with unreported decisions, they are generally the refuge of the hard-pressed counsel, who, finding nothing to justify his position, adopts the expedient of invoking the shadowy authority of some traditional case "just in point." These sort of authorities have been jocularly called "*pocket-pistol law*," and the citation of them is hardly justified even by the necessities of counsel. The judicial estimate of such authorities is well indicated in the observations of the Master of the Rolls, in *Knight* v. *Bowyer*, 23, Beav. 627. Referring to an unreported decision which had been cited, he remarks, "This case is not reported either in print or manuscript, but the case is cited from the proceedings in the cause filed in the Chancery office. It is extremely difficult to rest safely on a case not reported by any competent person, when the grounds of the decision are to be picked out of the facts appearing on the recorded proceedings alone, when, if the case had been reported, it might have been found that, in truth, some other matter than that supposed was the principal cause of the dismissal of the bill. If the case had been seriously argued it would probably have been reported."

Next, as to the so-called unauthorized reports, the rule is now pretty well established that no Judge will refuse to refer to and act upon a case simply because it does not appear in the regular reports. The decisions reported in the *Law Journal*, *Law Times* and *Weekly Reporter*, in advance of the regular series, are and have long been of great value to the profession. Indeed, in many cases it has been matter of observation from the Bench that a report in the serials has elucidated the more obscure report of the same case in the official reports. In *Francome* v. *Francome*, 11 Jur., N. S., 123, Lord Chancellor Westbury observed, "I do not decline to follow the case cited because it is reported in the unauthorized reports (18 Jur., 1051). It is of such materials that the law of England is made up, and I should be denying myself much valuable assistance in ascertaining what the law is, if I were to refuse to receive the citation of cases reported by barristers in those useful publications." See also per Stuart, V. C., in S. C. 11 L. T. N. S. 666. In a recent decision of the full Court of Chancery, in this Province, *Bank of Montreal* v. *McFaul*, 17 Gr., 234, the majority of the Court gave effect to a decision reported only in the *Weekly Re-*

porter, (*Defries* v. *Smith*, 10 W. R., 189), though the Chancellor declined to follow it, and dissented from the judgment of the Court. In *Iansen* v. *Paxton*, 23 U. C. C. P., 457, Richards, C. J., observes: "The *Law Journal* Reports have generally been favourably spoken of, both by the profession and the bench."

We notice that the present Master of the Rolls, Sir George Jessel, has said that the *Weekly Notes* are not intended for citation as authorities, and he has refused to allow them to be cited before him: *Attorney-General* v. *Cockermouth Board*, 22 W. R. 620. But surely they are of worth at least equal to the *Notes of Cases*, which are frequently referred to in maritime and ecclesiastical causes, and their value as *pro tempore* guides, till the fuller reports appear, should not be overlooked.

Coming next to the regularly-reported cases, perhaps those lowest and of least authority are Nisi Prius decisions. In many cases these rulings and holdings are necessarily given on the spur of the moment, and before publication require the careful pruning and consideration which Campbell gave to his reports. They are also useful when accompanied by the elaborate system of commentary, which Foster and Finlason append to the cases reported by them. But the Judges themselves are not well satisfied with such cases being reported and do not deem them of much value when cited before them *in banc*, as will appear from the few quotations which follow:

"As to the *nisi prius* cases, it would have been much better for the law if the crude opinions of Judges at Nisi Prius had never been allowed to be quoted to those who are sitting *in banc*:" per Best., J. in *Rowe* v. *Young*, 2 B. & B., 185. "Very likely one's first thoughts at Nisi Prius may be wrong, and I am extremely sorry they are ever reported; and still more so that they are ever mentioned again:" per Bayley, J. in 1 Chit. R. 121. "A sad use is made of these Nisi Prius cases:" Gibbs, C. J. in *Tompkins* v. *Wiltshire*, 1 Marsh. 116. See per Best, C. J. in *Johnson* v. *Lawson*, 2 Bing. 86. "*Buck* v. *Stacey*, 2 C. & P. 465, has been approved of by eminent Judges, and so lifted out of the sphere of a mere Nisi Prius decision:" per Lord Chelmsford, C. in *Calcraft* v. *Thompson*, 15 W. R. 387.

(To be continued.)

LAW SOCIETY.

Trinity Term—38th Victoria.

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

Monday, 24th August.

The several gentlemen whose names are published in the usual lists were called to the Bar, and received certificates of fitness.

Tuesday, 25th August.

The Report of the Examining Committee was received, read and adopted.

The Treasurer reported the result of the Intermediate Examinations.

The Treasurer laid before Convocation a communication received from the Attorney-General of Ontario relative to the new boilers for heating Osgoode Hall.

The Abstract of Balance Sheet was laid on the table.

Messrs. Vankoughnet, McMichael, Martin, Meredith and Lemon, were appointed Examining Committee for next Term.

Thomas Robertson, Esq., Q.C., and Thomas Hodgins, Esq., Q.C., were elected Benchers in place of G. W. Burton, Esq., Q.C., and C. S. Patterson, Esq., Q.C., appointed Judges of the Court of Appeal.

Messrs. Hodgins and Robertson were appointed members of the Legal Education Committee in the place of Messrs. Burton and Patterson.

Mr. Clarke Gamble was appointed a member of the Finance Committee in the place of Mr. Patterson.

Saturday, 29th August.

Messrs. Moss, McMichael and Read were appointed a committee to examine the Journals of Convocation for the last year, and report the names of any Benchers who have not attended any meeting of Convocation during that period.

The usual fee was ordered to be paid the Examiner for this Term, and Mr. Evans was appointed to that office for next Term.

Friday, 4th September.

The Treasurer read to Convocation a letter from the Hon. John Crawford, resigning his seat as Bencher.

Ordered, that his resignation be accepted, and that an election do take place, on the first Tuesday of next Term, of a Bencher to fill the vacancy created by his resignation.

The Petition of B. V. Elliott to be admitted an Attorney, under a special Act of the Legislature of Ontario, 37 Vict., cap. 89, was granted.

The Petition of J. McBride, in reference to his Certificates, granted on payment of costs.

The Petition of C. W. Cooper, in reference to his Certificates, granted on payment of costs.

Ordered, that the roof of the East Wing be repaired, and that no visitors be allowed to go upon it.

Ordered, that whenever an Attorney receives a Certificate of Fitness as an Attorney, entitled under either a Special Statute or the General Statutes applying to Attorneys of the Courts of the United Kingdom or Colonies, he shall pay the full fees as if he had been articled and admitted after the usual service in Ontario.

Ordered, that the necessary improvements to the hall, staircase and passages of the East Wing of the building be completed.

The application of D. M. McDonald for remission of his Certificate fees, on the ground that he was not a practising Attorney, was granted.

J. Hillyard Cameron,
Treasurer.

SELECTIONS.

CRITERIA OF NEGLIGENCE.

The question how far bailees are liable for neligence, and whether damages should follow under certain circumstances, has exercised the judicial mind perhaps as much as any other department or branch of jurisprudence.

Many important and recent adjudications upon the liability of a bailee have entirely failed to define the criteria of negligence, doubtless for the obvious reason that the degree of care demanded of bailees varies widely, according to the character of the bailment and particular circumstances bearing upon each case. And true it is, that common sense would dictate that much greater diligence devolves upon the depositary holding millions of gold coin, or convertible United States bonds, than that of a depositary of non-negotiable railroad bonds. Thus, the rule most recently laid down seems to be that, where the consequences of negligence would result in serious injury to the depositor, and where the means of avoiding the damage are mainly within the depositary's power, ordinary care requires the *utmost degree of human vigilance and foresight: Kelly* v. *Barney*, 2 Kern. 420.

The standard of ordinary care and skill being on the advance, the banker, broker and every bailee, as well as carriers of passengers, are bound to be vigilant and provide suitable and such improved means or engines of safety, concerning the thing bailed or carried, as may be within their power. The question of degree of negligence has been frequently and largely discussed in cases resulting from railroad accidents, as well as from burgularies and robberies.

In the action of *Dike* v. *The Erie Railway Co.*, growing out of the Port Jarvis disaster, some five years ago, which was tried in Brooklyn, the case turned principally upon the point, whether or not the company had used defective rails, as that was the proximate cause of the accident, and it being so proved, the plaintiff recovered a large verdict in way of damages for such negligence. Likewise in *Hagerman* v. *The Western Railroad Co.*, 3 Kern. 9, the case hinged upon the evidence as to care and skill of the company in selecting proper axletrees for their road. *Held*, that the defendants were liable if the defect could have been discovered in the course of its manufacture, by any process or test known to the skilful in such particular business.

Whether want of care be imputed to a person or corporation must necessarily depend upon a combination of circumstances, which essentially determine the issue. Negligence has been well defined to be either the omitting to do something that a reasonable man would do, or the doing something that a reasonable man would not do; *Blyth* v. *The Birmingham Water Works Co.*, 36 E. L. & E. 508; *Brown* v. *Lynn*, 31 Penn. 512; *Ernst* v. *H. R. Railroad Co.*, 35 N. Y. 9.

Thus, in modern jurisprudence, negligence may well be said to be *an absence of care according to the circumstances of the case.* See *Vaughan* v. *Taff Vale Railroad Co.*, 5 H. & N. 686; *Bilbee* v. *Railway Co.*, 114 E. C. L. 592.

That there can be no criteria of negligence would seem to be further indicated from cases quite recently tried, resulting from bank robberies. The case of *David Scott* v. *The Kensington National Bank*, being an action to recover certain moneys stolen from the bank by robbers (tried in Philadelphia some months ago), the allegations of the plaintiff being that the bank was negligent in having a watchman in attendance who allowed two or three men, who pretended to be of the city police, to enter the bank after hours; the consequence being that the watchman was gagged, and the *pseudo* policemen blew open the safe and took all they wanted. A judgment was given in favour of the plaintiff. And it will be remembered that a similar case occurred in Cleveland last year, and was tried; resulting favourably to the plaintiff; *Perkins* v. *The Second National Bank of Cleveland.* The case, also, of *The First National Bank of Lyons* v. *The Ocean National Bank of the City of New York*, growing out of a burglarious entry into the bank between Saturday night and Monday morning; such entrance to the bank being effected from the basement, which was occupied by a tenant of the bank, and who was supposed to have been the guilty party, the case turning upon the issue of negligence in having such a tenant.

An exhaustive case, and a very interesting one as to the degree of care requisite in various bailments, is that of the *Steamboat New World* v. *King*, 16 U. S. 472.

In general, it has latterly been held that, in gratuitous bailments, it is not enough that the defendant took the same care of the bailor's property as he did of his own; but he is required also to go further and show that he took *proper care*, and as a prudent and reasonable man would of such property. In the case of *Doorman* v. *Jenkins*, where a bailee left valuables of his own, and those of the plaintiff, in an unsafe place and they were stolen, it was explicitly held that the fact of the defendant having lost his own property in that way was wholly immaterial. Also see 2 Add. & Ell. 256; *Tracy* v. *Wood*, 3 Mason, 132.

Mr. Justice Nelson, in delivering the opinion of the court, *Chicopee Bank* v. *Philadelphia Bank*, 8 Wall. (U. S.) 641, went so far as to say that the loss of the bills by the bank carried with it the presumption of negligence and want of care; and if it was capable of explanation, so as to rebut this presumption, the facts and circumstances were peculiarly in the possession of its officers, and the defendant was bound to furnish it. And he remarked: "When a peculiar obligation is cast upon a person to take care of goods intrusted to his charge, if they are lost or damaged while in his custody, the presumption is, that the loss or damage was occasioned by his negligence or want of care of himself or his servants."

As in contrast to some of the cases cited, see *Foster* v. *Essex Bank*, 17 Mass. Ordinary care is requisite where the bailment is beneficial to the bailor and bailee. 2 Kent's Com. 587. Where life

is involved and endangered, the degree of care required is, of course, much greater. *Clark* v. *Eighth Avenue Railroad*, 32 Barb. 657; *Cayzer* v. *Taylor*, 10.

Upon the question of liability of banks, it is now clearly held, that if they be acquainted with the facts and circumstances calculated to put a prudent man upon his guard, a degree of care commensurate with the evil to be avoided is required, and a want of that care makes them entirely liable if a loss occur.

It is well that a higher degree of care is demanded by the later decisions than formerly, on the part of those who hold themselves out to the world as depositaries or bailees for hire; and such care and diligence should be equivalent to the character of the thing bailed and the extent of the injury likely to happen in the event of loss.

