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NOVEMBER, 1895.

The Barrister.

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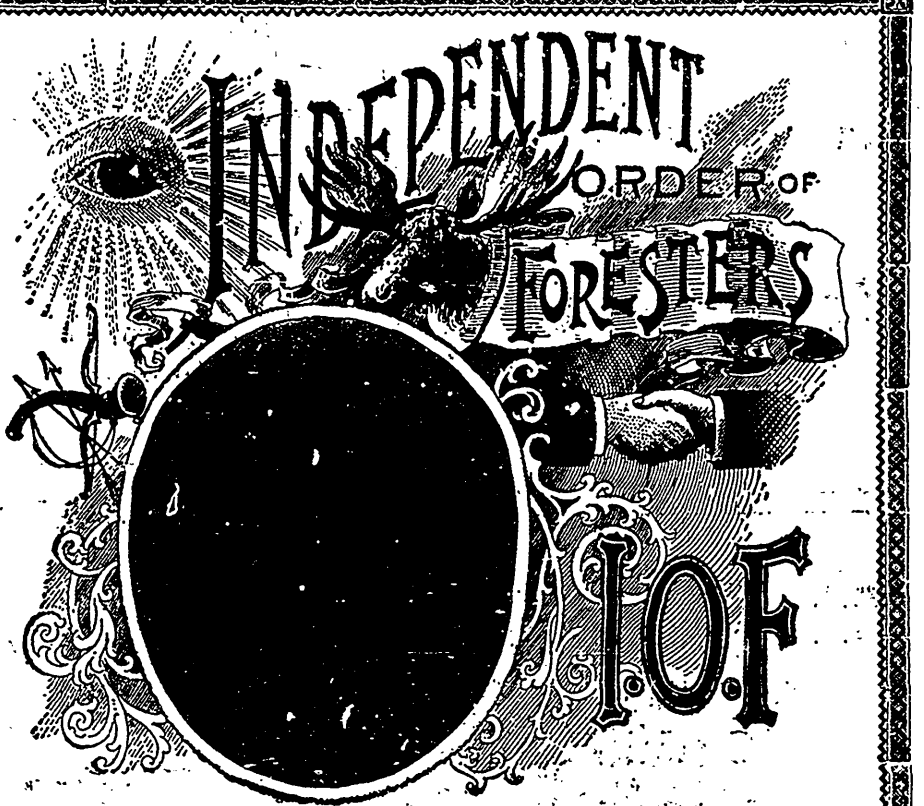

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EVERYBODY who knows anything about insurance acknowledges that the Independent Order of Foresters is far and away the **Best** Fraternal Benefit **society in the World.** It was founded in Newark, New Jersey, on the 17th June, 1874, and has spread all over the United States and Canada, and is rapidly spreading in Great Britain and elsewhere.

The Unexampled Progress and Prosperity of the Independent Order of Foresters is shown by the following figures:

	No. of Members.	Balance in Bank.		No. of Members.	Balance in Bank.		No. of Members.	Balance in Bank.
October, 1882	880	$ 1,145 07	January, 1888	7,811	$ 86,102 42	January, 1894	54,484	$855,857 39
January, 1883	1,134	2,769 58	January, 1889	11,618	117,599 88	February, "	55,149	875,360 06
January, 1884	2,216	13,070 85	January, 1890	17,026	188,130 86	March, "	56,559	876,230 03
January, 1885	2,558	20,992 30	January, 1891	24,466	233,967 20	April, "	58,339	911,120 93
January, 1886	3,648	31,082 52	January, 1892	32,303	408,793 18	May, "	59,607	928,707 04
January, 1887	5,804	60,325 02	January, 1893	43,024	580,597 85	June, "	61,000	951,571 62

Membership 1st July, 1894, about 61,000. Balance in Bank, $951,571.62.

The total number of applications considered by the Medical Board for the year ending 31st December, 1892, is 18,247, whom 17,028 were passed, and 1,219 rejected.

