DIARY FOR FEBRUARY.

1. Tues. Last day for Co. Tr. to furnish to Clks of Mu. in Coun's lists of land liable to be sold for taxes.
2. Wed. *Purification of B. V. M.* Meet. Gr. Sch. Board.
4. Fri... Exam. of Law Students for call to the Bar.
5. Sat... Exam. of Articled Clerks for certificate of fitness.
6. SUN. *5th Sunday after Epiphany.*
7. Mon. Hilary Term begins.
9. Wed. Last day for service for Co. Ct. York. Interim Exam. of Law Stnd. and Art. Clks. New T. Day, Q. B. Last day for setting down and giving notice for rehearing. New T. D., C. P.
11. Fri. . Paper Day, Q. B. New Trial Day, Common P.
12. Sat. .. Paper Day, C. P. New Trial Day, Queen's B.
13. SUN. *Septuagesima.*
14. Mon. *St. Valentine.* P. Day, Q. B. N. T. Day, C. P.
15. Tues. Paper Day, C. P. New Trial Day, Queen's B.
16. Wed. Paper Day, Q. B. New Trial Day, Common P.
17. Thur. P. D. C. P. Re-hearing Term in Chancery com.
18. Fri. . New Trial Day, Queen's Bench.
19. Sat. . Hilary Term ends. Dec. for County Ct. York.
20. SUN. *Sexagesima.*
24. Thur. *St. Matthias.*
27. SUN. *Quinquagesima.*
28. Mon. Last day for Notice of Trial County Court, York.

THE

Canada Law Journal.

FEBRUARY, 1870.

CHANCERY REFORMS.

Without at all admitting that alterations in procedure or any improvement in the official staff will work an effectual reform in our Court of Chancery, or that our system of distinct tribunals of law and equity is the best, or is, or is not capable of improvement, it is obvious enough that until organic changes are determined upon, the best must be made of the present system, so that all reforms necessary to improve details in the existing procedure should be carried out by the court, if competent for the purpose, or by the Legislature, after full examination and upon accurate knowledge of the evils and defects.

It is upon this ground that we now approach the subject of Chancery Reform. To this matter the attention of the public and the legal profession has recently been directed by discussions in the public press, resulting from a movement set on foot by a large number of the practitioners in the Court of Chancery to secure greater efficiency in the working out of the various details of the practice of that Court; but unfortunately it cannot be doubted that the lay press has approached the subject in a manner betraying too clearly on all sides the presence of a spirit not conducive to a calm or healthy consideration of a very important matter.

A large number of those doing business in the Court of Chancery have for some time past made great complaints as to the way in which the responsible duties pertaining to the various offices of that Court have been performed; and that many needless delays and much consequent expense have been occasioned to suitors, as well by reason of the shortcomings of the officers, as by the apparently unnecessary and useless routine, which has been enforced in regard to many simple but important matters of practice.

We are therefore not surprised to find that a number of the practitioners of the Court of Chancery have called the attention of the judges to the subject by a petition adopted at a meeting, and subsequently presented to the judges of the Court; and we are glad to hear that the judges have signified their intention to give due consideration to the matters complained of, and to the suggestions of the deputation who presented the petition on behalf of the meeting. We have every confidence that the judges having taken the matter in hand will address themselves to the subject with that energy and ability which has always characterised our judiciary, and that the needed reforms will be carried out so far as practicable.

As to the wording of the petition itself, the constitution of the meeting where it was discussed, and the manner in which the subject was handled at the meeting, there are many opinions, some of them not very complimentary to some of the parties concerned. But, though this may be mentioned as an incident connected with the inception of the proceedings, it is not material to our purpose further to allude to it, and we shall now proceed to discuss the chief causes of complaints referred to in the petition.

They concern—1st, the Master's office; 2nd, the Registrar's office; and 3rd, the Secretary's office. The importance of having the office of Master filled by a man of ability as well as strict integrity will be admitted by every one who is at all aware of the duties discharged by that officer. He is not a mere ministerial officer; he is a *judicial* officer. Nor are the questions disposed of by him of a trifling character. Many thousands of pounds are frequently involved in the references submitted to his judgment. He is daily called upon to hear and weigh evidence often submitted without a thorough examination, and under circumstances which render it more

than ordinarily difficult justly to estimate its value. He should be well versed in the principles which govern our court, and be prompt in the despatch of business. Without a personal knowledge of the facts we are unable to say whether the present incumbent of that office possesses all these qualifications, but a decided opinion to the contrary has been pronounced by those who ought to know, and who would naturally be reluctant to complain without good cause. It is charged that the great delays and costs of proceedings in that office are attributable to the present Master, whose advance in years has greatly impaired his usefulness; and it will be remembered that some twelve or thirteen years ago the profession addressed the Court to much the same effect as they have now, and in consequence of the action then taken by the Bar, the late Mr. Hemings was appointed taxing officer to relieve the Master of certain duties then devolving upon him. It is now urged, after a trial of many years, that the Master's office is not yet efficiently conducted, but on the contrary, that it is worse than ever.

It is also stated that the Registrar has not devoted that attention to his office which he should have given to it. Not so important as the duties of Master, the business assigned to the Registrar nevertheless calls for a good know ledge of equity, for the preparation of the decrees and orders pronounced by the Court devolves upon him; and, above all, he should be systematic and regular in the discharge of his duties. The profession practising in the Court, whilst allowing that the present Registrar possesses quite sufficient ability, contend, and apparently with some shew of fairness, that there is ground for complaint as to the manner in which this office has hitherto been conducted; and that more regularity and a more efficient system might be introduced to great advantage. The decrees and orders of the Court should be drawn up by the Registrar instead of the solicitors or counsel engaged in the causes as at present. There is no system observed in delivering papers which have been in the hands of the judges for the preparation of their judgment; briefs, deeds, evidences, and exhibits (which are not filed in Chancery as they are in Common Law Courts), are handed out to the first applicant, and in this way we have heard of many valuable deeds and papers going astray. There is no record kept of judgments as delivered; and the judgments when delivered are not preserved in any regular manner.

Perhaps the cause of complaint most frequently urged is against the needless difficulties thrown in the way of suitors and others entitled to moneys at their credit in the Court. It is impossible to get money out of Court within two or three days, or sometimes weeks from the first application for it, even after the decree or order has been pronounced for its payment. The decree has to be drawn, settled, passed, stamped, signed, entered, examined, issued, then entered in the ledger; after which the cheque is drawn, stamped, signed by the ledger keeper, then by the Registrar, and finally by a judge. Each of whom are required to make an examination into the account, and to have a full explanation; frequently there is difficulty in finding some of these disengaged (if in town), so as to receive explanations, and the delays consequent upon this routine are certainly trying to the unfortunate man who is kept waiting for his own. All this delay and consequent expense is unreasonable; one competent person should be appointed (from whom satisfactory security might be required), whose duty it should be to see to the payment out of court of moneys to the person entitled to the same, and there should be no more delay or trouble in securing money in court than if it were deposited in the bank in the ordinary way. With an officer who can be trusted, what object is there in requiring more than his signature, and what necessity is there to trouble our over-tasked judges with this detail of practice.

The objection urged against the Secretary's office is solely against the principle, that the judgment is pronounced by a judge who has not heard the argument, but only so much of it as can be remembered, retailed and diluted by the Secretary, before whom the case or question has been argued. It is but seldom that the Secretary can see a judge upon the same day upon which the case was argued. Frequently a week elapses, and sometimes several weeks intervenes before the judge can hear what the Secretary's memory will enable him to repeat of the views argued before him. Even with the present painstaking Secretary such a system must work much injustice.

In England, where the Judges Secretary disposes of questions of practice, it is the invariable rule that he submits the same to the

judge as soon after the argument, on the *same day*, as he is able to wait upon him; and the former will not hear cases except upon a day on which he can see the judge and submit the argument for his decision.

We should be glad, either to see such a system adopted in this country, or to have power conferred upon the Judges Secretary to dispose of questions argued before him, giving him jurisdiction analogous to that of the Clerk of the Court of Queen's Bench in Common Law Chambers, and if necessary with somewhat the same restrictions; and thus a vast number of applications might be disposed of promptly, which are now delayed to await the convenience of a judge.

Coming from such authority, these important complaints deserve the attention of the judges; and the charges preferred against the officers of the court call for some action on the part of the government. We think it would not be unwise in the government to appoint a commission of competent men, who could enquire into all the facts and offer their suggestions as to any changes they might deem advisable, either in the systems pursued in the various offices, or in the officials having charge of the same.

No doubt much care would be required in the selection of the commissioner or commissioners—knowledge, ability and freedom from prejudice or irregular influences would be necessary. But the government may very well be trusted with this selection, and we doubt not it would be made with a single eye to the public good.

COMMON LAW CHAMBERS.

The rules required to bring into full operation the recent Act of the Local Legislature were promulgated during Hilary Term.

These rules are founded on the English rules provided for a similar statute, but give the Clerk of the Queen's Bench somewhat more extended powers than are held by the officer holding the analogous position in England. By these rules the Clerk here has, in the cases excepted from his adjudication, power to grant summonses (except only when the liberty of the subject is concerned), whilst in England he would not. The rules do not exempt proceedings under the Municipal Act to contest the validity of elections, though in such cases the decision is final and conclusive, and there would seem to be as much reason for excepting cases of this kind as some others, for example, referring causes under the Common Law Procedure Act. Such matters as appeals in insolvency and the removal of causes from inferior courts are, we presume, excepted, as the effect would otherwise be to give the Clerk appellate jurisdiction over the County judges. Our present inclination, however, would not be to see the powers of the officer presiding in Chambers curtailed, but rather the reverse, provided always that the appointment is, from time to time, made with special reference to the duties assigned under the new system, for we can well fancy, that there will be occasionally some inconvenience felt by the same person not having jurisdiction in one case as well as another. Whether we may always expect a person in the position of Clerk of the Queen's Bench as capable of filling the new quasi judicial position as the present clerk is another matter. But the rules are intended, not for the present only, but to meet future contingencies as well.

We had hoped to have seen some provision made in the rules for fees to counsel on arguments in Chambers. We know of no case where the injustice of the present tariffs is so apparent as here. The fees for business in Chancery Chambers are nearly double those taxable for similar services on the Common Law side, and we do not hear that the former are too large; and if there is reason for asking an increase in the "west wing," there is, at least in this respect, twice the reason for an increase in Common Law Chambers.

Something ought to be done, and if necessary the matter should be brought formally before the judges by those interested—and the interested parties are not merely the town agents, but country practitioners in general; for although agents think it worth while to do a vast deal of work for the niggardly pittance allowed by the present tariff, they occasionally make a charge somewhat in proportion to the labour, time, talents or experience, as the case may be, devoted to the case entrusted to them—which fees, however, very generally come out of the pockets of their country principal. There is no reason why a proper fee should not be allowed to counsel arguing a case before one judge, as well as when the same person argues a no more difficult case before two or three judges. The remarks of Mr. Justice Galt, in the late case of *Royal Canadian Bank*

v. *Matheson* (*ante*, p. 9) are in point here, and have as much general application as they had special application in the case then before him. It may be said that a judge has a right to give a *fiat* for a counsel fee in special cases, but this is seldom asked for and seldom given; and it is unpleasant to ask, and no person should be required to crave as a favor that which he should receive as a matter of right.

The rules as read in court are as follows:—

REGULÆ GENERALES.

As to the jurisdiction of the Clerk of the Crown and Pleas of the Court of Queen's Bench.

Hilary Term, A.D., 1870.

Whereas, by the statute made and passed in the session of the Legislature of Ontario, held in the 33rd year of the reign of Her Majesty, intituled, "An Act respecting proceedings in Judge's Chambers, and Common Law:" it is enacted that it shall and may be lawful for a majority of all the Judges of the said courts, which majority shall include the two Chief Justices, or one of the Chief Justices and the senior of the Puisne Judges of the Superior Courts of Common Law, from time to time, to make and publish general rules for certain purposes therein mentioned:

It is therefore ordered, that the Clerk of the Crown and Pleas of the Court of Queen's Bench be, and is hereby empowered and required to do all such things, and transact all such business, and exercise all such authority and jurisdiction in respect of the same, as by virtue of any statute or custom, or by the rules and practice of the said courts, or any of them respectively, were at the time of the passing of the said Act, and are now done, transacted or exercised by any judge of the said courts sitting at Chambers, except in respect of matters relating to the liberty of the subject, and to prohibitions and injunctions, and except (unless by consent of the parties) in respect of the following proceedings and matters, that is to say:—

All matters relating to criminal proceedings.

The removal of causes from inferior courts other than the removal of judgments for the purpose of having execution.

The referring of causes under the Common Law Procedure Act.

Revising taxation of costs.

Staying proceedings after verdict.

Appeals in insolvency.

In all such excepted matters, not being matters relating to the liberty of the subject, the said Clerk may issue a summons returnable before a judge.

That in case any matter shall appear to the said Clerk of the Crown to be proper for the decision of a judge, the Clerk may refer the same to a judge, and the judge may either dispose of the matter, or refer the same back to the Clerk with such directions as he may think fit.

That appeals from the clerk's order or decision shall be made by summons, such summons to be taken, and within four days' after the decision complained of, or such further time, as may be allowed by a judge or the said clerk.

The appeal to be no stay unless so ordered by a judge or the said Clerk.

The costs of such appeal shall be in the discretion of the judge.

That the scale of costs for all matters done by and before the Clerk, shall be the same as are fixed for business done by and before the judges.

That the same fees shall be taken in respect of business transacted before the said clerk a, Chambers as are now taken when the same business is transacted before a judge.

That these Rules take effect on the 21st day of February, A.D. 1870.

LAW SOCIETY—HILARY TERM, 1870.

The following is the result of the late examinations, for calls to the bar and admission as attorneys:—

CALLS TO THE BAR.

A. H. Macdonald and R. Oliver, Guelph; P. Ferguson, Walkerton; John Barry, Hamilton; J. McDougall, Toronto; J. H. Ferguson, London; T. D. Delamere, B. A. Toronto; J. N. Kirchhoffer, Port Hope; A. J. Matheson, Toronto; John Cameron, B.A. London; — Hall, Guelph; F. C. Denison, Toronto; G. Green, and T. G. C. Green, Toronto; and Mr. H. J. Larkin, of the Lower Canada Bar.

ATTORNEYS ADMITTED.

C. W. Matheson, Simcoe; F. G. A. Henderson, Belleville, and H. E. Nelles, London, equal; Jno. Shaw, Toronto; J. N. Kirchhoffer, Port Hope; T. J. C. Green, Toronto; A. J. Matheson, F. C. Denson, J. McDougall, Toronto; T. G. Fennell, Bradford; F. W. Lally, Barrie; W. H. Nash, London; D. Junor, St. Mary's; Alfred Frost, Owen Sound.

Mr. Macdonald and Mr. Matheson were passed without being required to undergo any oral examination. We understand that the standard of marks for this purpose has been increased this Term from two-thirds to three-fourths.

OVERHOLDING TENANTS.

We publish in another place a judgment given by Mr. Hughes, Judge of the County Court of Elgin, under the Overholding Tenants Acts, which decides a point of interest.