Under the later decisions, it is left to the province of the jury to determine whether or not the bailee exercised that degree of care or diligence requisite or commensurate, according to the circumstances of the case, and which a reasonable and prudent man would have done under a like state of facts.—*Albany Law Journal.*

COLONIAL ATTORNEYS.

The substance of the bill to amend the Colonial Attorneys' Relief Act is embraced in the following clause:—

"So much of the Colonial Attorneys' Relief Act as enacts that no person shall be deemed qualified to be admitted as attorney or solicitor under the provisions of the said Act, unless he shall pass an examination to test his fitness and capacity, and shall further make affidavit that he has ceased for the space of twelve calendar months at the least to practice as attorney or solicitor in any Colonial Court of law, and also so much of the said Act and of any orders and regulations made thereunder as relate to such examination, shall not apply to nor shall compliance therewith respectively be required of any person seeking to be admitted as attorney or solicitor under the provisions of the said Act who shall have been in actual practice for the period of seven years at the least as attorney or solicitor in any colony or dependency as to which an order in council has been or may be made as mentioned in the said Act, and who shall have served under articles and passed an examination previously to his admission as attorney and solicitor in any such colony or dependency."

It will be generally admitted that the minimum of restriction should be placed on the admission of colonial lawyers to practice in England. If the rights of the profession and the interest of the public are protected, that is sufficient. We do not see any objection to the abolition of the examination. A gentleman who has served under articles, who has been examined prior to admission in the colonies, and who has been in practice for upwards of seven years, ought to be deemed duly qualified. If it is suggested that a colonial lawyer may not be posted in English law, we reply that a capable colonial lawyer will speedily become a capable English lawyer; and further, that a gentleman from the colonies is not likely to get much English practice at starting.

But we do see an objection to allowing colonial attorneys to forthwith commence practice in the mother country. If that is done, a colonial attorney who happens to have one or two good appeal cases in England, or who is instructed by a client to realize any estate in England, may say: 'I want a holiday. I will go to England, get admitted, do this business myself, and pocket the costs.' That, we contend, would be unfair to the profession, and contrary to the intent of those who framed the bill. It is not desired that a colonial attorney shall come and be admitted for the purpose of conducting some business he would otherwise have to transact through agents, and then return to the colony. The only way to prevent that is to insist upon an interval between the cessation of practice in the colonies and the admission to practice in England. And we do not think that a less interval than twelve months would suffice. *Law Journal.*

DISTRESS AND RE-ENTRY.

The progress of civilization may be measured by the extent to which persons are prohibited from taking the law into their own hands. In the infancy of society property and person find their protection in individual force. But, as the reign of law is extended, all rights come to be guarded and obtained through the process of constituted tribunals. In this country there is a singular and unfortunate exception to this golden rule. Owing to circumstances, historical, political, and social, the law of landlord and tenant, so far as concerns the modes in which the landowner can enforce his rights, is still

in the barbarous stage. Thus, where forfeiture of a lease has been incurred, the reversioner can re-enter under a proper proviso, without resorting to any legal process, and without the intervention of any officer of the Courts. So also a landlord can himself make a distress for rent in arrear, can in his own proper person enter the house demised, and with his own hands seize any goods or chattels found upon the premises. The evil results of this state of the law are readily discernible and are proved by common experience. Thus we find no less than eight pages in 'Bullen and Leake's Precedents' occupied by forms and notes relating to actions for illegal, excessive and irregular distresses, while the Legislature has over and over again attempted to regulate the levying of distresses. But the case is much stronger when we contemplate the history of the right of re-entry. The ingenuity of conveyancers has been exhausted in framing provisoes for re-entry for the purpose of enabling the reversioner to get possession without resorting to an action of ejectment. On paper and in theory of law nothing can be clearer than the right of the landlord upon a forfeiture to enter upon the premises and to remove the tenant therefrom. In practice nothing is more difficult. If, as is generally the case, the insolvent tenant stands his ground and refuses to go, the landlord will enforce his right at his peril. If he hesitates to employ force, the tenant laughs him to scorn. If single-handed he struggles to recover his own, his appearance before a justice of the peace for an assault is not improbable, while the certainty of his defeat in the battle is secured by the foresight of the tenant in garrisoning the house with a party of friends. If the landlord advances to the attack with half a dozen companions, then he is pretty sure to bring himself within 5 Rich. II. stat. 1, sec. 7, and, after having been compelled to attend on two or three occasions at a police court, to find himself indicted at the sessions for a forcible entry. Only last week the magistrate at Great Marlborough Street was occupied in the investigation of the case, in which a re-entry had been followed by a pitched battle between some half-dozen combatants on either side. So fully alive are all lawyers of experience to these perils, that they always advise the slow remedy of an action of ejectment in preference to a re-entry. Thus a right which was originally designed to help the landlord has in practice proved useless.

In most of the States of the American Union the law, both as regards distress and as regards re-entry, has been amended and placed on a reasonable and satisfactory footing. The landlord to whom rent is due, instead of going himself or sending a broker, obtains a writ of distress at the proper Court, and such writ is executed by the officer of the Court in the ordinary way. Again, a reversioner who seeks to take advantage of a forfeiture, obtains *exparte* a writ of re-entry from the Court, and if the tenant, upon the officer demanding possession of the demised premises, disputes the right of re-entry, the officer of the Court delivers to the tenant a summons calling upon him peremptorily to show cause at the Court on the following day why the landlord should not have possession. By this method of procedure all dangers of breaches of peace are averted, and at the same time every right which the landlord under our law enjoys is secured to him more effectually. Among the matters which Parliament will be invited to consider next session are the mutual relations of landlords and tenants. And perhaps advantage will be taken of that opportunity to abolish proceedings which benefit neither party to the contract, and which bring about results discreditable to a community which prides itself on its love of order and its hatred of violence.—*Law Journal.*

DR. KENEALY AND GRAY'S INN.

When it was first announced that the benchers of the Honorable Society of Gray's Inn had resolved to institute an inquiry into the conduct of Dr. Kenealy as counsel in the case of *Regina* v. *Castro*, we endeavoured to point out how hazardous was the enterprise which those gentlemen had undertaken. We explained that Dr. Kenealy was not charged with some overt act of dishonor or wrong, but with impropriety in language and demeanour as an advocate in the conduct of a cause. We dismissed, as outside the jurisdiction of the benchers, the charge of attacking the judges, on the ground that the judges were armed with sufficient

powers to protect themselves, and that, as their lordships had not thought fit to exercise those powers, it was not the business of other persons to usurp them. Upon the remainder of the case our position was, that the border-line between proper and improper cross-examination, between invective and insolence, between sarcasm and scurrility, proceeding from the mouth of counsel, was altogether indefinite; that forensic liberty and forensic license had never been accurately distinguished; and that the tribunal which was to judge Dr. Kenealy was eminently unfitted to deal with charges of this kind. A month after this expression of our opinion, the report of the committee named by the masters of the bench of Gray's Inn was published, and that report stated that Dr. Kenealy had misconducted himself in various ways in the course of the trial of *Regina* v. *Castro*. Dr. Kenealy was thereupon ordered to answer the charges, eight in number, preferred against him by the committee. But owing to the illness of the accused the matter was postponed from time to time. Meanwhile, the attention of the benchers was drawn to the newspaper called the *Englishman*, which is avowedly edited by Dr. Kenealy, and on July 8th a notice was sent to Dr. Kenealy to the effect that the bench intended to investigate his conduct as editor of that publication, and to limit their inquires to that subject. Ultimately, the benchers determined that Dr. Kenealy was the editor of that newspaper, that the newspaper was full of libels of the grossest character, and that Dr. Kenealy, being its editor, was unfit to be a master of the bench of the Honorable Society. His call to the bench was therefore vacated, and he was prohibited from dining in hall. The benchers by another resolution showed that they had not formally abandoned the previous charges against Dr. Kenealy; but they have not pursued them, and it is pretty certain now that they never will pursue them. We see, then, how amply our remarks, made as long ago as last April, upon this matter have been justified by the event. The benchers have not proceeded upon their original indictment; they have not considered Dr. Kenealy's conduct as an advocate in the Castro case, and they have not pronounced any opinion thereon. The *Englishman* happily relieved them from that task, and so saved them from a host of difficulties. The alacrity with which they seized upon this new matter of complaint shows pretty plainly that they had begun to realise their mistake in their former plan of action.

There are probably some hundreds of fanatics who will persistently deny the justice of the sentence pronounced by the bench of Gray's Inn, and who will regard Dr. Kenealy as an injured man. Such persons must be either incapable of understanding plain language, or must be blunted to all sense of what is right. No words that could be employed by a journal having respect for itself, could paint in its true colours the newspaper of which Dr. Kenealy was, and is, the avowed editor. The *Englishman* is declared by the bench of Gray's Inn to be "replete with libels of the grossest character." But the sting of them lies in their authorship. No reasonable man will dispute the proposition that lawyers ought to be the last to bring the law and its chief administrators into popular contempt, to drag it and them into the mire, and to excite the multitude to trample both under the feet of passion and of ignorance. What should be said of a General exciting battalions of private soldiers to mutiny, or leading a mob to sack the palace of his sovereign! The analogy between such a case and that of the editor of the *Englishman* is exact. The benchers have done what they could to express their indignation against a Queen's Counsel defaming all that he ought to hold sacred, and inviting universal rebellion against the law and the judges of the land.—*Law Journal.*

SHOP-BOOKS AS EVIDENCE OF DEBT.

Last week a correspondent signing himself W. H. H., drew attention to a statute 7 James I. c. 12, intituled "An Acte to avoid the double payment of Debtes," ingenuously confessing that he had never heard of the Act during the service of his articles. Our correspondent proceeded thus:—"It seems to say in effect, that a tradesman's shop-book shall not be evidence of a debt after twelve months from its being contracted. How, then, is a trades-

man in a disputed case to prove a debt which has been standing on his books more than a twelvemonth after the death of the person to whom the order was given?"

Now we are not quite sure that W. H. H., under a clever pretence of ignorance, was not laying a trap for some unwary reader, possessing himself all the time a clearer insight into the law of evidence than he would have us believe. But at any rate, he has suggested an inquiry of a very curious character, and one perhaps not altogether to be satisfied. However, we will make an attempt at a reply.

We must go further back in legal history than the reign of James I., for we have to commence with 38 Edward III. (A. D. 1363), c. 5, which is quaintly headed thus: "Any man may wage his law against a Londoner's papers," and which is in these words:—"Item come plusours gentz sount grevez et attachez par lour corps en la Citee de Loundres a la pursuite de gentz de meisme la citee surmettantz a eux qu'ils sount dettours et de ceq voillent ils prover par lour papirs la ou ils ne ont fait ne taille est assentu qe chescun soit resceu a sa lei par gentz sufficeantz de sa condition countre tieles papirs et preigne le creansour seurtee par autre voie sil vorra sanz mettre la partie de pleder a lenqueste sil ne le voet de son gree." The language of that Act implies that up to that time, among traders in the city, "the papers" of the creditor were held to be conclusive against the debtor.

The next statute is that of 7 James I. c. 12, intituled "An Act to avoid the double payment of Debts." In order to make the matter intelligible we must set out the language of the statute in full:—

"Whereas divers men of trades and handicraftsmen keeping shop-books do demand debts from their customers upon their shop-books long time after the same hath been due, and when, as they have supposed the particulars and certainty of the wares delivered to be forgotten, then either they themselves or their servants have inserted into their said shop-books divers other wares supposed to be delivered to the same parties or to their use, which in truth never were delivered, and this of purpose to increase by such undue means the said debt. And whereas divers of the said tradesmen and handicraftsmen having received all the just debt due upon their said books do oftentimes leave the same books uncrossed or any way discharge, so as the debtors, their executors or administrators, are often by suit of law enforced to pay the same debts again to the party that trusted the said wares, or to his executors or administrators, unless he or they can produce sufficient proof by writing or witnesses of the said payment that may countervail the credit of the said shop-books, which few or none can do in any long time after the said payment. Be it therefore enacted by the authority of this present Parliament, that no tradesman or handicraftsman keeping a shop-book as is aforesaid, his or their executors or administrators, shall after the feast of St. Michael the Archangel next coming be allowed, admitted, or received to give his shop-book in evidence in any action for any money due for wares to be hereafter delivered, or for work hereafter to be done above one year before the same action brought, except he or they, their executors or administrators, shall have obtained or gotten a bill of debt or obligation of the debtor for the debt, or shall have brought or pursued against the said debtor, his executors or administrators, some action for the said debt, wares or work done, within one year next after the same wares delivered, money due for wares delivered or work done.