The cause of this unexampled prosperity and growth of the I. O. F. is due to the fact that its foundations have been laid on a **Solid Financial Basis,** and every department of the Order has been managed on business principles, thereby securing for all Foresters large and varied benefits at the lowest possible cost consistent with **Safety and Permanence.**

At date all Benefits have been paid within a few days of filing the claim papers, amounting in the aggregate to the princely sum of **Two Millions Two Hundred and Thirty-four Thousand Four Hundred and Twenty-four Dollars.** Notwithstanding the payment of this large sum, as well as all the management expenses, including large sums for planting the Order in New Territory, there remains the handsome cash balance in the treasury, as noted above, of the sum of **Nine Hundred and Fifty-one Thousand Five Hundred and Seventy-one Dollars and Sixty-two Cents.**

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FOR YOUR FAMILY.—1. Funeral Benefit, $50. 2. Insurance Benefit of $1,000, $2,000, or $3,000.

The cost of admission to the Order in most Courts is only $7 to $9, according to the amount of insurance taken, besides medical examination fee, which is $1.50 if you are taking only $1,000 of insurance, and $2 if taking $2,000 or $3,000. **Agents wanted in Canada, the United States, and Great Britain and Ireland.**

For further information, apply to

ORONHYATEKHA, M.D., S.C.R., Toronto, Canada. HON. D. D. AITKEN, M.C., S.V.C.R., Flint, Mich. JOHN A. McGILLIVRAY, Q.C., S. Secretary, Toronto, Canada. JAMES MARSHALL, Gen. Manager, Great Britain, 172 Buchanan-street, Glasgow, Scotland, or to REV. W.J. McCAUGHAN, Gen. Manager, Belfast, Ireland.

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The Barrister.

VOL. I. TORONTO, NOVEMBER, 1895. No. 12.

EDITORIAL.

EVERY lawyer in Canada should be a reader of the BARRISTER; it is furnished subscribers at the cost of publication—two dollars a year, and is therefore within the means of everyone.

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WE invite all who desire to discuss any topic of interest to the Profession to use the BARRISTER freely.

*

WE believe that the jury in murder trials should have the power of bringing in verdict in the first, second or third degree—that is, they should decide whether the prisoner should hang, be imprisoned for life, or for a number of years. The law as it stands can only be defended on the ground that it is ancient, and what was good enough for our forefathers is good enough for us. Hanging at best is a barbarous method of punishment, and it is a question if it does not brutalize justice more than it exalts it.

*

IN the case of Peo v. Warren, 34 N. Y. suppl. 942, the statute of New York of 1870 c. 385, s. 2, as amended by the Act of 1894 c. 622, which makes it a crime for a contractor with a municipal corporation for the construction of public works to employ an alien as a laborer on such works, has been declared void. This the court holds to be in violation of the Constitution of New York, Art. 1 s. 1, and of the fourteenth amendment to the Constitution of the United States, which forbids any State to make a law which shall abridge the privilege or immunities of citizens of the United States, or to deprive any person of liberty or property without due process of law. We are glad to see this decision, and are glad to know the United States has a constitution to protect the people from the blunders of ignorant legislators. We wish we could say the same thing of Canada, but alas it is impossible. We are being governed or rather misgoverned to death.

*

THE appointment of Mr. Désiré Girouard Q.C., to be a puisne judge of the Supreme Court of Canada, in place of Mr. Justice Fournier,

resigned, was made on September 28th. Mr. Girouard comes somewhat late to the bench, being now in his sixtieth year, but this is the second vacancy which has occurred in the Quebec membership of the Supreme Court since it was constituted. He has had opportunities of accepting subordinate positions on the bench, but has preferred to bide his time. He thus brings to the discharge of his judicial functions the maturity of judgment and experience gained during the long period of thirty-five years devoted to active practice and parliamentary affairs. By this appointment the Montreal division of the province for the first time has a representative on the Supreme bench; yet more than four-fifths of the Province of Quebec cases carried to the Supreme Court have proceeded from this city, and in fact a considerable part of the entire business of the court has consisted of appeals from the city of Montreal. The new judge will thus be a gain to the profession in this district, and it may be added that both by ripe judgment and experience and the habit of thorough research and study he is well qualified to fill the position with distinction to himself and satisfaction to the bar.—*Legal News.*

*

In *In re* Look Tin Sing, 10 Sawy. 353; S. C., 21 Fed. Rep. 905, Justice Field held that a person born within the United States, of Chinese parents residing therein, and not engaged in any diplomatic or official capacity under the Emperor of China, is a citizen of the United States. The same was decided in *Ex parte* Chin Ying, 35 Fed. Rep. 354; *In re* Yung Ng Hee, 36 Fed. Rep. 437; *In re* Wy Shing, 36 Fed. Rep. 553, Gee Fook Sing v. United States, 49 Fed. Rep. 146. But this rule does not apply to citizens of independent political communities existing within the borders of a larger state, even though the latter exercises a protectorate over them; and therefore a child born of Indian, or of Indian and alien parents, is not a citizen of the United States, though born within its territory: Elk v. Wilkins, 112 U. S. 94; S. C., 5 Sup. Ct. Rep. 41; McKay v. Williams, 2 Sawy. 118.