This decision is at variance with the dictum of Judge Logie, County Judge of Wentworth, in *Nash* v. *Sharp*, 5 C. L. J., N. S., 73, though the latter case went off on another point than that expressly decided in *Re Sutton* v. *Bancroft*, to which we now refer.

A careful reading of the late Act in connection with the former statutes and decisions thereon would seem to shew that the construction placed upon the Act by Judge Hughes is the correct one.

NEW WORK ON REAL PROPERTY.

We understand that within three months, Mr. Leith will publish an edition of a leading English text book for students, on Real Property, adapted to the laws of Ontario. This will be a valuable addition to the works already given to the profession by the learned author, and will be gladly welcomed.

SELECTIONS.

THE JUDICIAL SYSTEM OF FRANCE.

France with a population of 37,000,000, is divided into 86 departments; each department is divided into districts, or, as they are called, arrondissements, of which there are 363, in each of which is a court, known as the Tribunal of First Instance, making 363 of these courts.

Each district is divided into cantons, of which there are 2847, each canton into communes or parishes, of which there are 36,819. In each canton there is a justice of the peace, who decides summarily, without the intervention of attorneys, all matters in contests of small importance, and has jurisdiction in criminal matters where the fine imposed does not exceed fifteen francs ($3), or where the imprisonment is for five days or less. The Tribunal of Justice of the Peace also acts with the consent of parties as a court of conciliation. There are 2847 justices of the peace. They are all salaried officers, and are professional men. The maires of communes also exercise, it would seem, some judicial authority. The appeal from the decision of the Tribunal of the Justice of the Peace, is to the Tribunal of the First Instance of the district.

Tribunals of First Instance.

The Tribunal of the First Instance is composed of from three to twelve judges, according to the population of the district. If the court has seven or more judges, is divided into two chambers, one of which has charge of criminal and the other of civil matters.

If the court has twelve judges, it is divided into three chambers, two civil and one criminal. The Tribunal of First Instance at Paris being very large it is divided into ten chambers. It has one procureur imperial, or attorney-general, with twenty-two deputies, and one registrar, with forty-two deputies.

The concurrence of *three* judges of a chamber, in this court in civil cases, and of *five* in criminal cases, is necessary for a decision.

One of the judges of this tribunal is appointed to act in the district for three years as a judge of criminal instruction. There is usually one to every criminal chamber, and attached to the Paris Tribunal of First Instance there are eleven. This judge, in conjunction with the procureur imperial (district attorney), examines every case of criminal accusation, and makes his report once a week to the criminal chamber of the Tribunal of First Instance, and that body, which must be composed of at least five judges, decides whether the party accused shall be discharged or not. If they decide that he shall not be discharged, they send the case to the criminal chamber of the Court of Appeal of the jurisdiction for further examination, and if that body think that a crime has been committed, and that it is of sufficient gravity, they send the case to the Court of Assize of the department to be tried by a jury.

The decisions of the Tribunals of First Instance are reviewable in the Court of Appeal of the jurisdiction.

The judges are appointed for life.

Courts of Appeal.

There are twenty-seven Courts of Appeal in France, now called Imperial Courts, each of which takes its name from the city or place where it is established. Each court is divided into chambers, corresponding usually with the number of departments over which the court has jurisdiction; so that in the twenty-seven courts, there are eighty-six chambers, that being the number of the departments in France.

Each Court of Appeal is composed of at least twenty-four judges, who are called counsellors, and is usually divided into three chambers, one having cognizance of civil cases, one of criminal accusations, and the other of appeals in police matters. In the civil chamber, seven judges must concur in a decision, and in the chamber of accusation, five. There is one general president, and a president for each chamber, who is selected by the judges of that chamber.

The Court of Appeal in Paris has six chambers, a first president, six presidents of chambers and fifty-nine judges.

In important matters, such as questions of state, or very difficult questions, two chambers, where there are more than one, are united and the decision must be concurred in by fourteen judges. This is termed the solemn hearing, and is called by the first president of his own motion or by him, upon the request of one of the chambers, in a matter which they deem of sufficient importance.

The appeal from this court is to the Court of Cassation, and must be brought within three months.

The judges are all appointed for life, but may retire or be retired upon a pension after thirty years' service, or in the event of permanent infirmity.

Court of Assize.

There is also a Court of Assize, composed of judges of the Court of Appeal in each department (or eighty-six in all), for the trial of criminal cases with a jury. Where the seat of the Court of Appeal is within the department, the Court of Assise of the department is held by three of the judges of the Court of Appeal, the senior judge being president, and when such is not the case the Court of Assize is held by one judge of the Court of Appeal, and two judges of the Tribunal of First Instance of the district where the Court of Assize is held; the judge of the Court of Appeal being president.

The Court of Assize is held every three months, usually at the chief town of the department. The one in Paris is held twice every month. The trial is public; the jury is composed of twelve; they pass only upon the facts, and a verdict by the majority is sufficient. The appeal from the judgment of the Court of Assize is to the Court of Cassation, and must be brought within three days.

Tribunals of Commerce.

There are in all the commercial towns and cities in France what are known as Tribunals of Commerce. The number or the locality of these courts is not fixed by law, but is determined by the government, according to the exigencies of each locality. This court takes cognizance only of disputes and transactions between merchants, tradesmen, bankers, or of matters connected with trade or commerce, in which is included bankruptcy. It is composed of a president, of judges and of supplemental judges. The number of the judges must not be less than two nor more than fourteen. The number of the supplemental judges is in proportion to the exigency of the public service. The number of each in each tribunal is fixed by a government regulation. The judges of this tribunal serve for two years, without compensation, and are elected by an assembly of the most eminent commercial men within the district, the list of electors being prepared by the prefect of the department, and approved by the minister of the interior. Any commercial man thirty years of age, who has exercised his calling with honor and distinction for five years, may be elected either as a judge or a supplemental judge. The president must be forty years of age, and be chosen from among those who has served as judges. Three judges, at least, must concur in a decision. If the amount involved is under 1500 francs ($300) there is no appeal, nor in any matter, if the parties give their consent to abide by the decision without appeal. In all other cases an appeal lies to the Court of Appeal within the jurisdiction, and takes priority in the court over other appeals.

In the Tribunal of Commerce in Paris, there were in the year 1853, 51,042 cases, of which 35,257 went by default, 10,465 were put at issue, 2663 were concillated, and 1985 were withdrawn. This tribunal has a general president, ten judges and sixteen supplemental judges. It is in session every day throughout the year except Sundays, and is one of the most useful courts in France.

Court of Prudhommes.

(A Mechanic's or Workingman's Court.)

There is in the cities of Paris and Lyons, and in some of the other cities, a court called *The Court of Prudhommes* (literally good and true men, but meaning in this connection men well versed in some art or trade). It takes cognizance of all contests between manufacturers or master workmen, and their workmen and apprentices. It acts first as a court of conciliation, and if that fails, it has jurisdiction to the amount of 200 francs ($40), without appeal, and jurisdiction to any amount subject to appeal to the Tribunal of Commerce if there is one in the district, and if not to the Tribunal of First Instance.

This Court of Prudhommes consists of a council composed of master-workmen or manufacturers, and of foremen, being six of each, equally balanced; one-half of each of which go out every two years, but are re-eligible. They are elected by the members of their respective classes. To them is added a president, and two vice-presidents, appointed by the sovereign for three years, but who are re-eligible.

This is a very practical and most useful tribunal. It sits every day except Sunday, decides cases with great dispatch, with little expense, and generally to the satisfaction of both parties. They are usually settled by conciliation. There are in the Paris Tribunal about 4000 cases in the year, two-thirds of them relating to wages. The judgments seldom exceed one hundred annually, and appeals are rare.

Court of Accounts.

The next court is the Court of Accounts. It is a court of exchequer, before which com-

matters relating to the public expenditures, all fiscal mstters, claims against government, the administration of poor-houses, hospitals, public charities, &c. It has a first president, three presidents, eighteen counsellors, or masters of account, and eighty referees, divided into two classes, a registrar and deputies and three chambers, each of which has separate duties. The appeal from this court is to the Council of State.

Court of Cassation.

The last and highest of the permanent courts of France, is the Court of Cassation. It is composed of fifty judges, called counsellors, and is divided into three chambers, one of request (matters arising upon petition), one civil, and one criminal and police. It has a first president and three presidents of chambers.

It is the final appellate court from all intermediate tribunals of last resort, such as the Courts of Appeal.

An appeal to it must be brought within *three* months after the judgment appealed from was rendered.

It does not, as the Courts of Appeal do, review the merits, but as its name imports, breaks the judgment, if the forms of procedure have been violated, or the judgment is founded upon an erroneous interpretation of the law, and sends the case back for another hearing, usually to a different tribunal, but one of the same rank, as the one that first decided it. The court to which it is sent, is not, as our inferior courts are, bound by the interpretation given to the law by the higher tribunal, but may make the same decision as the former tribunal, if it thinks that the decision of the Court of Cassation was erroneous, though, of course, great deference is paid to the opinion of the higher tribunal. Instances have occurred in which three different courts of appeal rendered the same judgment notwithstanding it had been twice declared by the Court of Cassation to be erroneous. Where such is the case, the question is no longer agitated, but the government (the Corps Legislatif), with the sanction of the emperor, makes a decree declaratory of the law, which is binding thereafter upon all judicial tribunals.

The applicant must deposit 250 francs ($30), which he forfeits to the other party if he fails, and is sentenced in addition to pay 300 francs ($60), to the state.

No chamber of the Court of Cassation can give judgment unless it is composed of seven judges, including the president.

Each chamber appoints its own president, and five members go out of each chamber every six months, but not until they have finished all the matters heard before them. The Civil Chambers sit every week day except during the months of September and October; the Criminal continuously throught the year, and the session is four hours a day.

In great or very important cases, the three chambers are called together by the first president of his own motion or upon the request of one of the chambers. The judges are robed in scarlet upon the occasion, and when they come together it is the most imposing and dignified judicial body in the world.

The judges of the Court of Cassation are appointed for life, and are retired in the same manner as the judges of the Courts of Appeal.

High Courts of Justice.

The highest court in Frauce is the High Court of Justice, which assembles only when an imperial decree is issued for its convocation for the trial of offences against the life of the sovereign or the safety of the state. It is composed of five judges and five supplementary judges, chosen from the judges of the Court of Cassation, and of a jury of thirty-six chosen from the members of the councils general of the departments. The judges and the jury are appointed annually by the sovereign.

The foregoing is a concise but accurate and full statement of the whole judicial organization of France. It does not however embrace any changes that may have been made during the past ten years, as the writer has not had facilities for ascertaining what laws or decrees have been enacted within that period. It may be added that the civil judicial organization of France is regarded as very perfect, and that the jurists of no country have done more to advance the science of jurisprudence. —C. P. D.—*The American Law Register.*

MANSLAUGHTER.

The Coroner's Inquest upon the body of the Welsh fasting girl, as she has been popularly styled, has ended in the committal of her father upon a charge of manslaughter. It is said the Treasury have taken the matter into their own hands, and as the case is pending we shall abstain from discussing its merits. But there can be no harm in indicating the kind of legal questions which must arise in such a case, and they are of rather a curious kind, bearing somewhat upon that most perplexed subject, the legal doctrines of causation.

The parents of the girl, and apparently the girl herself had long publicly maintained that she lived without food. This representation was naturally received with some incredulity, and at last a sort of vigilance committee was formed to watch the case, with a staff of doctors and nurses acting in concert with them. The vigilance party, with the full consent of the girl's father, took her entirely in charge, and kept a rigid watch and ward over her. They were most willing that she should have any amount of food, provided she or her father asked for it, but she should have none on the sly. The father, and it would seem the girl herself as long as she was in a condition to exercise a choice, were determined not to ask.

for food; though they were quite anxious that food should be had, but only on the sly; and between the two parties the girl died.

It is somewhat as if she had been lying in a room with two doors, a front door and a back. A. locks the back door, but would admit any amount of food by the front. B. bars the front door, but tries his best to smuggle food in by the back. Between them the patient dies. Who killed her, A. who locked the back door, or B. who barred the front? If that were all, it would be difficult to say, that either did so singly. And, therefore, so far, the jury were probably right in acquitting the doctors, nurses, and the rest of any criminal liability. But in the actual case, B., who represents the father, not only barred the front door, but was also a consenting party to the locking of the back, trusting, it would seem, to his own ingenuity to evade the vigilance of his rivals and open the door on the sly. And upon this ground the jury may have been right in their finding against the father.

There is another possible view of the case however. It may be said that both parties combined to carry on a contest of wits, a sort of game of chess, over the girl, which was from the first manifestly likely to result in her death, and which, in fact, it did do. If it be maintainable that those concerned were upon this ground guilty of manslaughter, which we by no means say is the case, then it seems to follow that both parties to the contest are in the same position, and both or neither ought to be indicted.—*The Solicitors' Journal & Reporter.*

RIGHTS OF THE PROFESSION.

Lawyers have rights for which they pay dearly, but which are sometimes ignored. The persons who pass by the name of agents or "clerks" often do the work that it is the entire privilege of the lawyers to do. We are happy to say that at last something is being done to protect the profession. Elsewhere we publish section 70 of the new Bankruptcy Act, which forbids any persons but barristers and solicitors to practise in the court, and an order of the Worship Street Police Court, forbidding any persons but barristers and solicitors, and, under certain circumstances, articled clerks, from practising. These are steps in the right direction. Will not county court judges lend their aid to this reform? In county courts agents, instead of lawyers, appear, and not only defraud the profession but waste the time of the judge and do injury to their clients. Surely the county court judges might do something to discountenance this practice, if, indeed, they have not the power to put an immediate and entire stop to it.—*The Law Journal.*

ONTARIO REPORTS

PRACTICE COURT.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law.)*

Edwards et al. v. Bennett.

Ejectment—Defendant retaking possession.

Under the circumstances set out below a new writ of *hab. fac. pos.* (the first having been executed and returned) was refused. *Wilson* v. *Chanton*, 6 L. T., N. S., 255, followed.

[Practice Court, Michaelmas Term, 1869.]

Osler, obtained a rule *nisi* last Term, upon the 19th November, calling upon Henry Bennett and James Erwin, to shew cause why an order should not be made on them to leave or give up possession of the east half of Lot No. 23, in the 2nd Concession of the Township of Woodhouse, and to restore the possession thereof to the plaintiffs, and why a writ of attachment should not issue against them, for having *illegally re-entered on the said lot against the plaintiffs' will*, directly after the Sheriff had ejected them under the process of the court.

The affidavits in support of the motion stated that a judgment for want of appearance had been obtained against the above defendant, Henry Bennett, at the suit of the above plaintiffs, in September, 1868: that thereupon a writ of *hab. fac. pos.* was issued upon the 21st July, 1869: that this writ was fully executed by the sheriff upon the 24th July, 1869, by the sheriff removing Mary Bennett and James Erwin, her son by a former marriage, and his brothers and sisters, Mary Bennett having after the decease of her first husband married the defendant Henry Bennett, who at the time of the commencement of the action of ejectment was not living on the premises; and by his nailing up the door and window and giving possession to one Davis, who resided on the adjoining lot, in the west half of the same lot. The affidavit of Davis which was also filed upon the motion stated that the writ having been executed on Thursday the 24th of July in the above manner, he observed smoke issuing from the chimney of the house on the following Tuesday, and that upon going to the house he found Mary Bennett and her son James Erwin in possession, and he suggested that Mary Bennett only could have got possession by striking off the board which had been nailed across the window. There was no allegation of any forcible taking possession, or any expulsion of Davis from his possession, nor was it stated that he in fact was in visible occupation. It appeared further that the writ had been duly returned by the sheriff as fully executed by him on the said 24th July.