"2. Provided always that this Act or anything therein contained shall not extend to any intercourse of traffic, merchandising, buying, selling, or otherwise trading or dealing for wares delivered or to be delivered, money due, or work done or to be done between merchant and merchant, merchant and tradesman, or between tradesman and tradesman for anything directly falling within the circuit or compass of their mutual trades and merchandise; but that for such things only they and every of them shall be in case as if this Act had never been made, anything therein contained to the contrary thereof notwithstanding."

From the first clause of the first section of this Act it seems clear that the framer of the Act thought that as a matter of law a shop-book could be given in evidence, and this supposition is borne out by the exceptive clause, which distinctly permits the books to be given in evidence to prove the consideration of a bill or bond. So also the second purports to leave the then existing law untouched as to dealings between tradesmen and tradesmen in pursuit of their mutual trades. This Act seems to have been continued by subsequent Acts, and remains to this day unrepealed, appearing in its proper place in the authorised edition of the Revised Statutes.

Now in *Pitman* v. *Maddox*, 2 Salk. 689, Lord Holt referring to the statute as saying that "a shop-book shall not be evidence after the year," &c., boldly declares that *it is not of itself evidence within the year*. In other words, Lord Holt asserted that the framer of 7 Jac. I. c. 12 took a wrong view of the law, or that the law had been changed by judicial opinion since that time.

Mr. Best, in his valuable work on evidence, says:—"The civil law received the books of tradesmen made, or purporting to be made by them, in the regular course of business, as evidence to prove a debt against a customer or alleged customer," and in a note he further says: "This is the well-known doctrine of civilians, which was implanted by them in most countries of Europe, and at one period seems to have obtained a footing in our own" (7 Jac. I. c. 12), and he proceeds to doubt whether the doctrine could be derived from the Roman Law, inasmuch as it is wholly at variance with the principles laid down in other parts of the *Corpus Juris Civilis*. Mr. Pitt Taylor says without hesitation, that in old times a tradesman's shop-book was admissible in the English Courts as evidence on his behalf.

In the present day the rule is thoroughly established that a tradesman's books are not evidence, but that the tradesman can appear as a witness, and use his books as memoranda to refresh his memory with respect to the goods supplied.—*Law Journal.*

The patent duplex "Law and Collection Bureaus" are entirely outdone by a firm in New York, the receipt of whose circular we have the honor hereby to acknowledge. This ingenious and enterprising association announces its readiness to supply its patrons, not only with every sort of goods, wares and merchandise from a tin whistle to an elephant, but also "to advise in Legal and Mercantile matters of all kinds, and to superintend the settlement of any controversy at law, draw all kinds of legal papers, collect notes, accounts, and claims, and to prosecute or defend suits, if necessary, in all the States and territories." It further announces that it sends general answers to questions in this department without expense. We would commend this "agency" to some of our friends who are in the habit of writing for our "private opinion" on questions of interest to them. *Albany Law Journal.*

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

London Election Petition.

George Pritchard, *Petitioner*; John Walker, *Respondent.*

Agency—Effect of bribery by Agent—Disqualification of Candidate—36 Vict. cap. 27 sec. 18.

Evidence of what acts constitute agency considered.

The evidence showed that very extensive bribery and corruption were practised by a very large number of persons and that immense sums of money were expended by the agents of the successful candidate, but no personal acts of corruption were proved against him, and he denied all knowledge of these acts, though he made a very diligent personal canvass. *Quære*, whether it must not be presumed that he was cognizant of the acts of his agents and consenting thereto.

Quære, also, as to whether under sec. 18 of 36 Vic., cap. 27, nothing but such personal bribery as would disqualify the candidate would avoid his election, or whether his disqualification was not a necessary consequence of the loss of his seat by corrupt acts on the part of his agents.

[London, Sept. 10, 1874.—Hagarty, C. J. C. P.]

The petition charged the respondent with bribery and other corrupt practices, both by himself and his agents. The facts disclosed on evidence at the trial sufficiently appear in the judgment of the Chief Justice of the Court of Common Pleas, who having taken time to consider, delivered a written judgment.

Robinson, Q. C., and *Street*, for the petitioner.

Harrison, Q.C., *Magee*, and *Campbell*, for the respondent.

Hagarty, C. J., C. P.—The evidence has disclosed an enormous amount of bribery and corruption in this constituency.

The number of votes polled for the respondent were about 1,260 and there was direct proof of an expenditure of at least $9,000 on his side, or an average of over seven dollars for each vote. To this sum may be added various small amounts admitted to have been spent by parties in the course of the canvass.

Apart from the question of responsibility on respondent's part, I am strongly of opinion that there would be sufficient ground for declaring this election void as not being free, but tainted and avoided by wholesale corruption.

It was not attempted to deny the prevalence of bribery, but it was urged that it was committed by persons for whose acts the respondent was not responsible.

The respondent did not nominate committees, but committees were formed in the different wards by his friends. This was a General or Central Committee.

It is clear that Mr. Dixon, the Secretary of the Reform Association, and also secretary of the respondent's committee, recognized the ward committees and paid moneys to them for expenses of the election, being moneys received from respondent for that purpose, and the expenses of these committees were matters of discussion between him and respondent.

I think there is no doubt in the evidence that many of the persons who admit having given money in bribing were agents of respondent to the extent of making him responsible for their acts, even though such acts were without his knowledge and even against his orders.

In Dr. Hagarty's case he was a committee man, three weeks canvassing; had a canvassing book received from Dixon. Some $600 passed through his hands, mostly received from Smallman and Reeves, respondent's partners and agents, as I will notice hereafter; received some money from Dixon for the committee of Ward No. 4; paid large sums, such as $120, for livery stable bills; used to see respondent every day, and talk to him as to how he was getting on, but did not speak to him as to the expenses. I have no doubt of this gentleman being an agent, He deposes to at least nine cases of direct bribery.

H. C. Green also admitted bribery, and would be considered an agent in my judgment. He was an active canvasser, paid rent for rooms, and was, I consider, well known to be working for respondent.

Frederick Fitzgerald was active and canvassing, to respondent's knowledge, and admits several acts of bribery.

John Campbell, a gentleman who had been Mayor of London, and seconded respondent's nomination, was undoubtedly such an agent, and respondent well knew he was working for him. He admitted several distinct acts of bribery, chiefly in giving money to the wives of voters.

Joseph Broadbent was also an agent, in my judgment, and admitted the most distinct acts of bribery of voters.

James Fitzgerald was an active committeeman, and made returns to the Ward Committee. He was foreman to Mr. John Campbell, and admitted paying money to bribe a voter through his wife.

John Doyle was on No. 1 Committee, canvassed for respondent, and spent $91 of Committee money. He admits he offered bribes to several, but found they had been offered more before.

Robert Henderson was Chairman of No. 1 Committee; received $700 for the ward, and received a small sum, $50 or $75, from Dixon for Ward expenses. He admits one distinct act of bribery of a voter through his wife. He also made lavish disbursements in his ward.

George Hiscox was canvassing, I consider, with respondent's knowledge. He admits distinct bribery.

Marvin Knowlton had influence as a temperance man, and went with respondent to canvass votes, and respondent knew, I consider, that he was canvassing for him. He received about $700, and paid $500 to one Robinson, a foreman in a large oil refinery, as Robinson said he had much influence with certain voters, and would like to have $500, and after consulting Reeves he gave him the sum. Robinson spent some of it in bribing, and I consider Mr. Knowlton in this transaction, if not in other reckless payments, acted corruptly.

Wm. J. Thompson was canvassing for respondent, and thinks (as I do) that respondent knew it. He admits several distinct acts of bribery of voters.

John E. Robinson, the man who received the $500 from Knowlton, and who admits having retained $200 for himself, in my judgment committed acts of bribery.

Philip Cook was chairman of a Ward Committee. Large sums passed through his hands, and he admits distinct acts of bribery.

John J. Magee, an active canvasser for the respondent, received about $900, which he paid away to various people for what he calls "election purposes." He would give no definition of his understanding of the "purposes," but it seems impossible to suppose that he could have believed the money was to be spent otherwise than corruptly, and in my opinion he must, on these facts, be assumed to know it was corruptly done.

The very numerous acts of bribery proved with complete distinctness must render it impossible to uphold this election.

I have now to consider the evidence in which it is sought to render the respondent personally responsible. He admits having paid $1,150 to Mr. Dixon for the expenses that he considered he would be lawfully liable for. There were seven wards; the constituency consisted of several thousand voters, and he and Mr. Dixon

consulted as to the amount that probably would be required. At first $1,000 was considered sufficient. Mr. Dixon has given us an account of the expenditure of most of this money. Three hundred dollars went for payments to clerks and messengers. There were eight or ten clerks, and the work ran over nearly all January. Messengers were also employed. Other items were for coal, furniture, rent of rooms; $100 to a Mr. McDonald, a lawyer, who sometimes acted for Mr. Dixon, and $600 to $700 was paid by him to committees in the wards, for their expenses—rent of rooms, light, refreshments, vehicles, driving about, canvassing, &c.

I see no reason to think that respondent or Dixon knowingly applied or intended to apply any of this money to illegal purposes. Respondent further admits having paid to the *Herald* newspaper $100 for advertising; to the *Free Press*, for same, $110; and to the *Advertiser*, for advertising and for bills, posters and printing connected with election, $625. For ornamental canvass cards, $20.50; stationery and books, $61.35. Total, $946.85.

This would leave his admitted expenditure about $2,100. It was not strongly pressed that such a sum would, under the circumstances, be extravagant, nor am I prepared to hold that it was.

I now turn to another branch of the case affecting the respondent. Large sums of money were proved to have been received from Thomas H. Smallman and George Reeves. They were partners with the respondent in a large oil refining business, called Reeves & Co. The respondent was stated to have been not an active member of the firm. Smallman and Reeves were shown to have taken a very active and prominent part in promoting respondent's return. Reeves is absent, but Smallman was examined. He admitted that between $5,000 and $6,000 passed through his hands in the election contest; of this he himself furnished $1,000. Mr. Edward Harris, a barrister and attorney here, belonged to a legal firm which did business for Reeves & Co., and one of the firm was respondent's own solicitor. Smallman says that he knew Harris was actively interested for respondent, and he thought him the most likely person to go to for money, and he obtained from him $4,000 in three or four sums. He never promised to repay it, took no receipt, and gave no security. No one suggested his going to Harris. Respondent never mentioned Harris to him. Nothing was elicited from this witness in any way to prove that respondent knew of the moneys advanced by Harris; or any communication between Smallman and respondent as to election expenses with which Smallman was concerned. He proved that respondent and Harris were intimate. He said he paid:

Reeves	$1,500
Knowlton	500
Dr. Hagarty	250
F. Fitzgerald	600
John Campbell	250
Scandrett	500
W. J. Thompson	100
Alderman Magee	600
Alderman Partridge, jr.,	100
Hiscox	50
And spent himself	150

All this money he paid for "election purposes," not asking the parties for what purposes they wanted it.

Mr. George Harris proved the great intimacy between his brother Edward and respondent, and that he told his brother the election could not go on without money. Edward asked how much, and witness said $5,000 would do. He (witness) said he would give $1,000, but he has not paid any.

The respondent swears very positively that he had no knowledge whatever of any advance of moneys by Harris; that he never talked of financial matters with Smallman or Reeves, and had no reason to think that either was spending large sums in his behalf. Never talked with Harris about money matters connected with the election; never knew Smallman was in communication with Harris; that it is only within the last fortnight he heard of this payment by Harris; that he warned his friends not to spend money illegally or commit him; that he never treated, fearing to break the law; that he canvassed very diligently, but never heard or knew anything from which he could suspect there was bribery on his side. He had sold stocks to Mr. Harris last fall, on which he still holds $10,000 of his paper unpaid.

Mr. Edward Harris swears that he paid $4,000 to Smallman and $2,000 to Reeves for election expenses. He had a strong feeling of resentment against Mr. Carling and of friendship for respondent. He had never before subscribed to an election beyond $5 or $10. On the polling day Reeves got the $2,000. He did not intend to advance over $4,000, but he got excited. He was very intimate with respondent; saw him every day during the canvass, but never spoke to him about money then or since the election; does not think respondent knew he had paid

the money—that he has no claim whatever on respondent for any of this money, and no understanding whatever that he is to be repaid. He says that he never gave a thought how the money was to be expended. He did not go so far in thinking about it as to consider that it would go to buy votes. It was in the atmosphere that much money would be spent on both sides on polling day. Reeves came in and said their opponents were spending two or three dollars to our one dollar, and then he got $2,000. Only a fortnight ago he mentioned to one of his partners that he had spent this money.