*

In Denver Consolidated Electric Co. v. Simpson, 31 Pac. Rep. 499, the Supreme Court of Colorado has very clearly defined the responsibility of a company which maintains electric wires in a public highway. Like other persons using instrumentalities which may become dangerous to others if misused, they are only bound to exercise that reasonable care which a reasonable prudent person would exercise under similar circumstances; but, as the business is attended with great peril to the public, the care to be exercised is commensurate with the increased danger. Accordingly, evidence that the wire of an electric light company, so highly charged with electricity as to be dangerous to persons coming in contact with it, is detached from its fastenings and hangs down in an alley, so as to endanger public travel, it is *prima facie* evidence of negligence on the part of the company; and

if degrees of negligence are not recognized, an instruction that the company is bound to use the highest degree of care in the maintenance and construction of its wires is not a prejudicial error. It was also decided in the same case, that the fact that a complaint for injury caused by coming in contact with a wire belonging to an electric light company contains allegations assuming that the defendant company is an absolute insurer of the public against injury by its wires will not render it bad on that ground, when it also alleges that the location and defective condition of the wire in question was due to negligence of the defendant in the building of its line and keeping it in repair.

RECENT ENGLISH CASES.

NEVILL v. Fine Arts and General Insurance Co., C.A. 14, R., Oct., 169.—Libel — Privileged Occasion — Actual Malice—Words in Excess of Occasion—Action against Corporation. In an action for libel, if the libel is published on a privileged occasion, and there is no evidence of malice, the defendant is entitled to judgment. Per Curiam: When the Judge has ruled that the libel was published on a privileged occasion, there can be no liability for such publication unless the jury expressly find that it was published maliciously. A finding by the jury that the statement exceeded the privileged occasion is not equivalent to a finding of actual malice and is immaterial.

*

SOUTHERN Counties Deposit Bank (Limited) v. Boaler, 15 R, Oct., 287. Case Stated—Company Appellant—Recognizance—Practice — Summary Jurisdiction Act, 1857, 20 & 21 Vict., c. 43, s. 3. Where a limited company appeals against a decision of Justices the recognizance required by section 3 of 20 & 21 Vict., c. 43, before a case is stated, may be entered into by a director or member of the company. (Lord Russell of Killowen, C. J., Pollock, B., and Wright, J.)

*

SARSON v. Roberts, C. A., 14 R., Oct., 198. Furnished Lodgings—Implied Condition of Fittings for Occupation—Extent of Condition—Duty of Landlord. In a contract for the letting of a furnished house or rooms there is no implied condition that the house shall continue fit for habitation during the term. There is no duty in the case of a man who has let part of his house as furnished lodgings to give information to the lodgers upon a member of his family living in the house becoming ill with an infectious disease. Wilson v. Finch-Hatton, explained.

*

PALMER v Bramley. C. A., 14 R., Oct., 225. Bill of Exchange given by Tenant for Rent due—Evidence of Agreement to suspend Right of Distress. The mere fact that a bill of exchange is given by a tenant to his landlord in respect of rent due is some evidence of agreement by the landlord to suspend his right of distress until the bill should have matured.

*

IN *re* J. H. Jones, 13 R, Oct., 109. Costs—Taxation — Agreement between Solicitor and Client—Jurisdiction to set aside Criminal Proceedings — Quarter Sessions—Attorneys and Solicitors Acts, 1843, 6 & 7 Vict., c. 63, and 1870, 33 & 34 Vict., c. 28, s-s. 4, 8, 10, 15. The words "Court or a Judge" in the Attorneys and Solicitors Act, 1870, do not apply to Courts of Quarter Sessions

or to stipendiary magistrates. Consequently where costs have been incurred in criminal proceedings at Quarter Sessions, and an agreement for the payment thereof has been made under section 4 of the Act, the High Court has jurisdiction to set aside the agreement and to order the costs to be taxed. (Stirling J.)