J. A. Boyd, shewed cause, and filed affidavits of Mary Bennett and James Erwin, wherein it was sworn that Thomas Erwin, the father of James Erwin and the first husband of Mary Bennett, about twelve years ago died seised in possession of the premises in question, of which he had and retained undisputed possession for seventeen years or thereabouts before his death: that he died intestate, whereupon his estate and

seisin in the premises descended to James Erwin and his brothers and sisters, of whom there were several as his heirs at law: that five or six months before the action of ejectment was brought against Henry Bennett, he had deserted Mary Bennett, whom he had married, and had left the premises: that when the action of ejectment was commenced, James Erwin was absent from home and knew nothing of it: that the sheriff who served the writ of ejectment upon Mary Bennett told her that the paper served was of no consequence to her, that it was not intended to disturb her or her children, and that she need give herself no uneasiness about it, and that accordingly she did not. The affidavits further stated that after the eviction by the sheriff, James Erwin, having taken legal advice, and in right of his title as a co-heir of his father, and finding the premises unoccupied and the door of the house unlocked, re-took possession, and took his mother and the rest of the family into the house, claiming title through Thomas Erwin, who, as stated above, died seised thereof.

Gwynne, J.—From the facts shewn it appears that the parties against whom this application is made assert no claim whatever through the defendant in the writ of ejectment, but wholly independent of him, under right of the father of James Erwin, who as it is said died seised in possession of the premises. Neither the rule nor the affidavits filed in support thereof allege any *forcible* taking possession of the premises—or any expulsion of any person in possession, on behalf of the plaintiff, nor any actual interference with or disturbance of the officer of the court in the execution of the writ, which has been returned as fully executed.

I find no case which under these circumstances would at all warrant me in making this rule absolute in the whole or in part.

In *Thompson* v. *Mirehouse*, 2 Dowl. 200, the affidavit upon which the motion, which was for a new writ of *hab. fac. pos.* was made, stated that the sheriff's officer had been turned out of possession of the premises before he could deliver it to the lessor of the plaintiff and that the deponent believed the parties committing the violence were combining with the defendant in order to prevent possession being delivered, but the court held it to be indispensably necessary that the defendant in the ejectment should be connected with the dispossession. In *Pitcher* v. *Roe*, 9 Dowl. 971, which appears to go further than any other case, it was the *defendant* in the ejectment against whom the motion was made and who in the night of the same day that he was dispossessed, re-entered and took *forcible* possession of the premises. In *Lloyd* v. *Roe*, 2 Dowl. P. C. N. S 407, the motion was for a fresh writ of *hab. fac. pos.*, upon a judgment obtained against the casual ejector, to eject the tenants in possession, and who if the action had been defended, would have been the *defendants*, and who, a few days after they had been ejected under the writ of *hab. fac. pos.* obtained upon the judgment against the casual ejector, came again *and forcibly expelled* the plaintiff's agent, who was in visible occupation and took possession again. In *McDermott* v. *McDermott*, 4 Prac. Rep. 252, a similar rule to the present was discharged, although it was the *defendant* in the ejectment who, about three weeks after he had been dispossessed, returned and re-took possession, the door being locked and nailed up as was done here. But the case of *Wilson* v. *Chanton, et al*, reported in L. T. N. S. 255, and (as *Wilson* v. *Chartier*) in 10 W. R. 546, decided by the full court, appears to me to settle the point, and greater weight must be attributed to this decision being that of the full court, than to any of the cases decided by a single judge in the Bail Court. In that case the sheriff had on the 1st February, 1862, given possession of the premises to the plaintiff under a writ of *hab fac. pos.*, issued upon a judgment obtained against the defendants. The plaintiff so put in possession retained possession until the 7th April following, when, the writ having been returned, two of the *defendants* in the ejectment *forcibly re-took* possession from the plaintiff of two cottages from which they had been evicted. Upon an affidavit of these facts, a motion similar to that which has been made in this case, was made upon the 26th of the same month of April. Wilde, B. says—"After the writ of *habere facias possessionem* was returned, the court as to that suit is *functus officio*." Pollock, C B. says—"The application is entirely novel, I never recollect a similar one. Put the case of an action of detinue for a chattel, the plaintiff recovers and the article is delivered up to him, but afterwards the defendant again gets possession, the court could not summarily interfere to enforce its re-delivery." And Wilde, B. says—"There has been no interference with the sheriff's officer, and consequently no contempt of court—the writ for delivering possession had been executed, and its execution certified to the court and the whole thing completed; the power of the court was then at an end. If the plaintiff has a right to this rule, I do not see why he should not be able to obtain one at the end of twelve months, or even two years after a defendant may have re-entered into possession." And the rule was refused.

The case before me is even stronger than that, when we see what is contained in the affidavits in reply. According to the plaintiff's own shewing, the writ was fully executed, and returned as executed on the 24th July. There is no allegation of any *forcible* taking of possession or any expulsion of any person in actual occupation for the plaintiffs, and now by the affidavits in reply, it appears that James Erwin who was in no sense a party to the action of ejectment in which the judgment was obtained whereon the writ of *hab. fac pos.* issued, and who has no connection in title whatever with the defendant in that action, but utterly repudiating all such connection and all title having ever been in that defendant, and in his own right as heir of his father, who as he says died seised of the premises, enters in assertion of that title, expelling no body, and takes with him his brothers and sisters, who according to his contention are co-heirs with him, and also his mother who has no estate in the premises except as entitled to dower thereout.

The rule must be discharged with costs.

Rule discharged with costs.

COMMON LAW CHAMBERS.

Regina v. Reiffenstein.

Extent—Commission to find debts—Affidavit of danger—Felony and civil remedy.

Held, 1. That a debt whereon to found a writ of extent may be found on inquisition without *vivâ voce* testimony.

2. That an affidavit of danger is sufficient if it satisfy the judge to whom the application for a fiat for a writ of extent is made, that there is danger that the debt will be lost if immediate remedy is not granted.

3. That it is not an irregularity, that an inquisition finds that the defendant was a debtor to the crown on the 20th of July, the inquisition being filed and a writ of extent issuing on the 21st July.

4. That the rule which prevents a civil remedy being taken whilst the prosecution for the felony which is the foundation of the action is not concluded, does not apply where the Crown, and not a private person, is the plaintiff.

[Chambers, December 30th, 1870.]

This was an application to set aside a writ of extent.

On the 17th July last, a commission to find debts against the defendant, a clerk in the office of the Receiver-General, was issued from the Court of Queen's Bench, on a fiat of the Chief Justice of the Common Pleas, founded on an affidavit of John Langton, auditor of public accounts, who stated the fact of the indebtedness; but no *vivâ voce* testimony was taken by the commissioners, who acted on this affidavit alone.

The commission with the finding of the debt by the commissioners and jury thereon endorsed, was returned and filed on the 21st of July, when, on reading the commission, inquisition and affidavit of danger, a writ of extent was by *fiat* of a judge taken out, directed to the sheriff of the county of Carleton.

The affidavit of danger, filed on the application for the *fiat*, was made by Mr. Langton, as follows:—

"That I was the auditor of the public accounts of the late Province of Canada for many years immediately before the establishment of the Dominion: that I have been the auditor of the public accounts of the said Dominion ever since its establishment, and that I have a personal knowledge of the facts hereinafter mentioned and contained:

That one George C. Reiffenstein, was for many years, and up to the establishment of the said Dominion, a clerk in the department of the Receiver-General of the said late Province: that he has been ever since the establishment of the said Dominion up to the twenty-sixth day of June now last past, a clerk in the department of the Receiver-General of the said Dominion, and that a portion of his duties, as such clerk, was the superintendent of the distribution of the municipalities fund of Upper Canada:

That it has been up to this time ascertained on investigation of the accounts of the said George C. Reiffenstein, that he has, during the period he has been so acting as such clerk as aforesaid, from time to time, fraudulently misappropriated divers large sums of money which belonged to the government of the said late Province, and the said Dominion respectively; the whole or considerable portions of which said sums of money he fraudulently converted to his own use; such several sums of money amounting, in the whole, to the sum of twenty-two thousand dollars or thereabouts, and that he, the said George C. Reiffenstein, is now a defaulter and indebted to the government in that amount:

That the said George C. Reiffenstein is at present in custody in the common gaol of the said county of Carleton, in respect of the fraudulent misappropriation aforesaid, and criminial proceedings are now being taken against him therefor:

And lastly, that I am informed and do verily believe, that the said George C. Reiffenstein is possessed of monies and other property within the said county of Carleton; and that it is desirable that an immediate writ of extent should issue on behalf of the Crown to attach such monies and other property; and I verily believe, that unless such writ of extent do issue forthwith there is danger of the said monies and other property being made away with and entirely lost to the government of the said Dominion, and of the claim of the crown for the monies so misappropriated as aforesaid being thus defeated."

The return to the commission to find debts, as well as the writ of extent alleged that the defendant became a debtor of record to the Crown on the 20th July, 1869.

On the 25th November, the writ of extent was returned and filed with the sheriff's return thereto. Mrs. Reiffenstein, wife of the defendant, subsequently appeared and claimed part of the property, real and personal, seized under the extent.

O'Brien, on filing verified copies of the papers above referred to, obtained a summons calling on the Attorney-General for the Dominion to shew cause why the said writ of extent herein, and all proceedings had thereunder, should not be set aside on the following grounds:—

1. That the requisition to find debts was taken on the affidavit of John Langton only, the said John Langton not being present upon said inquisition, nor any evidence of any witness being taken *vivâ voce*.

2. That the writ issued without any affidavit of insolvency or other affidavit sufficient to shew grounds according to the practice.

3. That the writ of extent misstated the day that the defendant became a debtor of record, the inquisition to find debts not having been returned and filed until 21st July, whereas the writ states him to have been a debtor of record on the 20th July.

4. That the affidavits on which the said writ issued charged that a felony was committed, so that no writ could issue to find debts, or debts be found or enforced which were the subject of the felony, until the prosecution of the defendant to conviction for the felony; or why all proceedings herein should not be stayed until the fifth day of next term &c.

R. A. Harrison, Q.C., shewed cause, and took the following preliminary objections:—

That the original writ was not before the court, and on this ground alone the application must be discharged. It would not suffice to put in a copy, as the defendant had done in this instance: *Manning's* Exch. Prac. 114; *King* v. *Mallett*, 1 Price 395.

The application is too late. A motion to set aside a proceeding for irregularity must be made promptly. The extent was issued on the 22nd

of July, and this summons was taken out on the 29th of December. In the meantime Georgina Reiffenstein had appeared to the writ, and claimed the property, and had asked time to plead, and the defendant had been represented on the trial of the claims of Mrs. Reiffenstein, and he must be barred by such delay and waiver: *Manning's* Exch. Prac. 114.

The motion should have been to set aside the *fiat* of the judge on which the extent issued. So long as the *fiat* stood, the writ must stand: *Rex* v. *Rippon*, 3 Price 38.

As to the grounds taken in the summons he contended:—

1. That even if evidence by affidavit be insufficient, that is no ground to set aside the *extent*. By the practice an affidavit is sufficient to find the debt: *West* on Extents 22; and *Reg.* v. *Ryle*, 9 M. & W. 227, is a direct authority in its favor.

2. The affidavit of danger was sufficient in the opinion of the judge who granted the *fiat*, and that is all that is necessary, and this *fiat* is not moved against. But the affidavit is sufficient according to the practice: *Man.* Ex. Prac. 11, 262.

3. If the date is not properly stated, the defendant may plead to that effect. But it is sufficient to say that there was a debt at the time of the investigation.

4. The reason for the rule on which this objection is founded does not apply where the Crown is concerned, and in any case it is no reason for setting aside the proceedings.

J. H. Cameron, Q C (*O'Brien* with him), supported the summons.

As to the preliminary objections: The case in *Price* proves nothing, as apparently there was not even a copy of the writ before the court. The objections go to the ground-work of the writ, and the motion is therefore not too late. It is not necessary to move against the *fiat* as that stands, and if this writ is set aside a new extent can issue on the same *fiat*.

As to the grounds in the summons:—

1. The alleged practice is objectionable and should not be followed, and the cases authorising it should be reviewed by the full court, and both in *Manning* and *West* the practice is remarked upon as one which "no lapse of time can legalise."

2. Not only must insolvency be shewn, but also the facts which establish it must be set out: *West* on Extents 51; *Man.* Exch. Prac. 12.

3. The mistake of the day appears on the face of the writ, and there is a manifest false statement on record; and this may be of great importance to third parties whose rights may be interfered with by such error. The inquisition only shews that the defendant had lands when he was *not* a debtor to the Crown.

4. The prosecution for the felony should be concluded before the civil action is gone on with, and the same rule should apply in Crown as in other cases.

It was also urged that if there was any doubt on the points taken it would be proper to let the matter stand till Term, especially as all the defendant's property was under seizure.

Galt, J.—I shall speak of each point as it appears on the summons. The grounds are:—

1st. That the inquisition to find debts was taken on affidavit without any witness being examined *viva voce*.

A similar objection was taken in the case of *The Queen* v. *Ryle*, 9 M. & W. 227, and expressly over ruled by the Court of Exchequer.

2nd. That the writ issued without any affidavit of insolvency or other affidavit sufficient to shew grounds according to the practice. Mr. West, in his Treatise on the Law of Extents, page 47, states: "The need for the immediate extent is shewn to the court by the affidavit that the debtor is insolvent, which is called an affidavit of danger; and the court (or single Baron) shews the exercise of its (or his) discretion as to the expediency of issuing the immediate extent by granting the *fiat*." The *fiat* in this case was granted by the learned Chief Justice of the Common Pleas, on an affidavit which satisfied him that this was a case in which an immediate extent should issue, and I should certainly never think of interfering with the exercise of his discretion, but would, if I entertained any doubt, postpone the case for the consideration of the court. I must say, however, that had the application been made to me I would, without hesitation, have given the *fiat*. As far as I can understand the law as laid down in Mr. West's Treatise, all that is necessary is to satisfy the court or judge that there is danger that the debt will be lost if immediate remedy be not granted; and whether the danger arises from insolvency, (which is the usual ground) or from any other cause which satisfies the court that such danger really exists, is immaterial. I do not specify the particular reasons assigned in the affidavit in this case, but they would have been quite sufficient to have induced me to grant the *fiat*.

3rd. That the writ of extent misstates the day that the defendant became a debtor of record. The inquisition to find debts not having been returned and filed until 21st July, whereas the writ states him to have been a debtor of record on the 20th of July. The inquisition was dated on 17th July, 1869, and appears to have been taken on the 20th. There is a memorandum endorsed on the copy before me to the effect that it was filed on 21st. There is no formal statement of any kind as to when it was received and filed. I cannot see in what manner the defendant can be prejudiced by this mistake (if it is a mistake, for no authority was cited by the learned counsel), and if, in truth, any of the property extended was acquired by him between the finding of the inquisition on the 20th and the filing of it on the 21st he might shew it, I presume, so as, *quoad* that property, to claim that it was not found by the inquisition or liable to the *extent*. In the absence of any such allegation I see no reason for setting aside the extent.