It is impossible to read the evidence without being convinced that this advance of money by Mr. Edward Harris was a most illegal and corrupt proceeding, and I deeply regret that a member of the legal profession should knowingly place in the hands of unscrupulous men a sum like six thousand dollars to be used in debauching and corrupting a constituency. From his purse has been furnished nearly all the money which, in the course of this most startling enquiry, has been proved to have done nearly all the vast amount of mischief and wickedness resulting from extensive bribery.

It is pressed upon me with great force by Mr. Robinson, for the petitioner, that notwithstanding the denials of the witnesses, it is impossible in the very nature of things to doubt: First, That the respondent must have known that bribery was being extensively practised; and secondly, the source from which his partners in business must have obtained the money—that the respondent could possibly have canvassed, as he says, extensively for three weeks without having come across traces of the bribery and of the expenditure of large sums of money.

I need hardly say that I am much impressed by the force of this reasoning, and that it is difficult to see how in the nature of things the bribery and the expenditure could both have remained unknown and unsuspected. Actual ignorance of the prevalence of bribery in this case can only be preserved by a wilful and determined resolution to be and remain ignorant, by a studious and systematic refusal to listen to anything he hears as to the expenses of the election, by insisting on the subject being always a forbidden subject of discussion, by shrinking from it and averting the eyes from it whenever it appeared to be coming to the light, and by a tacit if not an express understanding between all the instruments of corruption that the party chiefly interested should be kept ignorant of the wickedness that was being daily practised. I am compelled to conclude that only by the most rigid adherence to such a stringent system could the respondent be able with literal truth to make the statement of innocence that he has made before me. I am profoundly impressed with a sense of the mischief that may be caused by allowing such a course to be adopted with success, that it must be in effect violating the spirit while keeping outside the letter of the law. I am also well aware that to the understandings of the public at large, for whose benefit and guidance laws are enacted, it is not easy to explain satisfactorily how such a course can be adopted by a candidate for their suffrages, and yet the personal punishment provided by law be escaped. I am not here to deal with the case on moral, but on strictly legal ground; not as I think how the general understanding of intelligent men may regard it, looking at it in its prominent light, but unembarrassed by the heavy sense of responsibility that weighs on one filling my position, a position so forcibly described by the words of a great English Judge: "I cannot imagine to myself a jurisdiction more painful or more responsible than that of a judge deciding without the assistance of a jury that the candidate has been personally guilty of so grievous an offence."

All the circumstantial evidence, all the probabilities of the case, point forcibly to the respondent's knowledge; all the direct testimony that has been brought forward points the other way.

Witness after witness, after describing the days spent in bribery, winds up with the declaration that he never spoke to the respondent on any matter connected with money or with the expenses of the election. The testimony of Harris, Smallman, and of the respondent, declares the latter ignorant of the large payments by the former.

I feel far less difficulty in accepting the respondent's denial of any knowledge of Harris' advances than on the general question of his knowledge of money being illegally spent, without reference to the sources of its supply.

If there were any testimony affirming respondent's knowledge or any balancing of evidence on the subject, I do not think I could accept his direct denial against the powerful pressure of the general facts, to say nothing of the general probabilities of the case. The latter would certainly turn the scale against his assertion.

I can appreciate the embarrassment of a jury where a witness positively declares that he did not see, and was actually ignorant of the occurrence of an event which, according to all human

probabilities, he must have witnessed, and must have been cognizant of.

In such a case they can perhaps only accept his denial on the assumption that he wilfully shut his eyes and ears and was resolved not to see or hear it. I feel very much in the same embarrassed state. With a larger measure of doubt and hesitation than I remember to have troubled me during a long legal life, I have come to the conclusion not to report the respondent as personally guilty of the abominable and shameless conduct that has disgraced the last election for this city.

I am pleased to remember that this finding, with all other findings, can be reviewed by the Court of which I am a member; and if on the evidence my decision should have been the other way, the learned Judges can so decide.

The Court can decide on the question of fact as readily as the Judge at the trial. There is no contradictory evidence—nothing will depend on the demeanor of the witnesses or their manner of giving their evidence.

An important question may also arise on the meaning of the statute of 1873 governing this election. The 18th section reads as follows:

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

Mr. Harrison, in speaking to the agency question, argued, as I understood him, that in this section nothing but such personal bribery as would disqualify him could void the election.

I hold that bribery was committed by agents of respondent sufficient to void his election, whether he knew or did not know of their acts.

If I be right in so holding, then perhaps it may be argued for the petitioner that if, in the words of the section, the respondent "is found guilty of using any of the above means to procure his election," his election shall "be thereby declared void, *and* he shall be incapable of being a candidate, or being elected or returned during that Parliament." In other words, to void the election, I must find that the respondent directly or indirectly employed means of corruption, by giving any sum of money.

If I so find, as I do in the present case, it may be argued that the conclusion is irresistible—that as he is found guilty of using the prohibited means to secure his election, not only is his election to be declared void, but he shall be incapable of being a candidate. The clause draws no distinction as to personal knowledge or assent. It may be, therefore, that the disqualifying must follow the voidance of the election. The Act is peculiarly worded.

The election is set aside, and all the costs must be paid by the respondent. There were the most ample grounds to warrant the petition and the personal charges made against the respondent, and I see no reason for adopting Mr. Harrison's argument that the costs should be apportioned, not all the charges being proved. It was at the suggestion of the Court that petitioner stopped calling further witnesses to prove bribery. I shall report that the respondent was not duly returned, and that the election was void; that no corrupt practice has been proved to have been committed by or with the knowledge or consent of the respondent; that Daniel Hagarty, Henry C. Green, Frederick A Fitzgerald, John Campbell, Joseph Broadbent, James Fitzgerald, John Doyle, Robert Henderson, George Hissox, Marvin Knowlton, William J. Thompson, John E. Robinson, Philip Cook, John J. Magee, Thomas M. Smallman, George Reeves and Edward Harris, have been proved in my judgment to have been guilty of corrupt practices, and that corrupt practices have extensively prevailed at this said election.

The trial is now over, and I may venture to hope that these shameful disclosures will prove the death blow to the practice of bribery in this if not in other constituencies. Public opinion will, it is hoped, at last stamp with emphatic disapproval the practice of bribing. The briber and the bribed should stand on precisely the same footing. Many will, with perfect justice, attribute a far larger blame to men of education and position who tempt the ignorant and the poor to the sin of selling their votes to the highest bidder.

Election set aside.

Approved Re South Huron Election Cases, 29 U.C.C.P. 301; Re Duffrin Election, 4 A. R. 420.

SOUTH RENFREW PETITION.

BANNERMAN, *Petitioner*, v. MCDOUGALL, *Respondent.*

Costs—Preliminary Enquiry.

The respondent sought to establish on an enquiry under a preliminary objection that the petitioner (the opposing candidate) had been guilty of bribery, and was therefore disqualified as such. The enquiry was not concluded, as during its pendency the courts held that bribery would not disqualify a petitioner, but so far as the evidence went it did not show bribery by the petitioner.

Held, that the general rule as to costs should prevail, and that the respondent should pay the costs of the enquiry as well as the general costs of the cause.

[RENFREW, Sept. 9, 1874.—SPRAGGE, C.]

The respondent set up, by way of preliminary objection, that the petitioner had been guilty of bribery, and therefore had no status as a petitioner. Evidence was taken at Brockville, before the Chancellor, in support of this allegation. It however became unnecessary to proceed with the enquiry, as it was held in England, in the *Launceston Case*, that even if bribery were proved against a petitioner he was not disqualified as such.

The trial was then proceeded with before the learned Chancellor, at the town of Renfrew.

McCarthy, Q. C., appeared for the petitioner.
Bethune, for the respondent.

After the case had been partially heard, the respondent's counsel said that after consulting with his client he had found that there was one case of corrupt practice done by an agent without the knowledge and consent of the respondent, but for which the respondent was responsible to the extent of his seat, and which would avoid the election; but he did not admit any act of personal bribery.

Counsel for petitioner did not wish to press the charges of personal bribery, and would therefore accept Mr. Bethune's proposal.

The learned Chancellor said that the case at present did not show any personal act of corrupt practice on the part of the respondent, but that the question of costs still remained to be settled.

Bethune.—As far as the preliminary objection is concerned, there was ground for it and for the enquiry, as it was proved in Brockville, by petitioner's own evidence, that there had been spent of his and his partner's money about $3,600, making an average of $6 for each vote cast for petitioner. The Election Court at Toronto have acted on the rule of giving no costs to either party in interlocutory proceedings, as the law was unsettled in this respect. On these grounds he asked that the respondent should be relieved, and that each party should pay their own costs of the preliminary objection.

McCarthy, Q. C., *contra.*—The enquiry at Brockville was not concluded, and it was not known whether the charges against the petitioner were true or false. It would be contrary to every principle to assume the petitioner guilty before the investigation was determined, and in effect to punish him as in the way the respondent asks, by depriving him of his costs. But had the investigation closed, and petitioner's status not been affected, he would, of course, have been entitled to his costs. It was not prosecuted, because the respondent discovered, after setting up the preliminary objection, that as a matter of law, even if true in fact, it was insufficient. It would be an extraordinary result, that a party pleading, as it were, a special defence, which he admitted was bad in law, and which had not been proved in fact, should be relieved from the costs of the proceedings. As to the argument that the practice was unsettled, and that when the preliminary objection was filed that it was supposed, on the authority of the *Galway Case*, to be an omission; according to the *Southampton Case*, 1 O'M. & H., 221 to 225, it appears plain that the successful establishment of a recriminatory case does not debar the petitioner, even when he is the candidate, from prosecuting the petition so far as unseating the sitting member goes, but only prevented the unsuccessful candidate from being seated, and here the seat was not claimed.

SPRAGGE, C.—It is conceded by the learned counsel for the respondent, that as to the general costs there is nothing to take the case out of the ordinary rule, that the costs follow the event; but he contends that an exception should be made in regard to the costs of the inquiry which took place upon the preliminary objection of the respondent, that the status of the petitioner was annihilated by reason of his being guilty as was alleged, of personal bribery. It is conceded now that this preliminary objection was untenable as a matter of law, but it is urged that this was an unsettled point when the exception was taken and the enquiry had, and that the evidence showed that there was probable ground for the objection.

The evidence was taken before me, and having the evidence here, and having again read it over, it appears from it certainly that the expenditure of money by the petitioner and his agents was very considerable—so considerable as to leave room for the suspicion that it was not all expended for the legitimate purposes of the election. But what was charged went

beyond this—it was a charge of personal wrong on the part of the petitioner, which, however, was not established.

There have been cases where the usual rules have been departed from, but these cases, however, are few, and the general rule is now rarely departed from, unless under very exceptional circumstances. In this case, at any rate, they do not appear to apply, and never have been applied to such a case as this.

These costs have been incurred in an inquiry, not upon the merits of the petition, but at the instance of the respondent to intercept an investigation into the merits of the petition on the ground of demerit in the individual by whom the petition was presented, and it is now conceded that the petitioner rightly succeeds.

This is not a case, apart from the question of law, in which a party can properly claim exemption from the general rule. I do not say what might have been the case if a clear case of personal bribery had been made out against the petitioner. It might have been proper to refuse him costs in that case, but such a case has not been made out. The preliminary objection was wrong in point of law. Its purpose to intercept inquiry does not commend it as a proper proceeding, and it was deficient in proof of the fact alleged.

My opinion, therefore, is that these costs should not be excepted from the general costs to be paid by the respondent.

MUNICIPAL ELECTION CASE.

GEORGE BOOTH, *Relator*, v. H. M. SUTHERLAND, *Respondent.*

Disqualification of Candidate by indirect bribery.—Seating of Minority Candidate.—36 Vict., cap. 48, ss., 153, 157.

The respondent, who had been returned as reeve at a previous election for 1874, upon a trial on a writ of *quo warranto* was found guilty of bribery *indirectly*, by other persons on his behalf, within the meaning of sec. 153 of 36 Vict. O., cap. 48, and his election was declared void. He was again elected, the relator being the opposing candidate. The relator sought (1), to have the election of the respondent declared void, and (2), to have himself declared to be duly elected.