*

Scott v. Alvarez. C. A., 12 R., Oct., 76. Vendor and Purchaser—Condition of Sale requiring Purchaser to assume Facts—Absence of Receipt Clause or Receipt endorsed—Absence of Costs for Title.—Information obtained aliunde—Doubtful Title—Bad Title—Return of Deposit—Specific Performance. Upon a sale of leasehold property under a condition which provided that the purchaser "shall not make any objection or requisition in respect of the intermediate title to the premises between the granting of the lease and the execution of the said assignment, notwithstanding any recital of or reference to such title contained in the assignment, or any subsequent document of title, but shall assume that the said assignment vested in the assignees a good title for the residue of the said term," the purchaser cannot, where there is no evidence of *mala fides*, object to the title on the ground that the matters disclosed by the abstract raises suspicion amounting perhaps to a doubtful title. In re Sandbach and Edmondson's Contract followed. Where a purchase deed does not contain a receipt clause for the purchase-money in the body or deed, or a receipt endorsed, the purchaser must pay the expenses of proving that there is no vendor's lien for unpaid purchase-money should he insist upon such proof. It is no objection to title that some of the deeds do not contain covenants for title if a good legal estate passed, and there is a covenant against incumbrances. A purchaser who has bought land under the condition above set out cannot resist specific performance, and *a fortiori*, cannot recover his deposit on the ground of evidence obtained by him *aliunde* that the title between the dates specified is a doubtful one. Nor can such a purchaser recover back his deposit even on evidence obtained *aliunde* that such title, though in accordance with the conditions of sale, is not even a good holding title, but is manifestly a bad one; but the remedy by specific performance being a matter of discretion, the Court will not in the latter case specifically enforce the contract.

*

In *re* Goodenough, Marland v. Williams, 1895, 2 Ch. 537, 13 Q., Sept., 112, and In re Duke of Cleveland's Estate, 1895, 2 Ch., 542, are two cases in which Kekewich, J., has determined that the court, in future, in apportioning a fund between capital and income, will only allow interest at the rate of 3 per cent., instead of 4 per cent., as the basis of calculation. In the latter case a sum of money was paid out of court under an erroneous order, and, upon the order being subsequently varied, it was recovered, but without interest, and it was held that the amount so recovered ought not to be treated as between the tenant for life and remainderman as all capital, but that a fair proportion of it ought to be paid to the tenant for life as income, and, in estimating the amount so to be paid, a 3 per cent. basis must be adopted. The fall in the value of money in Ontario seems to call for some reduction in the statute rate here from 6 per cent. to some lower figure.

*

In McEntire v. Crossly, 1895, A. C. 457, 11 R., July 24, which was an appeal from the Irish Court of Appeal, the legal effect of a hire and purchase agreement had to be considered by the House of Lords. By the agreement in question the "owners and lessors" of a gas engine agreed to let and the "lessee" agreed to hire the engine at a rent, payable by instalments, amounting in the aggregate, to £240, and upon payment in full the agreement was to be at an end, and the engine was to become the property of the lessee, but until payment in full it was to remain the sole property of the lessors. It also provided that in case of failure to pay any instalment, or if the lessee should become bankrupt, the lessors might elect either to recover the full

balance remaining due, or resume possession of the engine and sell it, and, after paying themselves, pay any surplus to the lessee. The lessee, after paying an instalment, became bankrupt. The lessors took no steps to recover the balance due or to sell the engine, which was taken possession of by the trustee in bankruptcy, whereupon the "lessors" applied to the Bankruptcy Court for an order for the delivery of the engine to them. The question turned on whether or not the effect of the agreement was to transfer the property in the engine to the bankrupt. If it did, then the agreement would be void for non-registration under the Bills of Sale Act. Their lordships (Lord Herschell, L.C., and Watson, Ashbourne, and Shand) were unanimously of the opinion that the effect of the agreement was not to vest the property in the engine in the lessee, and that therefore registration under the Bills of Sale Act was unnecessary, and they therefore affirmed the order of the Irish court directing the delivery up of the engine to the lessors.

*

In the case of Foveaux, Cross v. London Anti-Vivisection Society, 1895, 2 Ch., 501, it became necessary to determine whether a society for the suppression of vivisection is a "charity" within the legal meaning of the term. The case arose in this way: A lady having power to appoint a fund in favor of charity made an appointment of it in favor of an anti-vivisection society, and the question was whether this was a valid execution of the power. Chitty, J., held that the society was a charity in the technical sense, and upheld the gift. The intention of such societies, he holds, is to benefit the community; but whether, if they achieved their object, the community would, in fact, be benefited was a question he did not feel called on to express an opinion.