4th. That the affidavits on which the said writ issued charged that a felony was committed, so that no writ could issue to find debts, or debts be found or enforced which were the subject of the felony, until the prosecution of the defendant to conviction for the felony. This objection appears to me to be founded on a misapprehension of the law as applied to private persons; the reason of the rule which prevails between private persons, that until the ends of justice have been satisfied by the prosecution of a person charged with felony

no action can be maintained for a private wrong, can have no application to a case in which Her Majesty is a party.

I therefore think that this summons should be discharged.

Summons discharged.

COUNTY COURT CASE.

In the matter of Sutton, Landlord, v. Bancroft, Tenant.

Overholding Tenants Act—Assignee of reversion.

Under the Overholding Tenants Act, 31 Vic. cap. 26., the word "landlord" includes the assignee of the reversion. [Hughes, Co. J., St. Thomas.]

The facts of the case were, that one Burtch demised the premises to this tenant for a term which had expired, but before the end of the term conveyed the reversion to Sutton, who claimed the possession as landlord.

Ellis, as attorney for the tenant, denied the relation of landlord and tenant within the meaning of the Act, upon which alone the County Judge has jurisdiction. Proof of title and of the lease having been made from Burtch to Bancroft, and no attornment shewn from Bancroft to Sutton, Mr. Ellis claimed to have the proceedings quashed and the application discharged for want of privity between the parties, and that the fact of his being in possession did not constitute Bancroft Sutton's tenant; nor did the assignment of the reversion constitute Sutton Bancroft's landlord. The notice to quit and demand of possession were admitted.

McDougall, counsel for the landlord, cited the 13th section of the Act as to the meanings of the words "tenant" and "landlord," whereby they have assigned to them interpretations which their ordinary signification do not import, and referred to *Nash* v. *Sharp*, 5 C. L. J., N. S., 73, as good authority under the former statute, but not under the Ontario Act, for by the interpretation of the 13th section no room whatever is left for doubt.

Hughes, Co. J.—In the Act, 4 Wm. IV. cap. 1, I find an interpretation clause (sec. 59), but no such meanings attached to the words "landlord" and "tenant" as are assigned them by the 13th section of the Ontario Act, nor do I find them in the Con. Stat. of U. C. cap. 27. The Act 27 & 28 Vic. cap. 30, affords a more expeditious remedy for cases coming within the meaning of the previously existing statute, but I find no extension as to the kind of cases which might be reached by that remedy, so that up to the passing of the Ontario Statute, 31 Vic. cap. 26, any decision of the Superior Courts as to the extent of the remedy and the class of cases coming within the purview of the then existing statutes would apply and be authoritative. Not so, however, since the passing of the statute now in question, because the word "tenant" is thereby declared to mean and include an occupant, a sub-tenant, under-tenant (if there be any difference between "sub" and "under") and his and their assigns and legal representatives; and the word "landlord" is declared to mean and include the lessor, owner, the party giving or permitting the occupation of the premises in question, and the person entitled to the possession thereof, and his and their heirs and assigns and legal representatives. I think that *Bonser* v. *Boice*, 9 U. C. L. J 213, does not apply as an authority in this case, for the statute in question affords not only a more expeditious but a more extensive remedy than was ever devised or contemplated by any previously existing statute, and no room is left for a well founded doubt that the word landlord includes the assignee of the reversion. The foregoing decision is at variance with the decision of his honor judge Logan, in *Nash* v. *Sharp*, above referred to. The latter case went off on another point than that expressly decided in the above case. Our views of the late statute agrees with the judgment of the county judge of Elgin.

I therefore decide, 1st. That this is a case clearly coming within the meaning of the second section of the Act. 2nd. That the tenant, Bancroft, holds without color of right, and was tenant, &c., for a term which has expired, and wrongfully refuses to go out of possession thereof, &c.

Writ of possession ordered.

ENGLISH REPORTS.

QUEEN'S BENCH.

Fair v. The London and North-Western Railway Company.

Damages—Future prospect—Negligence—Railway company.

Where a plaintiff having been injured through the negligence of the defendant can show that, although only enjoying at present a small income, he has a reasonable prospect of increasing that income, such prospect ought to be a matter of consideration for the jury.

[Q. B. 18 W. R., 66.]

This was an action tried before the Lord Chief Baron at Hartford, and was brought to recover damages for injuries received in an accident on the defendants' railway; a verdict was found for the plaintiff, damages £5,000, with £250 for expenses.

The plaintiff was a clergyman of twenty seven years of age, enjoying an income of £250, as a secretary to the Irish Mission, and it was shewn at the trial that he was a young man of great promise, and had reasonable expectations that he should increase his income hereafter.

It was admitted that he was totally incapacitated by the accident for the present, and that any improvement in his condition was a matter of great doubt.

Vernon Harcourt, Q C., now moved for a new trial, or to reduce damages on the ground that they were excessive. £5 000 is an exorbitant sum when calculating on £250. Such a sum would produce a larger annuity. How can the prospect of a man be proved? By calling friends on one side to give favorable evidence, and witnesses on the other to disparage? There should be some limit as in America, otherwise railway companies are made insurers at full amount without any means of ascertaining the value of what is insured. There should be some power to protect themselves by special contract as there is in the case of horses, goods, &c.; cannot the principle in *Hadley* v. *Baxendale*, 2 W. R. 302, 9 Ex. 341 be applied here?

Cockburn, C.J.—Certainly not. The argument of Mr. Harcourt calls on us to take upon ourselves the functions of the Legislature and to establish a new principle. True it is that to do full justice in some cases damages are so great as to cause serious inconvenience, but that is no reason for altering a principle. If a railway undertakes to carry a passenger, and is guilty of negligence, the passenger is entitled to bring an action, and in considering the case juries are to take into account two things: first, pecuniary loss in profession or business; secondly, injury to the person or health; for pecuniary loss the jury should consider not merely the amount of income but also the reasonable probability of acquiring larger income in future. It would be monstrous if when a man has reached a certain stage in his career, yet judging from the past you can see with reasonable certainty that he will increase his income, you should exclude such considerations from the jury. You would exclude a most important element and inflict the gravest injustice. The jury are bound to take into account not only income, but the destruction and annihilation of health and prospects. Here is a man at the outset of life, of great promise, with his prospects ruined and his health destroyed. I consider £5,000 within reasonable limits.

Mellor, Lush, Hannen, J.J., concurred.

Rule refused.

CHANCERY.

Pickard v. Hine.

Practice—Appeal by married woman without next friend

A married woman having been made a party to a suit in respect of her separate estate, appealed without the intervention of a next friend. Appeal directed to stand over for a next friend to be appointed, appellant's solicitors to give an undertaking to pay the costs of the day; in default appeal to be dismissed with costs.

[L. C., 18 W. R. 75.]

This was an appeal by two defendants from a decision of Vice-Chancellor Stuart.

One of the appellants had become bankrupt since the decree, and the other, a married woman, who had been made a defendant to the suit in respect of her separate estate, had appealed without the intervention of a next friend.

Dickinson, Q. C., and *Willis*, for the respondents, took a preliminary objection to the prosecution of the appeal by the married woman without a next friend. They cited *Elliot* v. *Ince*, 5 W. R. 465, 482, 7 De G. M. & G. 475.

Schomberg, Q. C., and *Bush*, for the appellants.—This case is not governed by *Elliot* v. *Ince*. Here the married woman has been made a defendant with respect to her separate estate. She is to some extent considered a *feme sole*, and this is an answer to the objection.

Lord Hatherley, C., after observing that unless some case was made he could not go on without a next friend, directed the hearing of the appeal to stand over, with leave to amend the petition of appeal by adding a next friend, amendment to be made and undertaking by appellants' solicitors to pay the costs of the day, to be given within a week; otherwise the appeal to be dismissed with costs.

Pearce v. Morris.

Mortgage—Acceptance of tender by mortgagee—Re-conveyance.

A mortgagee on accepting a tender of his principal, interest, and costs from the owner of a part of the equity of redemption, is bound to convey the mortgaged estate, and to hand over the title-deeds to the person making the tender, and will not by so doing incur any liability to the other owners of the equity of redemption. If, however, the mortgagee accept a tender from a mere stranger to the estate, he is not bound to convey or give up the title-deeds to such stranger.

[L. C. 18 W. R. 196.]

This was an appeal from a decision of the Master of the Rolls.

The plaintiff had contracted with the mortgagor for the purchase of a portion of certain lands of which the defendant was mortgagee.

The plaintiff then requested the defendant to convey the legal estate to him, and to hand over the title-deeds, but this the defendant refused to do, on the ground that he held the legal estate upon trust for the owners of the equity of redemption. The plaintiff thereupon filed his bill, praying that the plaintiff might be declared entitled to have the mortgaged premises transferred to him, and the title-deeds delivered up to him, and that the defendant might be ordered to transfer the premises and deliver up the deeds accordingly.

The portion of the premises which the plaintiff had contracted to purchase was conveyed to him after the bill was filed, and this fact was proved by affidavit.

The Master of the Rolls made a decree for conveyance and for the delivering up of the deeds to the plaintiff, the form of conveyance to be settled in chambers, and from this decree the defendant appealed.

The case is reported in the court below (17 W. R. 1001, L. R. 8 Eq. 217), where the facts are more fully stated.

Jessel, Q.C., and *Nalder*, for the appellant, the defendant.—The plaintiff had a mere contract, which might at any time have gone off and left him a mere stranger to the estate. But if he were entitled to the equity of redemption of a portion of the mortgaged premises he would have no right to a conveyance. We were compelled, at the risk of losing our interest, to accept the tender, but having notice of conflicting claims, we were bound not to convey until we had proof of who the real owners of the equity of redemption were, otherwise we might have been held liable for a breach of trust. This was not a contract to transfer, but to redeem. They cited *Cholmondeley* v. *Clinton*, 2 J. & W. 184; *James* v. *Biou*, 3 Swanst. 234; *Wicks* v. *Scrivens*, 1 J. & H. 215; *Henley* v. *Stone*, 3 Beav. 355; *Colyer* v. *Colyer*, 11 W. R. 587.

Southgate, Q.C., and *Villiers*, for the plaintiff.—The plaintiff became owner of the charge by paying off the defendant, who accepted our tender, and is, therefore, estopped from denying our right to redemption and conveyance. If this were otherwise, we might have great difficulty in getting contribution from the other owners of the equity of redemption. As to the form of the decree, Lord Romilly said he would settle the conveyance in chambers; but even i the legal estate were conveyed to us without limitation, it would be absurd to contend that

the other owners of the equity of redemption could be prejudiced: *Elisha* v. *Elisha*, Seton, on Decrees, 465, 475; *Titley* v. *Davies*, 2 Y. & C. C. C. 399; *Smith* v. *Green*, 1 Collyer, 555.

Jessel, Q C., in reply.

Lord Hatherley, L.C.—The question to be decided relates to the position of the mortgagor and mortgagee when several are interested in the equity of redemption, and the authorities have clearly settled the proper course to be pursued under these circumstances. Any person interested in the equity of redemption is entitled to redeem, and when he tenders the mortgage money and interest, to have a conveyance of the legal estate and the title deeds delivered up to him. The form of the conveyance must depend on the circumstances; but the case in Seton, p. 475, shows how that is dealt with.

In *Wicks* v. *Scrivens*, I had to decide the case of a tenant for life, and I decided then that he was entitled to redemption and to a conveyance. My opinion is, therefore, that it is not necessary for a mortgagee to wait for the institution of a chancery suit where there happen to be different claimants to the equity of redemption, and that it would be very mischievous to hold that the mortgagee is bound to enquire as to who are the real owners of the equity of redemption, he is only bound to ascertain that the person tendering payment has an interest in it. The mortgagee is only a trustee, and to this extent—he is not entitled to convey to a mere stranger to the estate; but as long as there is any interest in the person tendering, he has discharged his duty by giving a conveyance to such person, and handing him over his title deeds.

As to the form of the conveyance, it is desirable that the deed on the face of it show that others are interested in the equity of redemption and that should be stated on the decree.

As to the costs I confess I have felt much difficulty. The mortgagee being told that the plaintiff was owner of a portion of the estate by contract was put in this position:—If he refused the tender he might lose his subsequent interest, and if he conveyed the legal estate, he might be conveying to one who might turn out not to be the owner. The person contracting may have a right to make a tender; but whether he has a right to a conveyance and the deeds, until the conveyance to him by his vendor is perfected, is another matter. In my opinion this bill was prematurely filed.

James v. *Biow* was cited to show that a mortgagee was not bound to make a conveyance, unless he had a clear account of all those interested in the equity of redemption: but all that case decides is, that he must ascertain that the person tendering is not a mere stranger. I think in this case the defendant was entitled to reasonable proof that the plaintiff was not a mere stranger. I am satisfied by the affidavit that the plaintiff's title is now complete, but this was not the case when the bill was filed. The Court will not force a mortgagee to convey and hand over deeds until the title is perfected, although he accepts the tender.

The decree will be that the plaintiff now being entitled to a portion of the estate, and having demeaned, he is entitled to have a conveyance and delivery of the deeds. The simple rule is, that a person who makes out his title to some portion of the estate, and redeems the mortgage, has a right to the conveyance and the deeds. The defendant's case was, it is true, put much too high; still, considering that the plaintiff was not in a position to assert an immediate right, I cannot lay too much stress on that. There was no threat to part with the deeds or create an adverse title. In my opinion the decision as to costs was erroneous. The decree must be varied, and after the direction to convey the legal estate must be inserted "subject, as to those portions of the premises in which the equity of redemption is vested in persons other than the plaintiff, to such right and equity of redemption." The plaintiff must pay the costs. There will be no costs of the appeal.

Gilliatt v. Gilliatt.

Sale of Land by Auction Act, 1867 (30 & 31 Vict. c. 48)—Employment of puffer—Reserved bidding.

Land was offered for sale by auction, subject to a reserved price, but a right to bid was not reserved.

Held, that the employment of a person to bid on the seller's behalf was illegal, and vitiated the sale.

[M. R. 18 W. R. 203.]

This was an adjourned summons. The facts were, that under the decree in this cause an estate in Sussex was offered for sale by auction by Messrs. Norton, Trist, Watney & Co., the eminent auctioneers, subject to conditions of sale, the second of which was: "The sale is subject to a reserved bidding, which has been fixed by the judge to whose court this cause is attached."

No right to bid was reserved on behalf of the owners.

The estate was knocked down to a purchaser for £29,000, which was the reserved price. The purchaser afterwards discovered that a puffer had been employed by the auctioneer, and accordingly took out the present summons to set aside the sale.

It was in evidence that one puffer had been employed who bid for himself, and made in all four biddings, but did not bid beyond £28,900.

The Sale of Land by Auction Act (1867), sec. 5, provides that the conditions of sale by auction of any land shall state whether such land will be sold without reserve, or subject to a reserved price, or whether a right to bid is reserved. If it is stated that such land will be sold without reserve, or to that effect, then it shall not be lawful for the seller to employ any person to bid at such sale, or for the auctioneer to take knowingly any bidding from any such person.