Held, 1. That indirect bribery was within the meaning of sec. 157 of the Act, and that in consequence the respondent was rendered ineligible by the finding at the first trial as a candidate for two years.

2. That the respondent being ineligible, the facts being well known to the electors, all votes given for him were thrown away, and the relator, having the next highest number of votes, was duly elected.

[BARRIE, July, 1874—GOWAN, Co. J.

This was a *quo warranto* proceeding on the part of the defeated candidate for the Reeveship of the Village of Orillia, to unseat the candidate who received the greater number of votes, on the ground of bribery.

McCarthy, Q. C., for the relator.

W. Lount for the respondent.

The facts of the case sufficiently appear in the judgment of

GOWAN, Co. J. The questions to be determined in this matter are the following:

1. Whether the respondent, H. M. Sutherland, was ineligible as a candidate for the office of Reeve at the time of the municipal election for Orillia, held in June last.

2. Whether George Booth, also a candidate for the same office, who received a less number of votes at the election, was the duly elected candidate.

Eligibility as a candidate for any municipal office in Ontario depends almost entirely on the law relating to our municipal institutions, (see sec. 71, 36 Vict. O., cap 48.) A candidate is disqualified if he has not the qualifications required by the statute under our system of local representative government, but besides the negative disqualifications there are others of a positive character, rendering persons, otherwise eligible, disqualified in express terms. And such disqualifications either relate to the holding of some office or employment deemed incompatible with the duties of a member of a municipal corporation, (see sec. 75), or they are personal disqualifications, the result of some act of a criminal nature declared to be a ground of exclusion, (*e. g.* sec. 157.)

The offence of bribery, striking as it does at the root of freedom and purity of elections, one might well expect to find in every well-considered system of local representative government, and in ours it is not merely prohibited in all its various phases and details, but the Legislature has inflicted temporary disqualification as a punishment for the offence.

It is charged in the case before me that the respondent was disqualified because he had been found guilty of bribery upon a trial upon a writ of *quo warranto* at an election during this present year, which was declared void, and the relator removed from office on that ground.

The 153rd sec. of the stat. enacts,—"The following persons shall be deemed guilty of bribery and shall be punished accordingly," (that is as provided in the Act). The sub-sections of the clause, under seven distinct heads, mention and describe in elaborate detail, acts, the doing of any

of which by any person brings him within the provision, and subjects him to the penalties of bribery, as here defined, on being found guilty of the offence.

The first sub-section, so far as touches this case, may be shortly read as follows:—Every person who shall directly or indirectly, by himself or by another person on his behalf, give, &c. any money, &c., in order to induce any voter to vote at a municipal election, &c. shall be deemed guilty of bribery.

The second and third sub-secs. relate to other acts to influence voters, the 4th to the act of advancing money for bribery, the 5th and 6th to voters corruptly receiving money, and the 7th to hiring teams to convey voters to the polls, &c.; these last acts are innocent in themselves, but, like the acts mentioned in the other sub-sections, persons committing them are to be deemed guilty of bribery and punished accordingly.

In the case of a candidate, one of the punishments is ineligibility as a candidate for any municipal election for two years. Sec. 157 enacts that "any candidate elected at any municipal election who shall be found guilty by the Judge, upon any trial upon a writ of *quo warranto*, of any act of bribery or of using undue influence as aforesaid, shall forfeit his seat and shall be rendered ineligible as a candidate at any municipal election for two years thereafter."

An act of bribery, &c. must be found by the proper tribunal upon a writ of *quo warranto*. What is bribery we find by reference to the 153 sec. And any one of the acts mentioned in any one of the sub-sections, committed by a person (either directly or indirectly by the person himself or some other person on his behalf under sub-section 1 and 2) constitutes an act of bribery within the meaning of the law. Two consequences are here mentioned on a finding of guilty, one necessary and immediate,—the forfeiture of the candidate's seat, the other a positive disqualification as a candidate for a limited time,—both may be said to be in the way of punishment upon the offender for one and the same offence, an act of bribery. If the words "an act of bribery" meant only an act done by the party himself personally, it would follow that an act of bribery committed indirectly by another person, on the candidate's behalf, would not forfeit the candidate's seat, and it is obvious that such a construction would render nugatory a very express provision of the law, for the sum of both—the forfeiture of the seat of the candidate and the disqualification for two years—is the measure of punishment prescribed by this clause. The words in sec. 157 seem to me to cover any act directly or indirectly committed by a candidate which is declared to be bribery by the 153 sec.

It may be that the provision of law is a hard one, and it may no doubt work harshly in some cases, but with that I have nothing to do where the intention of the Legislature is plain.

The provisions 161 and 162 are in keeping with this view, and seem to me pointed in the case of candidates to secure notice of the candidate's disqualifications in the particular municipality. The finding is a matter affecting a candidate very seriously, but the provisions of the 156th sec. secure for a party charged with an offence under 153, as well as the 154th sec. a public and open trial by *viva voce* evidence, taken before the judge, upon which his judgment is to be founded; whereas the general mode of trial in controverted elections is upon statement and answer by affidavit in a summary way. In other words, the party charged with an offence under sec. 153 has as full opportunities for defence, and at least as good a tribunal, as a party charged with crime on indictment found.

The respondent offered himself for election as Reeve of Orillia last month, and was returned as elected, having received a larger number of votes than the relator, who was the only opposing candidate. The respondent's disqualification or ineligibility as a candidate is alleged to be in substance that he was found guilty of bribery within the meaning of sec. 153 upon the trial during this present year of a writ of *quo warranto*, before the officiating Judge of the County Court of this County, and his seat being forfeited, he was, by order of the Judge, removed from his office as Reeve. And the evidence before me shows that such was the fact. The affidavits fully detail the circumstance, and an exemplified copy of the judgment roll is put in in proof of the disqualification of the respondent. The particular finding bearing upon this is as follows:—

"Third, that the said respondent was a candi-
"date elected at the municipal election men-
"tioned in the said writ of summons and
"papers, and that he, the said respondent, was
"guilty of bribery within the meaning of sec.
"153 of the Municipal Institution Act of 1873,
"(36 Vict. chap. 48), at the said election, that
"is to say, in that the said respondent did in-
"directly, by other persons on his behalf, give
"money to voters in order to induce them to
"vote for him, the said respondent, at the said

"municipal election." This adjudication seems to me clearly to show the fact alleged, and with all the particulars necessary to a finding under sec. 153, and supports the relator's allegation respecting the respondent's disqualification. It is not necessary in a formal judgment to enter into details, and the maxim, *Omnia præsumuntur rite esse acta* applies to all acts of a judicial character. And after verdict, whether in civil or criminal cases, it will be presumed that those facts, without proof of which the verdict could not have been found, were proved though they were not distinctly alleged in the record, provided it contains terms sufficiently general to comprehend them in reasonable intendment: *Regina* v. *Webb*, 1 Den. 338; *Regina* v. *Waters*, *ib.* 356; *Goldthorp* v. *Hardman*, 13 M. & W. 377; *Kidgell* v. *Moore*, 9 C. B. 364. But I do not think the judgment needs such aid.

At the last argument of this case, it was stated as an objection that the enquiry here should be *viva voce* under sec. 156. I do not think it necessary or required by the statute; the respondent simply appears and offers no evidence, nor does he deny the matters of fact that a trial was had, and the finding in question by the judge. This is not a trial whether the party has been guilty of bribery at this past election, but whether he is disqualified, and the proof of that is found in the judgment and papers before me; it is a question simply of a previous conviction, so to speak.

My finding on the first question then is, that the respondent was ineligible as a candidate for the office of Reeve at the time of the last municipal election for Reeve at Orillia in June last, he, the respondent, having been found guilty of an act of bribery bringing him within the disqualification mentioned in the 157th sec. of the Act within a few months previously.

Now as to the second question, whether George Booth, who received a less number of votes at the election, should be declared elected.

As I collect the rule of law from the authorities it is,—If an election is made of a person who is ineligible, that is, incapable of being elected, the election of such person is absolutely void, even if he is voted for at same time with others who are eligible; and if the electors have notice of the disqualification of a candidate, every vote given for him afterwards will be thrown away as not having been given at all: *Rex* v. *Hawkins*, 10 East 211, *Claridge* v. *Evelyn* 5 B. & Al. 81; *Rex.* v. *Bridge*, 1 M. & S. 76; *Rex.* v. *Parry*, 14 East 549. And the effect of this is, not only will the election of a disqualified person be held void, but if it takes place after notice of disqualification is given the electors, the candidate having the next highest number of votes will be elected. (Rodgers on Elections 224.)

The doctrine, however hard it seems, is founded on the familiar principle that every man is bound to know the law with reference to any act which he undertakes to do, and consequently that when an elector is apprised of the fact of disqualification of a candidate, and notwithstanding gives his vote for him, the elector takes upon himself the risk of losing his vote if his view of the law is wrong. (Rodgers on Elections, 226.)

Here there were only two candidates.

All the cases cited are quite distinguishable from the facts before me in this matter, and it is difficult to conceive a case in which the ineligibility of a party as a candidate could have been brought more prominently before the electors than in the present. The proofs before me show that in March and April the trial was had, at which the respondent was pronounced guilty of bribery; that a number of voters were examined thereat, and after the decision the matter was generally and publicly known; that it was discussed in the local papers; that at the nomination it was publicly stated by the relator that the respondent was disqualified for the office of Reeve by reason of his having been found guilty of bribery, and that he was ineligible for the said office; that on the second day thereafter (the next day was a Sunday) public notice was given in printed form and distributed over the village, informing the electors and warning them that their votes would be thrown away; so that before, at, and immediately after the nomination the electors appeared to have had the fullest notice of the respondent's disqualification. And all the facts would seem to show that the relator was quite justified in his statement—"I do not believe that there was an elector of the village of Orillia who did not know that the election of the said Sutherland had been declared invalid and void on the ground of bribery by him or his supporters." I find that the electors had full notice of the respondent's disqualification as a candidate, and the votes for him being thrown away, that the relator, a qualified candidate, is entitled to the seat.

A formal adjudication can be drawn up to give effect to my finding in favor of the relator, who is entitled to his costs to be taxed, and the necessary process will issue under the statute.

UNITED STATES REPORTS.

SUPREME COURT OF ILLINOIS.

Donoghue v. The City of Chicago.

Dower—Allowance in lieu of—When cannot be changed.

When a widow has petitioned to recover dower, and by reason of the indivisibility of the property an allowance has been made to her in lieu of dower, the sum so fixed becomes conclusive, and cannot be changed by a court of equity, although the property may subsequently become greatly enhanced or depreciated in value.

Appeal from Cook County.

Opinion of the Court by Scott, J.

The question involved in this case is, whether when a widow has petitioned to recover dower, and by reason of the indivisibility of the property an allowance has been made to her in lieu of dower, the sum so fixed becomes conclusive and cannot be changed by a court of equity, although the property may subsequently become greatly enhanced or depreciated in value.

The facts alleged in the bill and admitted by the demurrer are briefly these:

On the 3rd day of October, 1860, the appellant filed her petition in the Circuit Court of Cook County, for dower in certain premises against Joseph N. Barker and the City of Chicago, and upon the hearing she was found to be entitled to dower, and thereupon commissioners were appointed by the court to assign dower under the statute, who, at a subsequent term of the court, reported that the premises could not be divided nor dower assigned without manifest injury to the rights of the parties interested therein. Upon the confirmation of the report a jury was called, and assessed the yearly value of the dower in the premises at the sum of seventy-five dollars per annum, and the court decreed the payment of that sum and a like sum annually in lieu of dower, during the natural life of the doweress.

Since the rendition of the decree in the former proceedings, the property has greatly risen in value, so that the sum of seventy-five dollars per annum is grossly inadequate as an allowance for dower therein, the premises being worth the sum of thirty thousand dollars, without any improvements, and would readily rent unimproved, for a term of years, for at least fifteen hundred dollars, and that sum is the present fair rental value.

Our statute follows the common law, and declares that "a widow shall be endowed of the third part of all the land whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless the same shall have been released in legal form." It is also provided that wherever it is practical to do so, that the dower shall "be set off and allotted to the widow by metes and bounds, according to quality and quantity."