*

Melville v. Mirror of Life Co., 1895, 2 Ch., 531, was an action for the infringement of the copyright of a photograph. At the request of the plaintiff a well-known athlete, named Crossland, allowed the plaintiff to take a photograph of him. The plaintiff made no charge, but gave Crossland some copies. No agreement was made as to copyright, but it was understood that the plaintiff was to be at liberty to sell copies. When the photograph was taken the plaintiff's son was present and performed the operation, while the plaintiff looked on and merely directed Crossland how to look. The plaintiff was duly registered as the proprietor of the copyright in the picture. The defendants applied to the plaintiff for a copy, and for permission to publish it, but their request was not granted. They then obtained one of the copies given to Crossland and published a copy of that in their newspaper, and for so doing the action was brought. It was contended that the son of the plaintiff was the "author" of the photograph, and not the plaintiff; but Kekewich, J., held that the father was the "author" within the meaning of the Act, and that the son merely acted as his servant in taking the photograph, and that the father was, consequently, rightly entitled to the copyright. He also held that the photograph was not taken "for or on behalf of Crossland," and, therefore, the proviso of section 1 of the Act (25 & 26 Vict., c. 68) did not apply. He also held that section 6 of the Act precluded Crossland, as well as other persons but the plaintiff, from multiplying copies without the plaintiff's leave.

*

In *re* Burrows, Cleghorn v. Burrows, 1895, 2 Ch. 497, 13 R., Sept., 117, was a simple question in the construction of a will, whereby land was devised to the plaintiff "absolutely" in case she has issue living at the death of the testator's wife, and, if not, then over. The fact was that, at the death of the testator's wife, the plaintiff had no children born, but she was then *enceinte*, and the following day was delivered of a living child. The question was whether this unborn child could be considered as "issue living" at the death of the testator's wife. Chitty, J., had no difficulty in deciding that question in the affirmative.

*

Betjemmann v. Betjemmann, 1895, 2 Ch. 474, was an action brought by the

personal representative of a deceased partner against the surviving partner. A partnership had originally existed between a father and his two sons, John and George, from 1856 to 1886, in which year the father died, and henceforward the business was carried on by the sons, without taking any accounts, or winding up the old partnership, or coming to any settlement. John died in 1893, and his personal representative brought the present action against George for an account of the partnership since the father's death in 1886. George claimed by way of cross relief to have the accounts taken from 1856, on the ground that he had recently discovered that John had during his father's lifetime fraudulently drawn more than his share from the partnership fund, and that the fraud was concealed from his co-partners. The plaintiff set up the Statute of Limitations as a bar to the taking of the account prior to 1886, and Wright, J., held it to be an answer, and he also held that, even if there had been a concealed fraud, the defendant might by ordinary diligence have discovered it sooner, and, therefore, he could not avoid the statute on that ground. The Court of Appeal (Lindley, Lopes and Rigby, L.JJ.), however, disagreed with this view of the law, and held that, although the first partnership terminated on the death of the father, the Statute of Limitations was no bar to the taking of the accounts before that date, the accounts having been carried on into the new partnership without interruption or settlement; and the fact that George might, by ordinary diligence, have sooner discovered the fraud of John was held in this case to be no answer to the statute, because a partner is entitled to rely on the good faith of his co-partners: following Rawlins v. Wickham, 3 D. G. & J. 304.

*

In The Goods of McAuliffe, 1895, P. 290, 11 R., Sept., 46, the testatrix in this case had bequeathed her residuary estate, of the value of £456, to one Catherine Headon, "to be disposed of as she shall think fit at her discretion for the benefit of" a certain Roman Catholic convent. The executor named in the will and Catharine Headon had predeceased the testatrix, and the superior of the convent applied for administration with the will annexed, as residuary legatee, and the question was whether it was necessary, first, to apply to the Chancery Division for a scheme for the application of the money. Jeune, P.P.D., held, under the circumstances, that it was not, and he being satisfied by evidence as to the permanence of the convent in question and the fitness of the superior to apply the money, made the grant to her as residuary legatee.