Jessel, Q C., and *Whitehorne*, in support of the summons.

Sir R. Baggallay, Q.C., and *Langworthy*, for the owners, submitted that the employment of a puffer under the circumstances of the case was immaterial, inasmuch as he did not bid up to the reserved price.

Mortimer v. *Bell*, 14 W. R. 68, L. R. 1 Ch. 10, was referred to.

Lord Romilly, M.R.—The meaning of the Act is clear, that in every case of a sale of land by auction, the owner must state in the conditions of sale whether there is a reserved price, and if

he also mean to employ a puffer he must say that a right to bid is reserved. This has not been done in the present case; the purchaser must therefore be discharged, and the deposit returned with interest at four per cent.

Parker v. Simpson.

Res judicata—Staying proceedings—Practice.

The dismissal of a bill by consent, as well as adversely, is a bar to a second suit for the same object, and the defendant may avail himself of this defence by a motion to stay proceedings, or *(semble)* by a motion to take the bill off the file.

If a plaintiff's consent to an order effecting a compromise has been obtained by fraud, his proper course is to move to have the order annulled before the judge who made it.

[V. C. M. 18 W. R. 204.]

The plaintiff in this cause, who was a person with no pecuniary means, had filed a bill in the Rolls Court on the 1st of April, 1869. He then compromised the claim put forward by that bill, and agreed to release his demands against the defendants to it, on their paying his creditors three and fourpence in the pound. The payment was made, and the plaintiff thereupon applied for and obtained the dismissal of his bill, with costs as against some of the defendants, and without costs as against the others, in accordance with the terms of the agreement. It was stated in court that the plaintiff considered that his consent to this compromise was unfairly obtained.

Shortly afterwards the plaintiff filed the present bill, which was a verbatim copy of his former bill, with the single exception that it mentioned the death of one of the former defendants and substituted his personal representatives in his place.

Cotton, Q. C., now moved, on behalf of the defendants, to stay all further proceedings in the suit.

Pearson, Q. C., appeared for the plaintiff.

Malins, V. C., after hearing the facts, asked if they were admitted, and then said that the point was too clear for argument. A decree deciding against a claim was a bar to the institution of another suit raising the same claim; and the dismissal of a bill by consent had the same effect as an adverse decree. If the plaintiff contended that his consent to the order dismissing his bill had been obtained by fraud, his proper course would be to move to dissolve it before the same judge who had made it. To bring another suit for the same matter in a different branch of the court was a most improper proceeding. He would make the order prayed for, and would also, if desired, take the bill off the file.

United States Legal Tender Act;—*Held, per* Chase, C. J., that the Legal Tender Act, passed February, 1862, is inoperative as to all contracts for the payment of money made prior to that date, and such contracts can only be discharged by the payment of gold or silver coin. —*Hepburn et al.* v. *Griswold.*

UNITED STATES REPORTS.

SUPREME JUDICIAL COURT OF MAINE.

Geo. W. Prentiss v. Elisha W. Shaw et al.

The plaintiff was unlawfully seized by the defendants, carried thence three miles and confined in a room several hours, and thence to a town meeting, where he took an oath to support the Constitution of the United States, and was discharged. In the trial of an action of trespass, based upon these facts, the plaintiff claimed (1.) Actual damages resulting from his seizure and detention; (2.) Damages for the indignity thereby suffered; (3.) Punitive damages. *Held:*—

1. That the plaintiff was entitled to recover full pecuniary indemnity for the actual corporeal injury received, and for the actual damages directly resulting therefrom, such as loss of time, expense of cure, and the like:
2. That the declarations of the plaintiff, made prior to the unlawful arrest and tending to provoke the same, not being a legal justification thereof, are inadmissible in mitigation of the actual damages; but,
3. That such declaration made on the same day, and communicated to the defendants prior to such arrest, together with all the facts and circumstances fairly and clearly connected with the arrest, indicative of the motives, provocations, and conduct of both parties, are admissable upon the question of damages claimed upon the other two grounds.

The writ was dated June 15th 1867, and contained a declaration in trespass, substantially alleging that Elisha W. Shaw (a deputy sheriff), Putnam Wilson, Jr., Oliver B. Rowe, Hollis J. Rowe, and Daniel Dudley, on the 15th April 1865, at Newport, with force and arms, assaulted, beat, and bruised the plaintiff, thereby permanently injuring his hip and back, violently forcing him into and locking him in a room in the Shaw House, subjecting him to remain there five hours, violently taking him from thence into a carriage and carrying him against his will to the town-house in Newport.

The plaintiff introduced evidence tending to show that in April 1865, while he was at a blacksmith's shop in Newport, where he was having his horses shod, Shaw, Dudley, Wilson, and H. J. Rowe seized him, and forcibly putting him into a waggon, transported him a prisoner three miles distant, to Newport village, and confined him for several hours in a room in the hotel there; that a crowd of men accompanied the four defendants to the shop and from thence to Newport village; that the four defendants inflicted injuries upon the person of the plaintiff; and that threats of extreme personal injuries were made to the plaintiff, both at the blacksmith shop and at Newport village, by some persons.

There was conflicting testimony as to the extent of the injuries to the plaintiff's person

The defendants, against the objections of the plaintiff, introduced evidence tending to show that the four defendants seized the plaintiff in the forenoon of the day on which the news of the assassination of President Lincoln was received; that when the plaintiff stepped into the blacksmith shop, he said, addressing one Gilman (who was a witness in this case): "He that draweth the sword shall perish by the sword, and their joy shall be turned into mourning;" that Gilman (alluding to the assassination of the President) said to the plaintiff; "I suppose there are some who are glad of it," that the plaintiff thereupon replied: "Yes; I am glad of it; and there are fifty more in town who would say so if they dared to;" that Gilman re-

joined that the plaintiff would be glad to take those words back; that the plaintiff responded substantially that he would not; and that Gilman thereupon informed the plaintiff that he should report him.

On cross-examination, Gilman testified that he thought that the plaintiff, when speaking of the assassination, said it might stop the further effusion of blood.

Against the objections of the plaintiff, the defendants also introduced evidence tending to prove that the blacksmith shop was three miles from Newport village, where three of the defendants were; that Gilman, in about twenty minutes after his conversation with the plaintiff, told it to the defendant Wilson; that Gilman and Wilson went to Newport village and informed the four defendants of the plaintiff's declarations concerning the assassination; that, about two hours afterwards, the four defendants proceeded to the blacksmith shop and did the act proved by the plaintiff; that there was great excitement in the public mind upon the receipt of the news of the assassination.

The plaintiff reasonably objected to the admission of the alleged declarations of the plaintiff, made to Gilman that day: but the presiding judge ruled that the plaintiff's declarations made that day, concerning the assassination of the President, might be given in evidence *de bene esse*, it having been stated by the defendants' counsel that they should prove the same had been communicated to the defendants before their arrest of the plaintiff.

Against the objections of the plaintiff, the defendants also introduced evidence tending to prove that, after the confinement of the plaintiff in the hotel, he was taken by them, on the same day, to a public meeting of the citizens, called at the town-house, at which a moderator and a clerk were chosen, and acted officially; that, at the meeting, a vote was passed that the plaintiff be discharged upon his taking an oath to support the Constitution of the United States: and that the plaintiff voluntarily took such oath and was thereupon discharged.

The defendants also introduced evidence tending to show, that, before arresting the plaintiff, telegraphic communication, relative to the plaintiff's declarations concerning the assassination, was had with the provost-marshal at Bangor, who replied by telegraph, that he should be arrested and held; that thereupon the defendant Shaw, then an acting deputy sheriff, with three other defendants, acting under his orders, proceeded to make the arrest; and that they honestly believed that they had a legal right to do what they did, and had no malice towards the plaintiff.

As to the four defendants proved to have been present (and the other, if found to have participated), the presiding judge instructed the jury that the defendants had shown no legal justification for their acts, and must be found guilty; that the only question for the jury was the amount of damages; that the plaintiff claims damages on three grounds:—

1. For the actual injury to his person and for his detention;

2 For the injury to his feelings, the indignity, and the public exposure; and,

3. For punitive or exemplary damages.

That they were bound to give, at all events, damages to the full extent for the injuries to the plaintiff's person and for his detention.

That, as to damages for the second and third grounds, it was for the jury to determine, on the whole evidence, whether any should be allowed, and the amount.

The presiding judge explained to the jury the nature and grounds of such damage, and instructed them, *inter alia*, that they could only consider the evidence introduced by the defendants under the second and third heads above set forth, and in mitigation of any damages they might find under either or both of said heads, if, in their judgment, those facts did mitigate such damages; but that they could not consider them under the first head.

The jury acquitted O. B. Rowe, and found a verdict of guilty against the other defendants, and assessed damages in the sum of $6.46. Whereupon the plaintiff alleged exceptions.

W. H. McCrillis, for the plaintiff, contended, *inter alia*, that the language of the plaintiff was not a sufficient provocation It was not personal to any of the defendants: *Corning* v. *Corning*, 2 Selden 97; *Ellsworth* v. *Thompson*, 13 Wend. 658.

Sufficient provocation cannot be proved in mitigation when the assault and battery were deliberately committed. The assault must accompany the provocation before the blood has time to cool. The question is, was there time for a reasonable man to reflect, and not whether the defendants continued in a state of passion: *Cope* v. *Sullivan*, 3 Selden 400; *Avery* v. *Ray*, 1 Mass. 11; *Lee* v. *Woolsey*, 19 Johns. 319; *Willis* v. *Forrest*, 2 Duer 318.

Words cannot constitute justification. Words can never be sufficient provocation. They may provoke extreme anger, and the anger be admitted in mitigation. But, if the blood has time to cool, the assault is regarded as deliberately done and cannot be mitigated. Any other rule would be subversive of the order of society.

L. Barker, for the defendants.

(*To be continued.*)

DIGEST.

DIGEST OF ENGLISH LAW REPORTS.

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(*Concluded from Vol. V. page 27.*)

Ignorance—*See* Bond.

Illegal Contract.

Property pledged to the keeper of a brothel to secure payment for wine, &c., consumed in a debauch in said brothel, cannot be recovered by the pledgor of the pledgee.—*Taylor* v. *Chester*, L. R. 4 Q. B. 309.

Implied Grant or Reservation—*See* Easement; Way.

Indemnity, Act of—*See* Conflict of Laws.

Indictment—*See* Assault.

Injunction.

The publication of any document which

would destroy property, whether consisting of money or reputation, may be restrained in equity.

An injunction was granted against the publication of a notice stating that a merchant was a partner in a bankrupt firm.—*Dixon* v. *Holden*, L. R. 7 Eq. 488.

See Bond; Fraudulent Conveyance, 3; Interpleader; Light; Nuisance, 1, 2.

Insanity—*See* Domicile.

Insurance.

1. Meat shipped at Hamburgh for London was delayed on the voyage by tempestuous weather, and solely by reason of such delay became putrid, and was necessarily thrown overboard at sea. *Held*, not a loss by perils of the sea, or within the words "all other perils, losses, and misfortunes," &c., in a policy of insurance on said meat.—*Taylor* v. *Dunbar*, L. R. 4 C. P. 206.

2. An assurance company lent W. £1000 on a mortgage for that sum and on a policy on his life for the same amount, which he effected with them for the purpose. The policy contained a conditiou, that if W. should die by his own hands, &c., it should be void, "except to the extent of any *bona fide* interest therein which, at the time of such death, should be vested in any other person . . . for a sufficient pecuniary or other consideration." W. committed suicide while insane, the policy being still in the hands of the company. *Held*, that the company came within the above exception to the condition, and that the policy was valid to the extent of the debt to them. The mortgage was ordered to be re-assigned — *White* v. *British Empire Mutual Life Assurance Co.*, L. R. 7 Eq. 394.

Interest—*See* Bank.

Interpleader.

The plaintiff's affidavit of no collusion in an interpleader suit cannot be rebutted before the hearing by a counter affidavit, although the plaintiff has filed additional affidavits in reply. In such a case, an order was made for the payment of the money into court and for an injunction, on the plaintiff's giving an undertaking as to damages. Order of Malins, V.C., reversed.—*Manby* v. *Robinson*, L R. 4 Ch. 347.

Invitation—*See* Negligence.

Joint Tenancy—*See* Legacy, 3.

Jurisdiction—*See* Account; Court.

Laches—*See* Cheque; Mortgage, 4.

Landlord and Tenant.

1. B. made a second mortgage of certain premises to the defendants by an indenture which was executed by B. but not by the defendants, who, however, advanced money on it. B. by the deed conveyed the premises in fee, on trust for sale; "and as a further security for the principal and interest for the time being due from B., . . . B. did thereby attorn and become tenant to the defendants, their heirs, &c., for and during the term of ten years, if that security should so long continue," at a certain rent payable on each 1st of October. "Provided that . . . without any notice or demand . . . it should be lawful for the defendants, their heirs, &c., before or after the execution of the trusts of sale," to enter on the premises, eject B, and determine the said term of ten years. B. accordingly continued in occupation, and, rent not being paid on the first rent day, the defendants distrained. It appeared by the deed that the defendants had only an equity of redemption. *Held*, that the intention of the parties, as shown by the deed, and that the effect of the Statute of Frauds on the same, was to create a tenancy at will, and that B. became tenant at will on attornment; also that B. was estopped by the deed to deny that the defendants had a legal reversion, although the truth appeared. (Exch. Ch.)—*Morton* v. *Woods*, L. R. 4 Q B. 293; s. c. L. R. 3 Q. B. 658; 3 Am. Law Rev. 703.

2. Defendant entered upon, occupied, and paid rent for premises under a demise for a term of years, made on behalf of a corporation, the owners, but not sealed with the corporate seal. By this agreement, defendant undertook to make certain repairs. *Held*, that he was bound by his stipulation. He had become tenant from year to year on the terms of the demise applicable to such a tenancy.—*Ecclesiastical Commissioners* v. *Merral*, L. R. 4 Exch. 162.

See Covenant, 1.

Lapsed Devise—*See* Executor and Administrator, 4.

Law of Nations—*See* Rebellion.

Lease—*See* Covenant, 1; Landlord and Tenant; Mortgage, 3; Vendor and Purchaser of Real Estate.

Legacy.

1. Bequest to testator's son L. for life, and after his decease equally between and amongst the wife of L. (in case she should survive him) and all and every the child and children of L., as they should severally attain twenty-one, at which period the shares of such children were to be vested in them. At the date of the will, L. had a wife and one child, but the wife died before the testator. After the testator's death,

L. married again, and died leaving a widow. *Held*, that L.'s widow took under the will.—*In re Lyne's Trust*, L. R. 8 Eq. 65.

2. Bequest to A. B. for life, and after her death to eight, equally, their interests to be vested from the death of the testator; and in case of the death of any of the eight before the tenant for life, the share of those so dying to be paid to the survivors equally. The eight legatees survived the testator, but all died before the tenant for life. *Held*, that the survivorship was to be referred to the death of the tenant for life, and that, as none survived that moment, each took his original gift.—*Marriott* v. *Abell*, L. R. 7 Eq. 478.