In view of this fact that some estates could not be divided without great detriment to the rights of the parties interested, in case of a division, giving to the widow a portion too small for profitable use, the legislature, to make provision whereby the widow should receive the benefit of her right and the estate should not be rendered valueless by an unwise division, enacted the 28th section of the chapter on dower, in which it is provided that when "the land or other estate is not susceptible of a division without great injury thereto, a jury shall be empanelled to inquire of the yearly value of the widow's dower therein, and shall assess the same accordingly, and the court shall thereupon render a judgment that there be paid to such widow, as an allowance in lieu of dower, on a day therein named, the sum so assessed as the yearly value of her dower, and the like sum on the same day in every year thereafter during her natural life." The policy of the common law was, doubtless, that the dower should be assigned by "metes and bounds" one-third of the estate itself. Much trouble arose out of the difficulty, in some estates, of making an equitable division of the property, so that the same could be enjoyed by the doweress and the heir.

Obviously, to avoid the practical difficulties in the way of assigning dower by "metes and bounds" in certain estates too limited in extent to be profitably divided, the statute above referred to was enacted.

The power of the legislature to make such a provision for the maintenance of the widow in lieu of dower at common law, cannot be questioned; indeed the right of dower might be abolished by legislative power if deemed expedient, and other more beneficent provision made.

The effect of the statute is, where lands are found to be indivisible, and the yearly value of the dower is assessed in the mode prescribed that such assessment, by force of the statute stands in lieu of dower, and the heir or the owner of the fee will take the estate discharged from dower, but instead thereof, burdened with

a certain annuity, during the natural life of the widow.

Such is the plain meaning of the law, and if it works hardship in certain cases, only the power that enacted it can afford the remedy.

It is not in the power of a court of equity to relieve against the force of a statute, the meaning of which is not doubtful.

In the case under consideration, the yearly value of the dower was fixed by the decree of the court some ten years ago, and the aid of a court of equity is now invoked to relieve against the effect of that decree, on the ground that since the former proceedings were had, by reason of the enhanced rental value of the premises, the yearly value of the dower as then fixed by the court, is grossly inadequate.

It is not perceived how a court of equity will obtain jurisdiction to afford the relief sought.

The grounds of equitable jurisdiction are usually fraud, accident or mistake. None of these elements are to be found in the case under consideration. It is not pretended that the decree was not fairly pronounced, or that the value of the dower was not then fairly assessed. Had the assessment been unfairly obtained, or for an inadequate amount, the widow would at that time have been permitted to contest it, and would have been entitled to have a re-assessment. Not having done so, we will presume that the assessment was fairly obtained, and for the proper amount.

It is not doubtful that at common law, if the sheriff was guilty of fraud in making the assignment of dower, equity would relieve either party and order a re-admeasurement of dower. To this effect are the cases, *Hoby* v. *Hoby*, 1 Ves., 218; *Sneyd* v. *Sneyd*, 1 Atk., p. 442. It is believed that no case can be found where a court of equity ordered a re-assignment of dower unless where the bill charged fraud or mistake. Relief has been granted where the title to the lands assigned to the widow or heirs had failed after assignment, and a re-assignment ordered, as in the case of the *Singleton heirs*, 5 Dana, 87.

We have not been referred to a single case that holds the contrary doctrine. The questions involved in the case of *Grove* v. *Cother*, 23 Ill., 634, cited by counsel, are not analagous to the one we are considering, and the reasoning of the court will not be considered as controlling the decision of this case.

In this instance it was found that the appellant could not have dower assigned to her by "metes and bounds," and by the decision of the court she got all that the law provided she should have in "lieu of dower," and there being no fraud or mistake charged in the proceedings, there is no ground for equitable relief, and the decree of the Circuit Court is affirmed.—*Chicago Legal News.*

Morton v. Noble.

Effect of release of dower when deed from husband and wife becomes inoperative as to husband's estate.

1. When Dower not Barred by.—That when the deed from the husband and wife becomes inoperative as to the husband's estate, because made in fraud of the rights of creditors, or from any previous lien or incumbrance, or where the purchase money is recovered back for a defect of title in the husband, or by reason of any wrongful act on the part of the husband, the dower is not barred by the deed.

2. When Dower Cannot be Restored.—That the court has been referred to no case that holds, where the husband and wife conveyed a perfect and indefeasible title, and when the title was subsequently lost, solely by the fault and neglect of the grantee, that the dower would be restored.

3. When the Right of Dower is Barred.—*Held*, where the title to land was in the husband, and the wife joined him in a deed thereof and released her dower, and the grantee omitted to place his deed upon record, and a creditor of the husband obtained a judgment against him and sold the land upon an execution issued upon such judgment, and the purchaser in due time received a sheriff's deed, that the right of dower of the wife was forever barred.

Appeal from the Superior Court of Chicago.

Opinion by Scott, J.

The appellee, by proof of her marriage with Noble, his death and seizin of her husband during coverture, having made out a *prima facie* case entitling her to dower, the question arises whether the defence set up by the appellants is sufficient in law to bar her dower.

From the stipulation as to the facts, it appears that Mark Noble, the husband of the appellee, was seized in fee simple of the land in which dower is claimed, and that on the 7th day of October, 1836, he and his wife, the appellee, duly made, executed, and both acknowledged in due form of law, a deed conveying the title in fee simple to Benjamin Harris, which deed was duly delivered to Harris on the same day, but was not recorded until the 31st day of August, 1837. After the making and delivery of the deed to Harris, but before the same was recorded, one Jefferson Gardner recovered a judgment in the municipal court of Chicago, against Mark Noble, for the sum of two hundred and fifty-one 56-100 dollars, which judgment became a lien on real estate on the 7th day of July, 1837. At the date of the conveyance to Harris the land was vacant and unoccupied, and such proceedings were subsequently had that the

premises were sold on an execution issued on the Gardner judgment, and Harris failing to redeem, the title matured in the purchaser at that sale, and the appellants now claim title through certain mesne conveyances as the grantees of the purchaser.

Mark Noble died in 1863, intestate, and the appellee filed her petition claiming dower in the premises. It is not questioned that the deed of July 7, 1836, was sufficient to release the right of dower if the title had remained in Harris, but it is insisted that inasmuch as the title was defeated in Harris, by reason of the sale on the Gardner execution, that the dower is not barred, and the appellants not connecting themselves with or claiming under the Harris title, cannot set up the release of dower to him to defeat the demandant in the proceeding. It will be observed that Harris obtained a perfect title to the land free from all incumbrances. The title thus acquired remained in him for the period of about one year, and was only defeated by the laches of Harris in not complying with the registry laws of this State, and by no fault or neglect of the grantor, Noble.

We fully recognize the doctrine that when the deed from the husband and wife becomes inoperative as to the husband's estate, because made in fraud of the rights of creditors or from any previous lien or incumbrance, or where the purchase money is recovered back for a defect of title in the husband, or by reason of any wrongful act on the part of the husband, the dower is not barred by the deed. *Blaine* v. *Harrison*, 11 Ill., 384; *Summers* v. *Babb*, 13 Ill., 483; *Grove* v. *Cother*, 23 Ill., 634; *Stribling* v. *Ross*, 16 Ill., 122. This case does not fall within the rule announced in any of the former decisions of this court. We have been referred to no case that holds that where the husband and wife conveyed a perfect and indefeasable title, and where the title was subsequently lost, solely by the fault and neglect of the grantee, that the dower would be restored.

It is difficult to comprehend upon what principle such a doctrine could be maintained. The doctrine of the cases cited above rests upon sound reason. In case the title does not pass by the deed of the husband and wife, the dower will not, and hence the grantee takes nothing.

It is a familiar principle that a widow cannot release her right of dower to a stranger to the title, but in this instance the release was to the owner of the fee, and for that reason it was effectual. Harris was in no sense a stranger. By the deed from the demandant and her husband he became vested with an absolute and indefeasable estate in the land. The title never failed. It was lost simply by the laches of the grantee. There are many ways in which Harris, by mere neglect, could have allowed the title to pass from him. The land being vacant and unoccupied, he might have suffered a party to make an entry and hold possession for twenty years, until the right of possession had matured into an absolute title against him. Had the title been lost in this way, it would hardly be insisted that the demandant in this case would be entitled to dower in the premises simply by reason of the failure of Harris to assert his rights within the period fixed by the statute of limitations. It is insisted that Harris was not seized of the land as against the creditors of Noble for the reason that the deed was not recorded in apt time. That was no concern of the grantor. It was not in his power to compel the grantee to place his deed on record. It does not appear that there were any creditors of Nobie at the date of the conveyance. If the grantee chose to withhold his deed from record the grantor could not prevent it. But it is not true that Harris was not seizcd of the land as against the creditors of Noble. He was in fact seized of an absolute title as against all the world, and held it for the period of one year, and might have continued to hold it forever, except for his own laches in not complying with the registry laws of the State.

We are of opinion, therefore, that the deed to Harris was effectual to pass the right of dower, and the title never having failed or been defeated by reason of any prior lien or incumbrance, or any act on the part of the grantor, the right of dower is forever barred.

For the reasons indicated, the decree of the Superior Court is reversed and the cause remanded.—*Chicago Legal News.*

REVIEWS.

THE MARRIED WOMEN'S PROPERTY ACT OF ONTARIO, with notes of the English and Canadian cases, and observations respecting the interests of husbands in the property of their wives; with an appendix containing the earlier Statutes relating to conveyances by married women. By R. T. Walkem, Barrister-at-Law, author of "A Treatise on the Law of Wills." Toronto: Willing and Williamson, 1874.

Though this little book contains less than one hundred pages, it will be found

of more practical use than many more pretentious volumes. The author does not assume to express any decided opinions upon the multitude of doubtful points that have arisen and are likely to arise under these troublesome Acts, but whilst drawing attention to many of them he offers suggestions which will be very useful in the present transition state of this branch of the law.

It cannot be denied that the Courts have been astute to interpret the acts with reference to the principles and policy of the common law rather than with what may fairly be assumed to have been the intention of the framers of some of these acts. For example, it is difficult to believe that it was intended that a husband should have the power of turning his wife out of doors, and deprive her of her clothes and other chattel property acquired by her previous to her marriage, when we find that one statute says she "shall have, hold and enjoy it free from her husband's control or disposition, without his consent, in as full and ample a manner as if she remained unmarried," and when another says that she may maintain an action in her own name for any separate property "against any person whomsoever, as if such property belonged to her as an unmarried woman." It would seem difficult by any form of words to make her position stronger even against her husband. But yet *McGuire* v. *McGuire*, 23 U. C. C. P. 123, decides that she is merely *protected* in the *possession* and *enjoyment* of her personal property without giving her the right to *dispose* of it, though what her "possession and enjoyment" would be worth if she were locked out of the house (possibly her own as well as the furniture in it) by a drunken or cross-grained husband, it is difficult to see. Such a case has actually occurred, and the law was powerless to give the wife even her own personal clothing. Mr. Walkem says the words of the latter statute are sufficiently ample to justify a civil or criminal proceeding (by the wife) against the husband; but Mr. Justice Gwynne, in *McGuire* v. *McGuire*, limits the right of action by the wife against the husband to property held *for* her (*i. e.*, by others, not her husband, and not in his possession), and not *by* her, (and therefore in one sense in the possession of the husband). This interpretation manifestly renders that part of the statute practically inoperative in the mass of cases where a wrong was probably intended to be remedied. This is a matter which can scarcely fail to come before the Courts for fuller discussion and more final adjudication.

We are not at present concerned to discuss the policy of recent legislation on marital relations, and Mr. Walkem may be right when he says in his preface —"It is conceived, however, that these objectors have underrated or lost sight of the restraining power of that natural law to which they refer, and have not sufficiently estimated the tact and capacity of the gentler sex; and it will probably be found in practice that the privileges conferred upon wives by the Act will seldom be abused, and will be used only as a shield against oppression or injustice." But however this may be, we are certainly not at the end of litigation on this subject, and our author's work will be most acceptable, not only because all the light that can be had is wanted, but because the work which he proposed to himself to do has been done in a very satisfactory manner. The book is neatly got up, and is very creditable to the enterprising firm who publish it.

Self-Preparation for the Final Examination, containing a complete course of study, with statutes, cases and questions, and intended for the use, during the last four months, of those articled clerks who read by themselves. By John Indemaur, Solicitor, Clifford's Inn, Prizeman Michaelmas Term, 1872, author of Epitomes of Leading Common Law and Equity, and Conveyancing Cases. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar, 1874.