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In The Goods of Ponsonby, 1895, P. 287, 11 R. Sept., 49, the executor named in a will being seriously ill, and not in a condition to be served with a citation to accept or refuse probate, Jeune, P.P.D., granted letters of administration with the will annexed, to the residuary legatee, for the use and benefit of the executor until his recovery.

*

The question in Palmer v. Bramley, 1895, 2 Q. B., 405, was one of evidence. The action was in replevin by the tenant against the landlord. The plaintiff, in order to show that the defendant had suspended his right to distrain the goods in question, proved that he had accepted a bill of exchange for the rent in arrear, which was still current when the distress was made. The county judge who tried the case held that according to Davis v. Cyde, 2 A. & E. 623, the acceptance of the bill was no waiver of the right to distrain, and he therefore withdrew the case from the jury, and gave judgment for the defendant. The Divisional Court (Wright and Kennedy, JJ.) directed a new trial, being of opinion that Davis v. Cyde was not an authority, that an agreement to suspend the right of distress might not be inferred by the acceptance of a bill of exchange; and the Court of Appeal (Kay and Smith L.JJ.) were of the same opinion, and their lordships point out that Davis v Cyde was a decision on a demurrer to a plea which alleged a bill had been given for the rent, but did not aver

that it had been taken in satisfaction, or with the intention of suspending the right to distrain, and was, therefore, no authority for saying that the giving of the bill was no evidence of an agreement to suspend the right to distress, had such an agreement been averred.

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In the case of Fuller v. The Blackpool Gardens Co., 1895, 2 Q.B., 459, one or two points of interest under the English Copyright Act of 1833 (3 and 4 W. 4, c. 15) are determined. It was held by the Court of Appeal (Lord Esher, M.R., and Smith and Kay, L.JJ.) that a musical composition, in order to be a dramatic piece within the meaning of the Act, must have the characteristics of a dramatic piece, and whether it has such characteristics is a question of fact which must be determined by the nature of the composition itself. A song that does not require for its representation either dramatic effects or scenery is not a dramatic piece, though intended to be sung in appropriate costume on the stage of music halls. The well-known ditty of "Daisy Bell" was, therefore, determined not to be a dramatic piece within the meaning of the Act. It was also determined that, in order to secure the copyright of a musical composition, it is necessary that every copy published should bear the notice that the right of publication is reserved, as required by the Act of 1882.

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Thomas v. Lulham, 1895, 2 Q.B., 400, was an action by a landlord to recover possession of the demised premises for non-payment of rent, under C.L.P. Act, 1852 (15 and 16 Vict., c. 76), s. 210. The defendant contended that the plaintiff, having distrained for the rent in arrear, had thereby waived his right to recover possession under the C.L.P. Act, notwithstanding that the plaintiff had failed to realize the full amount due by the distress, and there still remained a year's rent in arrear. Mathew, J., so held, but the Court of Appeal (Lord Esher, M.R., and Kay and Smith, L.JJ.) reversed his decision, holding that the distress did not operate as a waiver of the right to proceed under the statute to recover possession.

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In *re* Coalport China Co., 1895, 2 Ch., 404, one of the articles of the company provided, amongst other things, that the directors should have power to refuse to register transfers of shares, among other cases, "where the directors are of opinion that the proposed transferee is not a desirable person to admit to membership." The directors had, in pursuance of this power, resolved to refuse to register a transfer, but without giving any reason. There was no evidence of any want of *bona fides* on their part, and it was held by the Court of Appeal (Lindley, Lopes and Rigby, L.JJ.) that the refusal could not be successfully questioned, and the decision of Kekewich, J., to the contrary, was reversed.

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In Harle v. Jarman, 1895, 2 Ch. 419, 13 R., Aug., 140, a married woman had, by a separation deed made in 1875, which was not acknowledged, covenanted to release when discovert a reversionary life interest in real and personal estate. The same deed provided for the payment to her of an annuity which she had received. On her husband's death, the persons beneficially entitled to the release claimed that the wife should execute the release; but North, J., held that as to the land the covenant was void for want of acknowledgment, and that as to her reversionary interest in the personal estate she had no power to bind it by deed made during coverture, and that her acceptance of the annuity did not amount to an election to confirm the deed.

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In *re* Debenham and Walker, 1895, 2 Ch., 403, 13 R., Aug., 161, is only necessary to be referred to as marking a difference between the practice in England and Ontario. In this case an order for taxation between solicitor and client had been obtained by a solicitor, a balance was found due to him from his client, and he applied for a summary order for payment thereof, but North, J., held that an action must be brought.