3. A bequest to testator's wife and executrix absolutely, "for the benefit of herself and children," creates a joint tenancy among the children which is not severed by the marriage of a daughter. *Semble*, the wife takes a life estate. *Armstrong* v *Armstrong*, L. R. 7 Eq. 518.

See Charity. 1, 2; Devise, 1; Forfeiture; Perpetuity; Will, 7–14.

Legislature—*See* Parliament.

Libel.

1. At a meeting of a board of guardians, at which reporters were present, a member, E., said "he hoped the local press would take notice of this (the plaintiff's) very scandalous case," and requested the chairman, P., to give an outline of it. P. did so, and said, "I am glad gentlemen of the press are in the room, and I hope they will take notice of it." There was other language to the same effect. A correct but condensed summary of the proceedings, containing remarks defamatory of the plaintiff, which were made at the meeting, was afterwards published in two local newspapers. *Held* (Exch. Ch. *per* Keating, Montague Smith, & Hannen, JJ., Byles & Mellor, JJ., *dissentientibus*), that there was evidence to go to the jury of publication of the libel in the newspapers by E. and P.—*Parkes* v. *Prescott*, L. R. 4 Exch. 169.

2. A report of the directors of a company contained the following statement: "The shareholders will observe that there is a charge of £1306 for deficiency of stock, which the manager is responsible for. His accounts have been badly kept, and have been rendered to us very irregularly." This report was printed and sent to the shareholders, according to the usual practice, by order of a general meeting. *Held*, that, in the absence of evidence of express malice, the printing and publication of the report was privileged.—*Lawless* v. *Anglo-Egyptian Cotton Co.*, L. R. 4 Q. B. 262.

3. The defendant, in a privileged communication, described the plaintiff's conduct as "most disgraceful and dishonest." The conduct so described was equivocal, and might honestly have been supposed by the defendant to be as he described it. *Held*, that the above words were not of themselves evidence of actual malice. (Exch. Ch.)—*Spill* v. *Maule*, L. R. 4 Exch. 232.

See Injunction.

License—*See* Negligence.

Lien—*See* Collision, 3; Fraudulent Conveyance, 2.

Light.

Plaintiff pulled down a building with ancient lights, and put up a new one with larger windows only partially coinciding with the old ones. There were also additional windows. The owner of the servient estate obstructed the light of the substituted windows. An injunction was refused.—*Heath* v. *Bucknall*, L. R. 8 Eq. 1.

Lunatic—*See* Domicile.

Malice—*See* Libel, 2, 3.

Marriage Settlement—*See* Deed; Fraudulent Conveyance; Separation Deed; Ward of Court; Wife's Equity.

Married Woman—*See* Husband and Wife.

Marshalling of Assets.

Land was mortgaged to secure £1500. By a later deed, the same and other land, and some personalty, were mortgaged to secure the old and a new debt. The mortgagor died intestate. In a case between the administrator and heir-at law: *Held*, that the first mortgaged land was first liable for the £1500. The new debt to be apportioned between the realty and personalty.—*Lipscomb* v. *Lipscomb*, L R. 7 Eq 501.

See Bankruptcy, 4, 5; Charity, 1; Devise, 2; Partition.

Master and Servant—*See* Contract.

Misdemeanor—*See* Assault.

Mistake—*See* Award; Bond.

Money Had and Received—*See* Award, 2.

Mortgage.

1. A creditor agreed to remit part of the debt, on the debtor's giving him a mortgage for the balance. A mortgage was afterwards given with a power of sale, but also with a proviso, that, if the mortgage debt should not be paid within two years, or if any other condition should be broken, the whole of the original debt should be recovered. It also recited that the agreement had been made without

prejudice to the creditor's original rights. *Held*, that the proviso was not a penalty against which equity would relieve. Judgment of Chelmsford, L C., reversed.—*Thompson* v. *Hudson*, L. R. 4 H. L. 1; s. c. 2 Eq. 612; 2 Ch. 255; 1 Am. Law Rev. 518, 690.

2. A mortgage secured £600, future advances, interest on both, and all costs of any suits under the provisions of the deed or in anywise connected therewith; the total moneys secured not to exceed £1200. On a bill to redeem, a decree was made by Stuart, V.C., directing an account of what was due the mortgagee for principal and interest under the deed, and of sale-moneys, rents, and profits received by him. The mortgagee appealed. *Held*, that the decree was right. (*Per* Selwyn, L.J.) Because costs properly incurred in actions relating to the property might be claimed under it as "just allowances." (*Per* Giffard, L.J.) Because they might be claimed as principal due under the deed.—*Blackford* v. *Davis*, L. R. 4 Ch. 304.

3. B. mortgaged a term to D. for £3000. D. submortgaged the term, less three days, and the debt, to E., with power to sue for the whole of the same, to secure £1200. B. died, and E. claimed £3000 from B.'s estate. B.'s administrators assigned the equity of redemption to D. D. by registered deed assigned all his estate to trustees for the benefit of creditors. E. foreclosed a second submortgagee, and D., whose trustees disclaimed by answer. E. then ceased paying rent, which he had been doing, and B.'s lessors entered. *Held*, that the disclaimer only extended to what was in issue in the suit, and did not enlarge E.'s estate, and that E. could prove against B.'s estate for £3000, but was not to receive more than £1200, interest and costs.—*In re Burrell*, L. R. 7 Eq. 399.

4. A. and B., mortgagees, transferred their mortgage to W., who gave no notice of the transfer to T., the mortgagor. T., intending to redeem, paid the amount secured by the mortgage to the solicitors of A. and B., who were also W.'s solicitors, without ascertaining that they were authorized to receive it. The solicitors misappropriated the money, and prepared a deed which A. and B. signed, being deceived as to its contents, which contained a recital acknowledging the receipt of the money, and which purported to convey the property to the mortgagor's nominee. No receipt was indorsed on the deed. *Held*, that W. was entitled to foreclose.—*Withington* v. *Tate*, L. R. 4 Ch. 288.

See Bankruptcy, 6; Insurance, 2; Marshalling of Assets; Pledge.

Navigable Water—*See* Nuisance, 1; Statute, 3.

Negligence.

It was the practice of consignees of coal by defendants' road to go along a flagged path by the side of the road at the station, and to assist in the unloading, which was done by tipping the coal into cells. The plaintiff was consignee of a coal wagon which could not be unloaded in the usual way, as all the coal cells were full. He told the station master that he must have some coals, and, no reply being made, he went to the wagon, took some coal from the top, and descended to the flagged path. The flag he stepped on was worn and gave way, and he fell and was injured. *Held*, that defendants were liable, although the plaintiff was not getting his coal in the usual manner.—*Holmes* v. *North-Eastern Railway Co.*, L. R. 4 Ex. 254.

See Collision, 2; Laches; Proximate Cause.

Negotiable Instrument—*See* Bond.

Notary—*See* Evidence, 3.

Notice—*See* Company, 3; Executor and Administrator, 3; Mortgage, 4; Way.

Nuisance.

1. The plaintiff, a riparian proprietor on a tidal navigable river, filed an information and bill to restrain the opposite riparian owner from building a jetty in the *alveus* of the river. It was not proved that the plaintiff's land would be seriously injured by a greater volume of water being thrown upon it. But the public navigation and that of the plaintiff would be interfered with. *Held*, that the suit was properly framed, and an injunction was granted with costs. *Semble*, the Attorney-General need not have been joined.—*Attorney-General* v. *Earl of Lonsdale*, L. R. 7 Eq. 377.

2. A tenant from year to year obtained an injunction from Malins, V.C., against the erection of a circus, which was to last only a short time, on the ground that it would draw together a crowd of disorderly persons. Defendant appealed, the land having meanwhile been covered with permanent buildings. *Held*, that there was not sufficient ground for an injunction, and this having been granted, the appeal was not only for costs.

But an injunction against a circus, the noise of which was so loud as to be distinctly heard in the plaintiff's house when the windows and shutters were closed, was upheld, without a trial by jury. Since *Sir John Rolt's Act*, 25 & 26 Vict. c. 42, this is not necessary if the evidence satisfies the court.—*Inchbald* v. *Robinson*. *Inchbald* v. *Barrington*, L. R. 4 Ch. 388.

S. A., while lessee of two print-works, erected a weir across the stream which supplied them, and diverted the water from one of them at a point where he was riparian owner, but where defendants, who had no interest in the water, were owners of the bed of the stream. The plaintiff becoming lessee of the last mentioned print-work, and entitled to the water of the stream, removed the weir, which was soon replaced against the will of the defendants. Defendants declined to remove the weir, but gave plaintiff full liberty to do so. *Held*, that defendants were not liable for the continuance of the nuisance.—*Scaby* v. *Manchester, Sheffield, & L. Railway Co.*, L. R. 4 C. P. 198.

Oyer and Terminer—*See* Court.

Parliament.

A statute rendering ineligible for Parliament any one who shall "undertake, execute, hold, or enjoy" any contract for the public service, does not disqualify one who has performed his part of such contract before his election, although he has not been paid.—*Royse* v. *Birley*, L. R. 4 C. P. 296.

Parties—*See* Bankruptcy, 2; Nuisance, 1.

Partition.

A. and B., tenants in common in fee, made an agreement for partition, but both died before the deed was executed. A., the survivor, devised the share agreed to be held in severalty by him, but allowed the legal estate in one moiety of B.'s share to descend to his heir-at-law. *Held*, that the costs of partition, including those of getting in the legal estate, must be borne by the devisees of A., and not by his personal estate.—*In re Tann*, L. R. 7 Eq. 434.

Partnership.

1. Money received by one member of a firm of solicitors, in the course of the management and settlement of the affairs of a client of the firm, is money paid to the firm in the course of their professional business; and the firm are liable for any loss from the dishonesty of the partner by whom the money was received. *Earl of Dundonald* v. *Masterman*, L. R. 7 Eq. 504.

2. A. and B. were partners under an oral agreement to share profits and losses equally. A. died, having advanced to the firm £1900 more than B. The net assets of the partnership were only £1400. *Held*, that the deficiency of £500 was a loss to be borne equally by A. and B.—*Nowell* v. *Nowell*, L. R. 7 Eq. 538.

See Bankruptcy, 2; Discovery, 2.

Pawn—*See* Bankruptcy, 4, 5; Damages; Illegal Contract; Pledge.

Payment—*See* Cheque; Executor and Administrator, 3; Mortgage. 4.

Payment into Court—*See* Interpleader.

Penalty—*See* Mortgage, 1.

Perpetuity.

A fund was bequeathed, after the death of an unborn legatee for life, to all the children of A. (who was alive at the date of the will, share and share alike), and to the children of such of the said children "as shall be then dead, according to the statute of distributions; . . . but in case there shall be no child or grandchild of the said A. then living," then over. *Held*, that this was not a gift to the children of A., vesting at their birth, but to persons to be ascertained at the death of the unborn legatee for life, and therefore void as too remote. *Avern* v. *Lloyd*, L. R. 5 Eq. 333 (3 Am. Law Rev. 100), commented on.—*Stuart* v. *Cockerell*, L. R. 7 Eq. 363.

Pilot—*See* Collision, 2; Error; Will, 6.

Pleading—*See* Collision, 1.

Pledge.

Plaintiff borrowed money of defendants on the security of stock which he transferred to them. Plaintiff repaid the loan in due time, and defendants, who had sold the plaintiff's stock, transferred a like amount of the same stock to him. After a decree by Malins, V.C. (L. R. 6 Eq. 165; 3 Am. Law Rev. 277, 278), charging defendants with the amount for which they had sold the plaintiff's stock, and that he should retransfer that which he had received from them, it appeared that before filing his amended bill plaintiff had sold the stock which he received, a fact not disclosed in said bill. He then filed a petition for leave to transfer a like amount of said stock to defendants, and it was so ordered. *Held*, on appeal, that the order was inconsistent with the decree; and the bill also was dismissed with costs, as not having stated the real facts, but without prejudice.—*Langton* v. *Waite*, L. R. 4 Ch. 402.

See Bankruptcy, 4, 5; Damages; Illegal Contract.

Power.

D. made an agreement, not under seal, with a railway company, by which it was recited that D. was owner of lands specified in the schedule which were required by the company, and that the compensation to be paid D. for taking the same had not been ascertained, and it was agreed to abide by the award of arbitrators. Lands owned by D. in fee, and others settled to such uses as D. should by deed ap-

point, and subject thereto to D. in tail, were included in the schedule without distinction as to the character of D.'s interest in them, and a lump sum was awarded for the whole. D. died before conveying. *Held*, that the agreement was not made by D. as tenant in tail, but was in equity an execution of his power, and that the purchase money was payable to the personal representative of D. as part of his personal estate.—*In re Dyke's Estate*, L. R. 7 Eq. 337.

See Forfeiture; Fraudulent Conveyance, 3; Trust, 3.

Practice—*See* Collision, 2; Error; Will, 6.

Presumption—*See* Death.

Principal and Agent—*See* Account; Cheque; Collision, 2; Company, 4; Libel, 1; Mortgage, 4; Rebellion.

Principal and Surety—*See* Bankruptcy, 6.

Privileged Communication—*See* Libel, 2, 3.

Production of Documents.

A defendant, being in contempt for not having made an affidavit of documents and otherwise, applied for an order that plaintiff should make such an affidavit. The documents being necessary for the defence, the order was granted, the plaintiff's affidavit and production to be after affidavit and production by defendant.—*Haldane* v. *Eckford*, L. R. 7 Eq. 425.

Promissory Note—*See* Bills and Notes.

Proximate Cause.

By an act of Parliament, a cut was to be built, and also a culvert under it, which was always to be kept open. In consequence of the negligent construction of the cut by the defendants, the waters of a neighboring river flowed into it, burst the western bank, and flooded the adjoining land. The plaintiff, owning land east of the cut, closed the culvert to prevent his land being flooded; but the owners on the west, believing that this would be injurious to their lands, reopened it, and the plaintiff's land was flooded in consequence. *Held*, that defendants were liable for the entire damage so caused to plaintiff's land, whether the reopening of the culvert was right or wrong. *Collins* v. *Middle Level Commissioners*, L. R. 4 C. P. 279.

See Vendor and Purchaser of Real Estate.

Railway—*See* Carrier; Negligence; Statute, 1.

Ratification—*See* Bank.

Rebellion.

The title of the United States to public property of the Confederacy, which was not wrongfully taken from the United States, is a title by succession, and not paramount. Therefore the United States cannot demand an account from a Confederate agent in England in respect of his dealings in the Confederate loan, except on the same footing as if taken between the Confederate government and said agent.—*United States of America* v. *McRae*, L. R. 8 Eq. 69.

Rent—*See* Apportionment, 1; Vendor's Lien.

Res Adjudicata—*See* Charity, 3.

Revivor.

A suit for administration was instituted in the name of three infants by their next friend One of them, a female, married before decree. She and her husband did not know of the suit, and the next friend and other parties did not know of the marriage until after decree. Stuart, V.C., thought a supplemental bill necessary, but the defendants consenting, an order of revivor was made by the Lords Justices.—*Griffin* v. *Morgan*, L. R. 4 Ch. 351

Revocation of Will.