Mr. Indemaur appears to be of a practical turn of mind. We have had occasion favorably to notice his Epitome of Leading Common Law, Equity and Conveyancing Cases. Not long since we had the pleasure of noticing the second edition of his Epitome of Common Law

Cases. He reads with students; but many students are unable to avail themselves of the services of a tutor, and for all such the present work is intended. It appears to contain a careful selection of conveyancing, common law, equity, bankruptcy and criminal law books, with the statutes and cases affecting the same. One good feature of the work is that too much is neither undertaken nor recommended. Some guides for law students are so elaborate as to demand the study of a life-time to master a fair share of them; and then the student remembers rather what he has not done than what he has done. This is no such guide. It is simple, concise and practical. We should like to see a similar work prepared for use in Ontario. Some one of our young lawyers might, we think, prepare such a work, with advantage to the profession and profit to himself.

A Treatise on the Doctrine of Ultra Vires. Being an Investigation of the Principles which limit the Capacities, Powers and Liabilities of Corporations, and more especially of Joint Stock Companies. By Seward Brice, M.A., LL.D., London, of the Newer Temple, Barrister-at-Law, London: Stevens & Kayne's, Law Publishers, Bell Yard, Temple Bar, 1874.

It is sometimes most difficult to observe the line between legislation and interpretation of law. The line is at times so thin and shadowy that it cannot be discovered except with great effort. The expansion of law and growth of what is commonly called judge-made law, is in modern times a subject not only for contemplation, but for wonder. No better illustration can be found than that of the doctrine of *ultra vires*.

Mr. Brice, in his preface, truly says: "Its appearance as a distinct fact, and as a guiding or rather misleading principle in the legal system of this country, dates from about the year 1845, being first prominently mentioned in the cases in equity of *Colman* v. *Eastern Counties R. Co.*, 10 Beav. 1, and at law of *East Anglesa Railway Co.* v. *Eastern Counties Railway Co.*, 11 C. B., 775." He mentions that it was purely the creature of judicial decision. He says, "It was originated by the Courts *proprio motu* upon grounds of public policy and commercial necessity, and to meet and provide for circumstances which called for the intervention of some strong hand, but for which the State had not directly provided. Being so originated, and as most will probably admit, wisely originated, and in the best interests of trade and commerce, it has, however, become a species of Frankenstein. The tribunals have created, but they have confessed themselves powerless to control the operations of the principle which they have called into existence, or even to systematize its effects."

In the preface, Mr. Brice gives an amusing description of the vagaries of this judge-made Frankenstein. He knows that, notwithstanding the time-honored legal maxim that a man cannot stultify himself, a corporation may set up its incapacity whenever it is inconvenient for it to carry out its engagements; that notwithstanding the maxim in Equity, that he who seeks equity must do equity, a corporation may be relieved from a contract on the ground that it is *ultra vires*, and yet keep the benefit thereof. He also points out that Courts of Law and Equity are confused in their treatment of the confounded creation. "*Ultra vires*," he says, "objected to the restraint imposed by the maxim '*qui facit per alenia facit per se*,' and made a desperate stand to be relieved from it. Here, however, the Common Law maintained its supremacy: *Berwick* v. *English Joint Stock Bank*, L. R. 2 Ex. 259, though, *mirabile dictu*, Equity yielded: *Mixer's Case*, 4 De. G. & J. 575, 586. So that there is now seen the strange anomaly that corporations may be liable at law under circumstances where Chancery imposes no liability, and that what the former says is palpable fraud the latter will often pass over, or at least admit its inability to punish."

And this is not the worst he has to say of the monster that he has undertaken to describe. He points out that the same courts, dealing with it at different times, from causes not easily understood, have not been guided by uniformity of decision or indecision. "It is, he says, *ultra vires* of the Great Eastern Railway to run steam packets from Harwich: *Colman* v. *Eastern Counties R. Co.*, 10 Beav. 1, but

not of the South Wales Railway Company to run them from Milford Haven: *South Wales R. Co.* v. *Redmond* 10 C. B. N. S. 675. It is *ultra vires* of a steamship company to sell the whole of its vessels except two: *Gregory* v. *Patchett*, 33 Beav. 547, but perfectly legal thus to dispose at one swoop of every one of them: *Wilson* v. *Miers*, 10 C. B. N. S. 348. It is *ultra vires* of the town of Southampton: *Attorney General* v. *Andrews*, 2 Mac. & G. 225, or Sheffield: *Reg.* v. *Mayor of Sheffield*, L. R. 6 Q. B. 652, to incur expense in order to obtain a proper supply of water for their respective inhabitants, but not so for Ashton-under-Lyne; *Bateman* v. *Ashton-under-Lyne*, 3 H. & N. 323, or Wigan: *Attorney General* v. *Mayor of Wigan*, 35 De G. Mc. N. & G. 52.

It was at one time supposed that a corporation was an artificial person, having all the powers as far as applicable of a natural person. Had this idea been allowed to prevail there would not have been much room for the doctrine of *ultra vires*. But when it is considered that nearly all corporations exist for the attainment of certain objects only, it is only proper that their powers should be restricted to the objects for which they were created; and it this consideration which gave birth to the doctrine of *ultra vires*.

An examination of the many dicta and decisions to which he refers we think quite justifies him in the remarks which he has made in the preface to his work, and in the conclusion that "the decisions and dicta are very conflicting, and some absolutely irreconcileable, while the principle itself is become, if not an excrescence upon, at least a very disturbing element in the legal system." He might have added, without exaggeration, that *ultra vires* is a Will o' the Wisp in the broad field known as the glorious uncertainty of the law.

Much as one may be surprised at the confusion which clouds this doctrine, it is all the more pleasant to notice the lucid manner in which it has been handled by the author. His arrangement of the work is logical and his treatment of the parts clear and concise. The work is arranged under four main heads, that is to say,

Part I. An introduction, showing the legal status of corporations, the ordinary incidents of corporations, varieties of corporations, and how corporations are created.

Part II. The doctrine of *ultra vires* as affecting the business and other transactions engaged in by corporations, and their rights and liabilities in respect thereof.

Part III. The doctrine of *ultra vires* considered with reference to the powers and privileges of corporations, and the manner and purposes in and for which such may be employed.

Part IV. The rights and liabilities of persons concerned in or otherwise affected by transactions considered to be *ultra vires*, and the legal proceedings which may be taken in respect thereof.

Each part appears to be well and appropriately filled up. The references to decided cases are full and accurate. The result is a body of law essential as an appendix to any work on corporations that has hitherto been published. The index of cases and index of subjects are full and complete—the whole making a volume of about 600 pages, well printed and well bound, and such as should be on the shelves of any lawyer who assume to have a useful and reliable library of modern law.

A Treatise upon the Law of Extradition, with the Conventions upon the Subject existing between England and Foreign Nations, and the Cases decided thereon. By Edward Clarke, of Lincoln's Inn, Barrister-at-Law, and late Tancred Student. Second edition. London: Stevens & Haynes. Toronto: R. Carswell.

Extradition of criminals is now looked upon by most civilized nations as an international duty. In this respect treaties are made and laws passed for the efficient performance of the duty, and of late years, owing to the facilities for passenger transit, many cases have arisen calling for judicial exposition of the treaties so made and the laws so passed. The consequence has been the rapid growth of that branch of the law now generally known as the Law of Extradition.

Until 1866 the only English book expressly devoted to this branch of the law

was a pamphlet published in 1846 by Mr. Charles Egan. In 1866 Mr. Clarke, the author of the book now before us, having been engaged in England on several important extradition cases, had his attention directed to the want of a good text book on the subject, and was induced to supply the want. The result was the first edition of the work now under review. It was received with great favor in England, the United States and Canada, and was soon exhausted. The author was thereupon induced to supply a second edition of his work.

We have looked through this second edition with much interest, and were particularly pleased with the fulness and completeness of the work. It is as much a Canadian as an English work. His history of the law in Canada evinces a remarkable knowledge of the Canadian decisions. Okah Tubbee's case, Anderson's case, the St. Albans case, Burley's case, Asher Warner's case, Morton's case, the Lamirande case, and all other Canadian leading cases, as reprinted in the columns of this journal, are carefully digested. The author is equally industrious and equally happy in his exposition of the Extradition Law in the United States. His review of Chevalier de Longchamp's case, Robbins' case, Daniel Washburn's case, Kaine's cases, and other leading United States decisions, is all that can be desired. His exposition of the law in England and France is, we presume, equally satisfactory.

The remainder of the treatise is occupied with the practice of the Law of Extradition in the several countries we have named.

In an appendix will be found the conventions of 1843 and 1852 between Great Britain and France, the conventions of 1862 and 1872 between Great Britain and Denmark, the convention of 1872 between Great Britain and Germany, the convention of 1872 between Great Britain and Belgium, the convention of 1873 between Great Britain and Italy, the convention of 1872 between Great Britain and Brazil, the convention of 1873 between Great Britain and Sweden, and the convention of 1873 between Great Britain and Austria. There are besides, in the appendix, a note upon the Lamirande case and a note upon political offences.

The author has done much to make well known this new and interesting branch of law. He has spared no pains to bring within the reach of each purchaser of his book all the law that appertains to the subject in Great Britain, the United States, France and Canada. We can bear special testimony to the accuracy of his book so far as the law of Canada is concerned, and we have only to ask, in conclusion, that our Canadian lawyers will, without hesitation, extend to the work that patronage which its merits deserve.

NEW RULES.

In the Court of Queen's Bench and Common Pleas.

Trinity Term—38th Victoria.

The following are the Rules regulating the practice under the provisions of the Administration of Justice Act, 1874.

Saturday, 5th September, A. D. 1874.

It is ordered, That the following Rules shall come and be in force in the Courts of Queen's Bench and Common Pleas from and after the last day of this present Trinity Term :—

1. As the business to be transacted out of Term does not appear to require more than one Judge of the Courts of Common Law to sit in open Court every week, it is ordered that one of the Judges of the Superior Courts of Common Law shall sit in open Court in Osgoode Hall, out of Term, pursuant to the Administration of Justice Act of 1874, every week, for the purpose of disposing of all Court business which may be transacted by a single Judge; and such sittings shall be on Tuesday and Friday of each week, and on such other days as the Judge holding such sittings may direct.

2. All Rules directed to be issued out of Term shall be four day Rules, and shall be heard at the first sitting of the Judge in open Court for arguments after the same are returnable, unless otherwise ordered.

3. Demurrers shall be set down at least four days before the day on which they are to be heard, and notice given to the opposite party.

4. A Demurrer Book shall be left with the Clerk of the Crown and Pleas of the Court in which the cause is pending at the time of setting down the demurrers.

(Signed),

Wm. B. Richards, C. J.
John H. Hagarty, C. J. C. P.
Jos. C. Morrison, J.
Adam Wilson, J.
John W. Gwynne, J.
Thomas Galt, J.

CORRESPONDENCE.

Crown Counsel.

To the Editor of the Canada Law Journal.

It would scarcely seem necessary at this hour of the day to ask any questions as to the position of Crown counsel and the rules of professional ethics affecting them; but what I heard at the trial of a case at the last Toronto assizes shows a somewhat curious state of things to my mind, and suggests the inquiry: Is it etiquette for a lawyer who advises a private prosecutor, and has the conduct of his case, to appear on the trial of the indictment as Crown counsel and avowedly not as counsel for the private prosecutor?

The point came up recently on the trial of an indictment for libel of much general interest, the defendant being the manager of a newspaper company. It appeared, moreover, that the prosecutor commenced life as a shoemaker, whilst the defendant was said to be of good social position and of liberal education. The jury was a "common jury," and was, I presume, of the ordinary capacity.

In his closing speech the Crown officer referred at great length to the fact that the prosecutor was a poor man with five small children, whilst the defendant was a "grandee," "nabob," "aristocratic blood," "fashionable blade," &c., and stated that this "grandee," &c., was endeavouring to crush a man who was trying to raise himself in the social scale—wishing to "send him back to his last." He concluded by reading from his brief a long list of eminent men who were of humble origin and of ignoble birth, drawing attention to the difference in social position between the prosecutor and the defendant, and thus having the probable effect (I presume a lawyer is supposed to know that he is responsible for the result of his acts) of prejudicing the minds of the jury against the defendant, without regard to the evidence.

As a matter of taste such fomenting of class prejudices is not what I should have supposed an enlightened Bar would be proud of. But such a course on the part of the Crown counsel is not what I should have expected to witness in this country at this period of the nineteenth century.