In *re* Stenning, Wood v. Stenning, 1895, 2 Ch., 433, was an interlocutory application by a client of a deceased solicitor to obtain payment of money due to her from the balance standing to his credit in a bank under the following circumstances: In March, 1890, the solicitor received the sum of £593, the proceeds of the sale of a sum of consols belonging to the plaintiff, and paid it into his private bank account; between that date and the 31st August, 1890, he received certain other moneys for other clients, which he also paid in to the same account. The aggregate of the moneys thus received from the plaintiff and other clients amounted to £3,042, but on the 11th August, 1890, the balance to the credit of the account was only £1,088. At the solicitor's death £4,443 was standing to his credit, but his estate was insolvent. The plaintiff claimed that the money in the bank account was ear-marked to the extent of her claim, and that she was entitled to payment in full. None of the other clients, whose money had been paid into the same account, made any claim on the fund, but one of them had proved a claim against the estate. North, J., on the facts, came to the conclusion that the plaintiff had really lent the money to the solicitor, and therefore, had no specific claim on the fund; and his decision of the other point may, therefore, be regarded as an *obiter dictum;* but assuming that the plaintiff did stand in the position of *cestui que trust* he held that as between herself and the other *cestui que trustent* the rule in Clayton's case must apply, and that when the balance was reduced on 31st August, 1890, to £1,088, it must be assumed that her moneys had been first drawn out.

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In *re* Fereday, 1894, 2 Ch., 437, 13 R., Aug., 169, a writ of attachment had been issued against a solicitor at the instance of clients for contempt in non-payment of £78 which he had been ordered to pay the clients. At the request of the solicitor, the clients agreed to suspend proceedings under the writ for fourteen days on payment of £25 on account. This was done, and, no further payment having been made within the fourteen days, after the expiration of that time he was arrested. He then applied to be discharged, claiming that the acceptance of part payment and giving of time amounted to a waiver of the right to enforce the attachment; but North, J., held that there had been no waiver and dismissed the motion.

*

In the case of Somers-Cocks, Wegg-Prosser v. Wegg-Prosser, 1895, 2 Ch., 449, the construction of a will was in question. The testatrix thereby bequeathed her personal estate upon trust for sale, and out of the proceeds to pay her debts and testamentary expenses, and then to pay a legacy to her niece; and the residue of her personal estate, save and except such parts thereof as could not by law be apportioned by will to charitable purposes, she bequeathed to a charity. Part of her estate consisted of impure personalty. It was contended on behalf of the charity that the will operated as a direction to marshal the assets in favor of the charity, but Kekewich, J., was of opinion that marshalling in favor of a charity is only to be resorted to in order to give effect to the directions of a will; and that in the present case the express exception from the bequest to the charity, of property which could not by law be apportioned by will thereto, indicated that the due effect could be given to the will without marshalling. He therefore held that there was no intestacy as to the impure personalty.

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In Birkett v. Purdom, 1895, A.C. 371, 11 R., July, 1, a somewhat curious marriage contract was in question, whereby in contemplation of marriage the husband bound himself to pay to his wife an annuity of £1,000, "to be applied by her towards the expenses of my household and establishment, and that during all the days of my life." He secured the annuity upon land, and declared the annuity to be his wife's separate property free of the *jus mariti*. The husband having made a trust deed in favor of creditors, the wife, with the concurrence of her husband, brought the present

action to obtain payment of arrears of annuity in priority to her husband's creditors, the husband's estate being insufficient to pay his creditors. The Scotch Court of Sessions dismissed the action, and the decision was affirmed by the House of Lords (Lords Herschell, L.C., and Watson, Ashbourne, Macnaghten, and Shand), their lordships being of opinion that, notwithstanding the provision declaring the annuity to be the wife's separate property, it was really a settlement of the husband's property for his own benefit, and could not prevail as against his creditors.

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In Municipal Council of Sydney v. Bourke, 1895, A.C. 433, 11 R., July, 57, an appeal from New South Wales, the Judicial Committee of the Privy Council reiterates the opinion expressed in Pictou v. Geldert, 1893, A.C. 524, to the effect that, although a municipality be under a statutory obligation to keep the highways within its limits in repair, yet it is not liable to be sued for damages resulting from its omission to do so in the absence of any statutory provision to that effect. (No statute law here to this effect.)