1. A testatrix destroyed a will without stating at the time her intention in doing so. Subsequently on the same day she said that she had destroyed the will with the intention that a former will should take effect, and she had before expressed the same intention. Probate of a draft of the destroyed will, on motion, was refused.—*Goods of Weston*, L. R. 1 P. & D. 633.

2. A testator, by what he called a codicil to his will, revoked all bequests and dispositions in the will, and nominated executors, but did not in terms revoke the appointment of executors and guardians in the will. *Held*, that the will was not revoked.—*Goods of Howard*, L. R. 1 P. & D. 636.

3. A testator appointed A. and B. his executors. By a subsequent will, containing no clause of revocation, he appointed A. and C. his "sole executors." Probate was granted of both papers, as containing together the testator's last will, to A. and C. The word "sole" revoked the earlier appointment.—*Goods of Baily*, L. R. 1 P. & D. 628.

Sale.

1. J. orally contracted to sell S. two pockets of X. hops on the spot, and two of Y. hops in a warehouse at L., at certain prices per cwt. The X. hops were delivered, the Y. hops were sold by sample. Afterwards, the keeper of said warehouse, by J.'s directions, marked two of three pockets of Y. hops, which J. had there, "To wait orders," with the name of S., but made no transfer in his books, and still held the hops at J.'s charge and risk. Later,

J. sent to S. an invoice, giving the numbers, weight, and prices of the X. hops and of the marked pockets of Y. hops, and a draft for acceptance. S. refused to accept the draft or to receive the Y. hops. *Held*, that the property in the Y. hops had not passed. S. had neither authorized nor subsequently assented to the appropriation of the Y. hops to him by J.—*Jenner* v. *Smith*, L. R. 4 C. P. 270.

2. Stock-jobbers agreed on the Stock Exchange to buy 100 shares for a certain day, and on the sale-note were the words "with registration guaranteed." The jobbers, before the day, gave the name of a transferee, who duly paid the purchase money. The seller executed and delivered the deed of transfer to the transferee, but the latter never registered it, and calls were made upon the seller, who filed a bill against the jobbers for indemnity, and afterwards died. *Held*, that the jobbers were liable to indemnify the seller's estate.—*Cruse* v. *Paine*, L. R. 4 Ch. 441; s. c. L. R. 6 Eq. 641; 3 Am. Law Rev. 714, 715.

3. Stock-jobbers agreed on the Stock Exchange to buy ten shares, and on the name-day gave the name of G. as ultimate buyer, to whom the shares were transferred without objection. It was afterwards discovered that said shares were delivered to the brokers named on the name-ticket as G.'s brokers, as part of a large number bought for S., as undisclosed principal (the dealings not being for specific shares), and that, by arrangement between S. and G., the name of G., who was irresponsible, was given. G.'s brokers and the jobbers were ignorant of this arrangement. *Held* (*Per* Kelly, C.B., and Bramwell & Pigott, BB., Cleasby, B., *dissentiente*), that G. was an ultimate purchaser within the usage of the Stock Exchange, and that the jobbers were not liable for calls.—*Maxted* v. *Paine*, L. R. 4 Ex. 203.

See Collision, 3; Copyright; Vendor and Purchaser of Real Estate.

Salvage

In a case in which the Judicial Committee, being assisted by the Nautical Assessors of the Court, were of opinion that too large a sum had been allowed by the court below as salvage, the vessel assisted not having been in imminent peril of destruction, the sum awarded was reduced by more than one-half.—*The Chetah*, L. R. 2 P. C. 205. See *The England*, *ib.* 253. But see *The Alice* and *The Princess Alice*, *ib.* 245.

Seaman—*See* Contract.

Separation Deed.

By a deed which recited that B. and his wife had agreed to live apart from each other during the remainder of their lives "upon the terms and conditions hereinafter contained," B. covenanted with trustees to allow his wife to live separate, and settled a sum of money upon trust for his wife for her life, and for their children after her death, with a proviso that if B. and his wife should afterwards agree, by writing, &c., to cohabit together, the income of said sum should be paid to B. during such cohabitation, and the trustees covenanted to indemnify B. against his wife's acts and engagements. No separation took place between B. and his wife. *Held*, that the deed was a separation deed, and not a voluntary settlement, and that, as no separation took place, it was wholly void.—*Bindley* v. *Mulloney*, L. R. 7 Eq. 343.

See Desertion, 1.

Servant—*See* Contract.

Settlement—*See* Deed; Fraudulent Conveyance, 1, 2; Separation Deed; Ward of Court; Wife's Equity.

Shifting Use—*See* Forfeiture; Perpetuity.

Ship—*See* Collision; Contract; Insurance, 1; Salvage.

Slander—*See* Libel.

Solicitor—*See* Attorney; Mortgage, 4; Partnership, 1.

Statute.

1. The occupier of premises near the Thames had been used to draw water from the river, and to bring barges to a draw dock, as public rights, and not as easements attached to the premises, and was obstructed in the enjoyment of these rights by the works of the Thames embankment. *Held*, that there was no such "interest in land, injuriously affected," as to entitle him to compensation under the Lands Clauses Act.—*McQueen* v. *Metropolitan Board of Works*, L. R. 4 Q. B. 358.

2. St. 10 Vict. c. 14, s. 13, imposes a penalty on certain persons who shall expose for sale certain articles, except in their own dwelling place or shop. A. was tenant of a dwelling-house and shop, and of ground in front of the same. A wooden shed had been attached to the house for eighteen years, and was partially supported on flags projecting three feet from the house and part of the original building, and in this shed A. exposed said articles for sale. *Held*, that the shed was part of the house, and that A. was not liable (Mellor, J., *dissentiente*).—*Ashworth* v. *Heyworth*, L. R. 4 Q. B. 316.

3. Stones shot overboard from boats below high-water mark, and there remaining until shipped for exportation, are not "landed" within the meaning of an act making all goods landed within a harbor subject to toll (Channell, B., *dubitante.*)—*Harvey* v. *Mayor and Corp. of Lyme Regis*, L. R. 4 Ex. 260.

See Apportionment; Bankruptcy; Carrier, 1, 2; Copyright; Court; Parliament; Vendor's Lien.

Statute of Frauds—*See* Landlord and Tenant, 1.

Stock Exchange—*See* Sale, 2, 3.

Subrogation—*See* Bankruptcy, 4, 5.

Subterranean Waters—*See* Easement.

Succession Duty.

An apparent heir died within the time allowed for accepting or rejecting the succession, without having made up a title, received rent, or done any thing to incnr representation. *Held*, that there had been no devolution of a "beneficial interest" to said heir which was liable to succession duty.—*The Lord Advocate* v. *Stevenson*, L. R. 1 H. L. Sc. 411.

Supplemental Bill—*See* Revivor.

Support—*See* Easement.

Tenancy from Year to Year—*See* Nuisance, 2.

Tenancy in Common.

One tenant in common cannot maintain trespass against another for taking, in the ordinary course, the whole profits of the land.—*Jacobs* v. *Seward*, L. R. 4 C. P. 328.

Tenant for Life and Remainder-man—*See* Apportionment.

Trespass—*See* Conflict of Laws; Tenancy in Common.

Trust.

1. A person executed a deed which appointed him trustee, and which declared his acceptance of the office. *Held*, that a claim against him for misapplication of the trust funds was not matter of specialty.—*Holland* v. *Holland*, L. R. 4 Ch. 449.

2. Trustees having power to invest money in the purchase of lands or hereditaments in fee simple in possession, may invest in the purchase of freehold ground rents.—*In re Peyton's Settlement Trusts*, L. R. 7 Eq. 468.

3. Under a power to vary investments, a loan upon a stock-mortgage is not justifiable.

A trustee lent trust funds upon mortgages which were probably not within his authority to take. He made no charge to the trust estate, but received a fee as solicitor from the mortgagor, and derived some other profit, in the way of professional employment, from his investment. *Held*, that the *cestuis que trust* were not entitled to these profits as profits of the trust fund.—*Whitney* v. *Smith*, L. R. 4 Ch 513.

4. Trustees, with the assent of C., the *cestui que trust*, lent trust-money to S. on the security of furniture with a power of sale and on a mortgage of a lease made to S. by A., one of the trustees, in his private capacity. There were covenants to repair both in the mortgage and lease, the former of which contained a power of sale, the latter a power of re-entry on breach of any of the covenants. S. failed to pay interest for some time with knowledge of *cestui que trust* [did not make proper repairs?], and let the rent fall in arrears. A. re-entered, and subsequently assigned his interest in the premises to F., to whom he also sold the furniture. *Held*, that A. by re-entering as landlord and determining S.'s lease, instead of selling it with the furniture as mortgage, had mixed the trust funds with his own, and was liable for the whole sum lent, with interest.—*Cook* v. *Addison*, L. R. 7 Eq. 466.

See Account; Apportionment, 1; Equity Pleading and Practice; Executor and Administrator, 3; Ward of Court; Wife's Equity; Will, 12.

Ultra Vires—*See* Company, 3.

Usage—*See* Sale, 2, 3.

Vendor and Purchaser of Real Estate.

Defendant, assuming to have authority from the landlord, for whom he had acted in other matters, agreed to renew a lease to the plaintiff, the tenant in possession. Plaintiff afterwards, without communicating with the defendant, agreed to sell to B. her interest in the present and renewed leases. At the end of the old term the landlord put out B., whom the plaintiff had let into possession. Plaintiff then brought a bill for specific performance against the landlord, B. joining with her on being indemnified against the expenses of the suit. The landlord answered and the defendant testified that the latter had acted without authority, and the bill was dismissed. It did not appear that plaintiff had known this fact before. B. then sued plaintiff for her breach of contract, and she paid the amount recovered. *Held*, that plaintiff could recover the costs of the chancery suit and the value of the lease she had lost, but not the damages and costs recovered from her by B.—*Spedding* v. *Nevell*, L. R. 4 C. P. 212.

Vendor's Lien.

An agreement for a sale of land to a company in consideration of a rent charge (under the *Lands Clauses Act*) does not give the ven-

dor a lien for unpaid arrears.—*Earl of Jersey* v. *Briton Ferry Floating Dock Co.*, L. R. 7 Eq. 409.

Voluntary Conveyance—*See* Bond; Fraudulent Conveyance; Separation Deed.

Ward of Court.

A ward of court, entitled to a small fund in court to her separate use, married on the day after she came of age. The Master of the Rolls ordered the fund to be settled; but on appeal it was ordered to be transferred to her after a separate examination.—*White* v. *Herrick*, L. R. 4 Ch. 345.

Warranty—*See* Carrier, 3.

Watercourse—*See* Easement; Nuisance, 1, 3.

Way.

A. purchased of B. the lease of a house, part of an estate agreed to be let to B. upon building leases. There was an arch under the house, described as a "gateway" in a plan drawn on the lease, through which, by the building agreement, was the only access to a mews behind the house. At the time of A.'s purchase there were other means of access to the mews, and a right of way through the arch was not reserved. After the buildings were completed according to the agreement, A. stopped the arch. *Held*, that a right of way through the arch was reserved by implication; that A. had constructive if not actual notice of the building plan, and that, having stood by while it was carried out, A. could not now dispute B.'s rights.—*Davies* v. *Sear*, L. R. 7 Eq. 427.

Wife's Equity.

In making a settlement, to which the wife of a bankrupt had an equity, out of fund: *Held*, (1) that the power of investment was to be confined to those securities on which cash under the control of the Court might be invested; (2) that a power of advancement to children was proper; (3) the limitations in default of appointment to be to children, so that sons who died under twenty-one and daughters who died under twenty-one and unmarried, should not take interests transmissible to their representatives; (4) the ultimate limitation should be to the bankrupt's assignee.—*Spirett* v. *Willows*, L. R. 4 Ch. 407; s. c. L. R. 1 Ch. 520; 1 Am. Law Rev. 512.

Will.

1. The burden of proof that the testator knew and approved of the contents of a will is on the party propounding it.—*Cleare* v. *Cleare*, L. R. 1 P. & D. 655.

2. A will was to this effect: "The instructions given this" day to W.'s "clerk, I desire to be carried out." The instructions were oral, but the clerk had at the time made short notes of them in the testator's presence. There was no evidence the testator knew any thing of said notes further than that he saw the clerk writing. Probate of the notes, on motion, was refused.—*Goods of Pascall*, L. R. 1 P. & D. 606.

3. On the back of a will was found a memorandum in the testator's handwriting, signed by him and witnessed. The witnesses could not remember whether the paper was signed when they attested it, and the testator did not say what the paper was. Probate of the paper as a codicil, on motion, was refused.—*Goods of Swinford*, L. R. 1 P. & D. 630.

4. The testator having informed the witnesses that he wished to make his will, filled up a printed form in their presence and wrote his name in the attestation clause thereto. The witnesses then signed, and the testator again wrote his name after theirs. Probate of the will was granted, omitting the second signature.—*Goods of Casmore*, L. R. 1 P. & D. 653.

5. When a will signed by two witnesses is also signed by a legatee, who is, however, proved not to have signed as a witness, the latter signature will be omitted in the probate. *Goods of Sharman*, L. R. 1 P. & D. 661.

6. A probate may be amended after it has issued, so as to show the true date on which the will was executed.—*Goods of Allchino*, L. R. 1 P. & D. 664.

7. A testator, after life-estates, gave a residue "to my nephews and nieces, the children of . . . L. in equal shares . . . as tenants in common; . . . and in case of the death of any of my said nephews and nieces leaving issue, . . . such issue shall take the share that . . . their deceased parent would have taken if living." *Held*, that the children of nephews and nieces who died before the date of the will, or after that date, but before the testator, took under the will.—*In re Potter's Trust*, L. R. 8 Eq. 52.

8. A testator gave his estate to such of his three grandchildren, S., M., and E., as should survive their father and attain twenty-five; but in case two of them should die under twenty-five, and the amount to which the surviving grandchild would then become entitled should exceed £10,000, then the excess to go to the person or persons, exclusive of the surviving grandchild, who, under the Statute of Distributions, would immediately after the decease of the survivor of the other two

grandchildren be entitled to the testator's personal estate, if he had then died intestate. S., and after her E., died under twenty-five. At E.'s death, M. was the testator's sole next of kin. *Held*, that the persons who at the death of E. would have been the next of kin of the testator if M. also had then been dead, were entitled to file a bill for the administration of his estate, although of a remoter class than M.— *White* v. *Springett*, L. R. 4 Ch. 300.

9. A testatrix gave property in trust as to one-fourth for A. for life and then to A.'s children at twenty-three. Any child attaining twenty-three in the lifetime of A. was to acquire a vested interest. In case of the death of A. without leaving children as aforesaid, the trustees were to pay, apply, and dispose of the income of A.'s fourth to and amongst testatrix's "surviving" daughters, such "benefit of survivorship" to extend to the "surviving" as well as to the original shares. The principal to go to the children of such daughters. The other three-fourths upon like trusts for the testatrix's other three daughters, B., C., and D., and their children. If all the daughters died and none of their children reached twenty-three, the fund was to be held for the next of kin. A. died, leaving children who reached twenty-three. Then C. died childless. Later, D. died, leaving children who reached twenty-three. *Held*, that "surviving" was to be read "other," and the children of A. took part of C.'s share as well as the children of D —*Badger* v. *Gregory*, L. R. 8 Eq. 78.