I may mention that the learned gentleman asserted most strongly that he was acting for the Crown and not for the private prosecutor. I should be glad to know your view on these points, as they seem to me of interest to the profession.

Yours truly,

Country Practitioner.

[We have a horror of libels and politics and all such unpleasant public amusements, and should not have felt inclined to publish the above, but that it touches upon what is really a matter of great importance to the good name of the profession, viz.: that the counsel for the Crown should not go beyond the well-established and universally recognized line of conduct in conducting a prosecution. The theory is that the Crown is the protector of public rights, and stands between its subjects to see justice done according to law. The duty of the Crown officer, who is the mouthpiece of the Crown, is to see that all proper evidence against a prisoner or defendant is fully and fairly laid before the jury, and also to see that the cause of the accused is not jeopardized by improper evidence or prejudice. Whatever is "more than this cometh of evil," or arises from ignorance or want of temper. We should have thought that the safer plan to prevent any suspicion would be for a counsel who has acted for a private prosecutor to decline to act for the Crown in that particular matter.—Eds. L. J.]

FLOTSAM AND JETSAM.

A judge, rejoicing in the well-known legal name of Doe, has lately made his appearance on the New Hampshire Bench, and is astonishing the professional world by his exhaustive judgments. In a recent partnership case, his opinion was 284 pages in length. He must consume and digest a vast amount of case law.

Flotsam and Jetsam.

A case was being tried before a presbytery not long ago, when the counsel for the defendant urged the plea of moral insanity. A venerable presbyter said: "Mr. Moderator, the disease of moral insanity seems to me to be identified with what the older theologians in their unscientific way called total depravity."

Many years ago, Robert Treat Paine (father of the poet,) was one of the judges of the Massachusetts Supreme Court. He was very old, and the Bar desired him to retire from the Bench, so they appointed Harrison Gray Otis, who was very polite and accomplished, to go and see the judge and talk with him on the subject. He suggested to the judge that it must be a very great inconvenience to him to leave home so often and so long.

"Do you see as well as you used to?"

"Yes, I can see with my glasses very well."

"Can you hear as well as you used to?" (for it was notorious that he could not hear anything unless yelled through a trumpet.)

He said, "Yes, I hear perfectly; but they don't speak as loud as they did before the Revolution."

Many law books unavoidably partake too much of the nature of digests, and appear compilated with extracts from the works of others. This fault cannot be imputed to Mr. Goldsmith's volume, which indeed is marked with as much originality as well can be in a work of its kind. For instance, in speaking of the origin of a penalty in a bond he has the following passage:—

"It will appear rather surprising, if we recur to those principles of conscience and equity which seem to have been regarded with such favour, and enforced by the ecclesiastical judges whenever an occasion presented itself in opposition to the severer rules of the common law, that the penalty inserted in a bond should have so long escaped their animadversion, and that some expedient at least should not have been attempted in order to relieve an unfortunate obligor from the full amount of penalty, at once so absurd and so unjust. It serves, however, as a proof of the contradiction and inconsistency into which men are prone to fall, merely for the sake of maintaining some favourite theory or scholastic dogma; and, in order to avoid a principle at variance with their system, adopt an evil of tenfold magnitude. Thus, the monkish scholiasts appear, for a considerable period, enamoured with the Aristotelian notion that money is naturally barren, and to make it produce money is preposterous, and contrary to its original design. These writers also fancied that the taking of usury or interest for the loan of money was hostile to the spirit of Christianity, and therefore set their faces most resolutely against it. But it was very soon discovered that, unless mankind had no other inducements to lend their money except the trouble and risk of recovering it, they would choose the safer course of keeping it in their own possession. The clerical judges, however, rather than sacrifice their theory, by fixing a moderate and unoppressive rate of interest upon borrowed capital, allowed the penalty in the bond (usually double of the sum borrowed) to be enforced against the miserable debtor, on default of paying the principal at the time agreed upon; he was thus, by ecclesiastical foresight and the decisions of the judges, preserved indeed from splitting upon the Scylla of usury; but, at the same time, he not unfrequently became engulfed in the Charybdis of their own invention." —*Goldsmith on Equity.*

One great objection to localising business, and therefore scattering the Bar, is that judges would cease to be controlled by that great moral influence which undoubtedly is at present exercised by a centralized Bar. Nothing proves this more forcibly than scenes which occasionally take place in County Courts. The nature of the general run of County Court business is certainly calculated to have a very bad effect upon the temper of everyone concerned, and it would be deplorable if all our judges became a sort of superior order of County Court judges. To show the length to which irritation is sometimes—rarely we ought perhaps to say—carried in the inferior tribunals, we direct attention to a scene in which Mr Josiah Smith, Q. C., as Judge, and Mr Garrold as advocate, were the actors. The action was brought to recover the value of a lamb, it being alleged that the defendant kept a lamb entrusted to him by the plaintiff, and substituted an inferior lamb. A question arising as to the probability of a ewe recognising its own lamb, the Judge inquired whether if a ewe were suffering from excess of milk it would not be rather glad to have any young lamb to relieve it? Witness replied in the negative, whereupon the Judge cited a case (not to be found in the books), of two cats of his own who were sworn foes until they both had kittens, whereupon in the absence of either the other took kindly to all the kittens. Mr Garrold, apparently feeling pressed by this case in point, abruptly observed: "We are talking of sheep, not cats." Subsequently the Judge referred to the two officers of the court as to the habit of ewes, and they (although not sworn) confirmed the witness; and, after hearing the defendant and his witnesses, the Judge said he considered the preponderance of evidence to be in favor of the plaintiff, and ordered the lamb in dispute to be given up. Thereupon Mr. Garrold threw the fee which the defendant had given him upon the table, saying that he declined to take a poor man's money with such

ruling from the Bench. It will be seen from the conversation which we report, that the advocate twitted the Judge with not knowing the law, with ruling ignorantly, and preventing as far as he could appeals against his decisions, and by his conduct driving the best advocates from the court. The learned Judge submitted to this abuse with a patience and forbearance simply astounding. He expressed a hope that Mr Garrold would apologise, to which the only reply was by Mr Garrold himself: "Oh, no, he won't. He is just telling the Registrar that he withdraws from all cases in which he was engaged in this court as an advocate." Looking to the small amount of provocation on the part of the Judge which produced this outburst, we can only conclude that the court is to be congratulated on Mr Garrold's announcement; but it reflects strangely on our County Court system that such a scene could possibly have thus ended without the law's representative having asserted his dignity more effectually than by a mild protest.—*Law Times.*

Two lawyers in a county court—one of whom had grey hair, and the other, though just as old a man as his learned friend, had hair which looked suspiciously black—had some altercation about a question of practice, on which the gentleman with dark hair remarked to his opponent. "A person at your time of life, sir,"—looking at the barrister's grey head—"ought to have acquired experience enough to know what is customary in such cases." "Yes, sir," was the rejoinder, "you may stare at my grey hair if you like. My hair will be grey as long as I live, and yours will be black as long as you dye."—*Law Times.*

CHANCERY AUTUMN CIRCUITS, 1874.

TORONTO.

THE HON. VICE-CHANCELLOR BLAKE.

TORONTO	Monday	November 9th.

HOME CIRCUIT.

THE HON. THE CHANCELLOR.

OWEN SOUND	Tuesday	September 29th
HAMILTON	Monday	October 5th
ST. CATHARINES	Thursday	" 15th
SIMCOE	Tuesday	" 20th
GUELPH	Friday	" 23rd
BRANTFORD	Thursday	" 29th
BARRIE	Monday	November 2nd
WHITBY	"	" 9th

WESTERN CIRCUIT.

THE HON. VICE-CHANCELLOR BLAKE.

SARNIA	Friday	September 25th
SANDWICH	Tuesday	" 29th
CHATHAM	Monday	October 5th
LONDON	Friday	" 9th
STRATFORD	Monday	" 19th
GODERICH	Friday	" 23rd
WALKERTON	Thursday	" 29th
WOODSTOCK	Tuesday	November 3rd

EASTERN CIRCUIT.

THE HON. VICE-CHANCELLOR PROUDFOOT.

LINDSAY	Tuesday	September 15th
PETERBOROUGH	Friday	" 18th
COBOURG	Wednesday	" 23rd
BELLEVILLE	Tuesday	November 10th
KINGSTON	"	" 17th
BROCKVILLE	Monday	" 23rd
CORNWALL	Thursday	" 26th
OTTAWA	Wednesday	December 2nd

AUTUMN ASSISES, 1874.

EASTERN CIRCUIT.

HON. MR. JUSTICE WILSON.

1	PEMBROKE	Tuesday	September 22nd
2	PERTH	"	" 29th
3	CORNWALL	Monday	October 5th
4	L'ORIGNAL	Wednesday	" 14th
5	OTTAWA	Monday	" 19th

MIDLAND CIRCUIT.

HON. THE CHIEF JUSTICE OF THE COMMON PLEAS.

1	NAPANEE	Monday	September 21st
2	PICTON	Thursday	" 24th
3	BELLEVILLE	Tuesday	" 29th
4	BROCKVILLE	Monday	October 12th
5	KINGSTON	Tuesday	" 20th

VICTORIA CIRCUIT.

HON. MR. JUSTICE MORRISON.

1	BRAMPTON	Tuesday	September 22nd
2	WHITBY	Monday	" 28th
3	COBOURG	"	October 5th
4	LINDSAY	Tuesday	" 13th
5	PETERBORO'	"	" 20th

BROCK CIRCUIT.

HON. MR. JUSTICE STRONG.

1	OWEN SOUND	Tuesday	September 22nd
2	STRATFORD	"	" 29th
3	WOODSTOCK	"	October 6th
4	WALKERTON	Monday	" 26th
5	GODERICH	Tuesday	November 3rd

NIAGARA CIRCUIT.

HON. MR. JUSTICE PATTERSON.

1	MILTON	Monday	September 21st
2	ST. CATHARINES	"	" 28th
3	WELLAND	Tuesday	October 6th
4	CAYUGA	"	" 13th
5	HAMILTON	Monday	" 19th

WATERLOO CIRCUIT.

HON. MR. JUSTICE GALT.

1	BARRIE	Tuesday	September 22nd
2	BERLIN	Thursday	October 1st
3	GUELPH	Tuesday	" 6th
4	BRANTFORD	Thursday	" 15th
5	SIMCOE	Tuesday	" 27th

WESTERN CIRCUIT.

HON. MR. JUSTICE GWYNNE.

1	ST. THOMAS	Tuesday	September 22nd
2	SARNIA	"	" 29th
3	SANDWICH	Monday	October 5th
4	CHATHAM	Tuesday	" 13th
5	LONDON	Wednesday	" 21st

HOME CIRCUIT.

HON. MR. JUSTICE BURTON.

1	TORONTO (Oyer and Terminer and General Gaol Delivery.)	Tuesday	Sept. 22nd
2	TORONTO (Assize and Nisi Prius.	Tuesday	Oct. 6th

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Trinity Term, 38th Victoria.

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

Angus M. Macdonald.
Frederick St. John.
John Ross.
Donald Greenfield McDonell.
David Hill Watt.
James Parkes.
Thomas B. Browning.
John Rice McLaurin (admitted and called.)
John Wright, under special Act " "

And the following gentlemen obtained Certificates of Fitness:

John Bruce.
James Parkes.
David Hill Watt.
Richard Dulmage.
John Ross.
George B. Philip.
Frederick St. John.
Thomas B. Browning
George R. Howard.

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

University Class.

Charles Wesley Peterson
John English.
George William Hewitt.
Duncan McTavish.
Donald Malcolm McIntyre.
Thomas Gibbs Blackstock.
William E. Hodgins.
Frederick Pimlott Betts.
Alfred Henry Marsh.

Junior Class.

Alexander Jackson.
Henry P. Sheppard.
Horace Comfort.
Bayard E. Sparham.
Archibald A. McNabb.
William Swayzie.
Albert O. Jeffery.
William F. Morphy.
Hamilton Ingersoll.
Albert John McGregor.
Robert D. Story.
Denis J. Downey.
Alfred Carss.
Alexander V. McClenaghan.
Charles E. Freeman.
John Hodgins.
Frederick Murphy.
George W. Hatton
Martin Scott Fraser.
Frederick W. A. G. Haultain.
William Pattison.
Roderick A. Matheson.
Charles E. S. Radcliff.

Articled Clerks.

Peter J. M. Anderson.
John H. Scougall.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. HILLYARD CAMERON,
Treasurer