10. Trust to pay one-fourth of the income each to testator's four sisters for life, and so soon as any of them should die "without leaving issue," the share of those "so dying without issue" to be divisible among the surviving sistors "and the issue of any who may then be dead, in equal . . . shares, but such issue to take only their respective parent's share." And so soon as any of said sisters should die and "leave issue," then to call in the shares of them so dying "leaving issue, and pay the same unto such respective issue, if more than one child, equally." One of said sisters died, having had two children, one of whom survived her mother, and the other died in her mother's lifetime, after the testator, leaving a family. *Held*, that a moiety of the deceased sister's share went to the family of her deceased child.

"Leaving issue" meant "having had children."—*Bryden* v. *Willett*, L. R. 7 Eq. 472.

11. A testator gave his residuary estate to trustees in trust to convert into money such parts thereof as should not at his decease consist in money or be invested in any of the public funds or government securities, and to invest the same in such public funds or government securities as to them should seem most advantageous, and to pay the interest, dividends, and annual proceeds of such residue in equal shares to his children for their lives, and after their deaths upon other trusts. *Held*, that the tenants for life were entitled to enjoy *in specie* long annuities of which the testator died possessed.— *Wilday* v. *Sandys*, L. R. 7 Eq. 455.

12. C. left his property to G. by will, and appointed him his executor. When about to die, C. sent for G. and told him privately of his will; G. said, "Is that right?" C. answered, "It shall be no other way." C. also told G. that he would find the will in a certain place and a letter with it. G. testified that nothing further passed between him and C. The letter named many persons to whom C. wished various sums to be paid, but after phrases implying some discretion to be allowed to G., there was this sentence: "I do not wish you to act strictly according to the foregoing instructions, but leave it entirely to your own good judgment to do as you think I would if living, and as the parties are deserving, and as it is not my wish that you should say any thing about this document there cannot be any fault found with you by any of the parties should you not act in strict accordance with it." G. paid money to some of the persons mentioned in the letter, but not to all. *Held*, that the letter did not impose any trust on G.—*McCormick* v. *Grogan*, L. R. 4 H. L. 82.

13. A testator "devised and bequeathed all his other property whatsoever and wheresoever" to trustees, without words of limitation, after a specific devise of lands with such words. He had no other lands at the date of his will, and the terms of the trust, except the word "income," were not appropriate to realty. He afterwards became entitled to real estate of great value. *Held*, that the latter passed to the trustees by the will.—*Lloyd* v. *Lloyd*, L. R. 7 Eq. 458.

14. A testator made a will in favor of his sister only, giving her "all my house and land and book debts," &c., "every thing on the said premises," "and all other chattels." *Held*, that the last words carried the general residue.—*Goods of Sharman*, L. R. 1 P. & D. 661.

See Apportionment, 2; Charity, 1, 2; Devise; Election; Executor and Admin-

istrator, 1, 4; Forfeiture; Legacy; Partition; Perpetuity; Revocation of Will.

Winding up—*See* Company, 1.

Witness—*See* Will, 5.

Words.

"*All other Chattels*"—*See* Will, 14.

"*Beneficial Interest*"—*See* Succession Duty.

"*Dwelling Place or Shop*"—*See* Statute, 2.

"*For the time being entitled*"—*See* Deed, 1.

"*Interest in land injuriously affected*"—*See* Statute, 1.

"*Issue,*" "*Leaving Issue*"—*See* Will, 10.

"*Landed*"—*See* Statute, 3

"*Lands or hereditaments in fee simple in possession*"—*See* Trust, 2.

"*No hope at present of recovery*"—*See* Evidence, 2.

"*Perils of the Sea,*" &c.—*See* Insurance, 1.

"*Personal Luggage*"—*See* Carrier, 2.

"*Profits in Hand*"—*See* Company, 2.

"*Public funds or government securities*"—*See* Will, 11.

"*Sole Executors*"—*See* Revocation of Will, 3.

"*Spirituous Liquors*"—*See* Covenant, 2.

"*Surviving*"—*See* Will, 9.

"*Undertake, execute, hold, or enjoy any contract*"—*See* Parliament.

Writ of Error—*See* Error.

Writ of Restitution.

The Court of Queen's Bench had at common law no jurisdiction to issue a writ of restitution except as part of the judgment on an appeal of larceny; and 21 Hen. VIII. c. 11, and 24 & 25 Vict. c. 96, s. 100, only confer this jurisdiction on the Court before whom the felon has been convicted.—*The Queen* v. *Lord Mayor of London*, L. R. 4 Q. B. 371.

REVIEWS.

The Investigation of Titles to Estates in Fee Simple. By Thomas Wardlaw Taylor, M.A., Referee of Titles, &c. Toronto: Adam, Stevenson & Co., 1869.

The past half century has witnessed repeated efforts to clear away the obstacles standing in the way of the free circulation of real estate. Even professional men are gradually, though slowly, beginning to see that the time is coming when there must be greater facility for the sale and purchase of real estate, assimilating it more and more, in this respect, to chattel property.

One is irresistibly reminded of the dangers and difficulties which, even yet, surround the investigation of titles by a perusal of the introduction to this excellent manual of Mr. Taylor's. We notice *en passant*, amongst other points, his remarks upon the necessity in the case of deeds executed before 18th September, 1865, of having the receipt for the purchase money endorsed on the deed, in addition to the usual formal receipt embodied in the deed itself. The rule is well enough established in England, but there seems to be more doubt about it in Canada, though it is insisted upon rigorously in cases coming under the Act of Quieting Titles. The practice in former years, in this country, was not to sign separate receipts; latterly the custom has grown up of giving separate receipts as a matter of course when the deed is executed, *without any reference as to whether the consideration is then paid or not.* In either case, one is led to doubt the necessity of the rule being strictly enforced in this country (See *ante* Vol. III. N. S., p. 254). But doubtless where the applicant asks under the act for a certificate of title, good against the world, he may reasonably be asked to spare no trouble in satisfying the judge on all points that can be explained.

The remarks on page 10 as to the powers of an executor or administrator to assign the legal estate must now be noted by a reference to the late act of Ontario passed since this book was written.

Chapter I. is introductory, giving a general view of the principal duties of a conveyancer in investigating a title. Chapter II. is devoted to Registration and the requirements of the Registry Act. Chapter III. discusses Incumbrances; Mortgages; Vendor's liens; Crown debts, now happily dying out; Executions; Taxes; Special improvements under particular Statutes; Liens of Mutual Insurance Companies, not much practical advantage to them and a nuisance to every body else, and given apparently without rhyme or reason; Dower; Curtesy and Legacies. Chapter IV. speaks of Particular Titles, such as by possession, by inheritance, by will, by decree and vesting orders of the Court of Chancery, by acts of Parliament, by by-laws under powers of sale in mortgages; tax titles and Sheriffs deeds under executions. In the next two chapters, the subjects of attested copies; Covenants for production; secondary evidence and presumptions are shortly treated of; and the concluding chapter is devoted to a few remarks

upon proceedings under the Act for Quieting Titles. In an appendix this act is given in full with notes, as also the orders of the Court of Chancery under the Act and Forms; the whole concluding with a full Index.

The arrangement is good, and so far as we have had an opportunity of judging, the information is reliable. Mr. Taylor's position as Referee of titles, under the Quieting Titles Act, gives him a peculiar fitness for dealing with the subject. Those having business under that act will do well to make themselves familiar with the contents of the work and so save themselves much time and trouble, and their client much expense and delay, for it cannot be denied that much of the delay of which the Court of Chancery gets the credit in matters of this kind is chargeable to want of familiarity with the working of the act on the part of the solicitors employed. With this book at their hand they cannot plead want of knowledge.

The author does not claim "that this little work will supersede, or even rival, the more extended treatises of English writers upon the various subjects embraced in it;" this of course, but nevertheless the practical conveyancer will do well to provide himself with Mr. Taylor's book as a valuable and reliable auxiliary to them, and a handy means of referring to the statutes and decisions in Upper Canada affecting the subjects, more fully and elaborately discussed elsewhere. To students it is peculiarly useful in giving them in a readable form the general principles as well as many of the practical details of a most important branch of their profession.

The Insolvent Act of 1869, with Tariff, Notes, Forms &c. By James D. Edgar, Barrister-at-law. Toronto: Copp, Clark & Co., 1869.

This is in effect a second edition of Mr. Edgar's annotated edition of the Insolvent Act of 1864. Since then a number of cases have been decided both here and in England, which, the former particularly, are of special importance in construing the Act now in force, and will be found collected in their appropriate places throughout the work.

As this Act is applicable to the Provinces of Quebec, New Brunswick and Nova Scotia, as well as Ontario, we hope that a collection, such as that before us, of the principal cases explanatory of the Act, may tend to assimilate the practice in the different Provinces, but this, as the author remarks, cannot *ensure* uniformity, which can never be attained without rules being made to effect that object. There should be rules applicable alike to Ontario, New Brunswick and Nova Scotia, and which might be framed by a joint committee of Judges from these Provinces, with such particulr rules for each as might be found necessary, owing to any peculiar administration in the individual Provinces; though it could scarcely be expected that the Province of Quebec could join in rules which might be framed for the other Provinces, owing to the peculiarity of her laws. This might be made one step towards the assimilation of the laws in the English-speaking Provinces, referred to in the British North America Act of 1867.

The book before us is in every respect superior to the edition of 1864, both as to the matter, and in its general appearance.

There are some useful forms in the appendix, as also the tariff of fees under 27, 28 Vic. c. 17, which, by the way, has strong internal evidence of being prepared with more reference to the value of money fifty years ago than at present.

OBITUARY.

JUDGE MALLOCH.

We learn from a local paper some particulars of the late judge of Leeds and Grenville, whose sudden death recently took place, at the age of 73.

He was born in Perth, Scotland, on the 13th of April, 1797. He came to Canada in 1817. He studied law with the late Levius P. Sherwood, and began to practice his profession in 1825. In 1837 he was appointed judge of the Bathurst District, and of Leeds and Grenville in 1842, which office he held till last year, when he resigned. Judge Malloch was one of the five Judges appointed in 1854 to frame Rules of Practice for the Division Courts—the Rules which were in force until a recent period.

We find also from one of the Blue Books that Mr. Malloch's period of public service dates from 1820, when he was appointed Registrar of the Surrogate Court of the then Johnstown District. For a period of half a century he enjoyed the confidence of the Crown and the public.

GEORGE HEMINGS, Esq.

We regret to record the death of Mr. George Hemings, Taxing Officer of the Court of Chancery, on 21st ult., at the age of 48.

He commenced the practice of his profession by entering into partnership with Mr. Adam Crooks. He subsequently joined Mr. John O. Halt, at Hamilton. After leaving Hamilton he returned to Toronto, and formed a partnership with Mr. George Morphy. On the 10th February, 1859, he was appointed Taxing Officer of the Court of Chancery, where he secured the confidence of the judges and the profession as a most efficient and painstaking officer. He held this position until his death. His loss will be much felt, though for some time past his severe and protracted ill-health prevented him giving as much time and attention to his duties as formerly.

SPRING ASSIZES, 1870.

Eastern Circuit.—*Mr Justice Galt.*

Kingston	Tuesday	March 15.
Brockville	Tuesday	" 29.
Perth	Tuesday	April 5.
Ottawa	Tuesday	" 12.
L'Orignal	Wednesday	" 27.
Cornwall	Monday	May 2.
Pembroke	Tuesday	" 10.

Midland Circuit.—*Mr Justice Gwynne.*

Lindsay	Monday	March 14.
Peterboro	Monday	" 21.
Cobourg	Friday	" 25.
Belleville	Thursday	" 31.
Whitby	Monday	April 11.
Napanee	Wednesday	" 27.
Picton	Monday	May 2.

Niagara Circuit.—*Mr. Justice Wilson.*

Milton	Monday	March 14.
St. Catharines	Wednesday	" 30.
Welland	Monday	April 11.
Barrie	Monday	" 18.
Hamilton	Monday	" 25.
Owen Sound	Tuesday	May 10.

Oxford Circuit.—*The Chief Justice of Ontario.*

Brantford	Monday	March 14.
Berlin	Friday	" 18.
Guelph	Wednesday	" 23.
Woodstock	Monday	April 18.
Stratford	Monday	" 25.
Simcoe	Tuesday	May 3.
Cayuga	Tuesday	" 10.

Western Circuit—*Mr. Justice Morrison.*

London	Monday	March 21.
St. Thomas	Wednesday	" 30.
Sandwich	Tuesday	April 5.
Chatham	Tuesday	" 12.
Sarnia	Tuesday	" 26.
Goderich	Monday	May 2.
Walkerton	Monday	" 9.

Home Circuit—*The Chief Justice of the Common Pleas.*

Brampton	Monday	March 15.
Toronto	Monday	March 21.

CHANCERY SPRING SITTINGS, 1870.

As finally settled by the Court.

The Hon. Vice-Chancellor Strong.

Toronto	Tuesday	March 15

The Hon. Vice-Chancellor Mowat.

Stratford	Tuesday	April 5
Goderich	Friday	" 8
Sarnia	Tuesday	" 12
Sandwich	Friday	" 15
Chatham	Tuesday	" 19
London	Tuesday	" 26
Woodstock	Saturday	" 30
Simcoe	Friday	May 6

The Hon. the Chancellor.

Hamilton	Tuesday	April 12
Brantford	Thursday	" 21
Lindsay	Thursday	" 28
Guelph	Thursday	May 5
Barrie	Wednesday	" 11
Owen Sound	Wednesday	" 18
St. Catharines	Monday	" 23
Whitby	Friday	June 3

The Hon. Vice-Chancellor Strong.

Ottawa	Thursday	May 5
Cornwall	Tuesday	" 10
Brockville	Tuesday	" 17
Kingston	Friday	" 20
Belleville	Thursday	" 26
Peterborough	Wednesday	June 1
Cobourg	Monday	" 6

Curious Tenures.—Hugh de Saint Philbert holds the manor of Creswell, in the County of Berks, by the serjeanty of carrying bottles of Wine, for the breakfast of our lord the King, and it was called the serjeanty of the Huse, through the kingdom of England.

The Mayor and Burgesses of Oxford, by charter, claim to serve in the office of butlership to the King, with the citizens of London, with all fees thereunto belonging, which was allowed at the Coronation of King James II., and to have three maple cups for their fee. They had also, *ex gratia*, allowed a large gilt bowl and cover.

Ela, Countess of Warwick, holds the manor of Hoke Norton, in the County of Oxford, which was of the barony of D'oyly, of our lord the King in capiti, by the serjeanty of carving before our lord the King on Christmas day, and to have the knife of our lord the King with which she carved. —*Oxford Journal.*

TO CORRESPONDENTS.

"Observer" supposes us to be aware of the existence in several counties of a practice which he condemns. We have no knowledge of any such appointments ever having been made. "When the statutory contingencies have not happened," we believe the maxim "*Omnia presumuntur rite esse acta*" would cover the acts of the deputy. See Cro. Eliz. 669, Cro. Jac. 552, 2 Jurist, 381, 3 Camp. 432, 3 C. & P. 412, 4 T. R. 366.

"D. H. P."—The insolvency case you refer to is in the current number of the Queen's Bench Reports.