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The suit of Brown v. Jackson, 1894, A.C. 446, was a patent case in which the appeal was brought from the Supreme Court of Ceylon. The action was to restrain the alleged infringement of the plaintiff's patent, which was for improvements to an old and well-known machine. The alleged infringements had the same object as the plaintiff's improvements, but they effected it in a manner not strictly corresponding to the plaintiff's specification; and it was held by the Judicial Committee that the patentee must be limited strictly to the exact terms of his specification, and that there was consequently no infringement.

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Meux v. Great Eastern Ry. Co., 1895, 2 Q.B. 378, was an action against a railway company to recover damages for the loss of the plaintiff's property. The property in question consisted of the livery of the plaintiff's servant, which was in the custody of the servant, and formed part of his personal luggage while travelling as a passenger on the defendants' railway, and which had been destroyed owing to an act of misfeasance of the defendant's porter. The defendants sought to escape liability to the plaintiff on the ground that the contract made by the defendants was a personal contract with the plaintiff's servant, who alone had a right to sue; and that the plaintiff could not recover because the goods were not lawfully on the defendants' premises, and Mathew, J., dismissed the action on these grounds; but the Court of Appeal (Lord Esher, M.R., and Kay and Smith, L.JJ.) held that, although the plaintiff was not entitled to recover for breach of contract, she nevertheless had a right of action in tort. The goods were lawfully on the premises of the defendants, having been brought there and accepted by the defendants as part of the servant's luggage, and the injury having occurred through an act of misfeasance, and not a mere nonfeasance, the defendants were directly liable therefor to the plaintiff, notwithstanding the defendants' contract was with the servant.

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In the case of Sarson v. Roberts, (1895) 2 Q. B. 395, the plaintiff leased furnished apartments in the defendant's house; subsequently, and while the plaintiff was in occupation, the defendants' grandchild, who was living in the house, fell ill of scarlet fever, and the plaintiff's wife and child were infected and took the fever, and the plaintiff was put to expense for medical attendance and nursing, and he claimed to recover such expenses as damages for breach of an implied contract that the premises would continue fit for habitation. The action was tried before a County Court judge, who gave judgment for the plaintiff; but the Court of Appeal (Lord Esher, M.R., and Kay and Smith, L.JJ.) set aside the verdict and judgment, and dismissed the action on the ground that although according to Smith v. Marrable, 11 M. & W. 5; and Wilson v. Finch-Hatton, 2 Ex. D. 336, there is an implied contract that a furnished house is fit for habitation at the commencement of the tenancy, there is no implied contract that it will continue so during the currency of the time.

SUPREME COURT OF CANADA.

OTTAWA, 9 Oct. 1894,—City of Quebec v. The Queen.—Exchequer.—Constitutional law—Dominion government—Liability to action for tort—Injury to property on public work—Non-feasance —39 Vic., c 27 (D)—R.S.C., c. 40, s. 6—50 & 51 Vic., c. 16 (D). By 50 and 51 Vic., c. 16 (D) the Exchequer Court is given jurisdiction to hear and determine, *inter alia:* (c) Every claim against the Crown arising out of any death or injury to the person or to property on any public work, resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment; (d) Every claim against the Crown arising under any law of Canada. In 1877 the Dominion Government became possessed of the property in the city of Quebec on which the citadel is situated. Many years before that a drain had been constructed through this property by the Imperial authorities, the existence of which was not known to the officers of the Dominion Government, and it was not discovered at an examination of the premises in 1880 by the City Engineer of Quebec and others. Before 1877 this drain had become choked up, and the water escaping gradually loosened the earth until in 1889, a large portion of rock fell from the cliff into a street of the city below, causing great damage, for which compensation was claimed from the Government. Held, affirming the decision of the Exchequer Court, that as the injury to the property of the city did not occur upon a public work, subsec. (c) of the above Act did not make the Crown liable, and moreover there was no evidence that the injury was caused by the negligence of any officer or servant of the Crown or acting within the scope of his duties or employment. Held, per Strong, C. J., and Fournier, J., that while subsec. (c) of the Act did not apply to the case, the city was entitled to relief under subsec. (d) ; that the words "any claim against the Crown" in that subsection, without the additional words would include a claim for a tort; that the added words, "arising under any law of Canada," do not necessarily mean any prior existing law or statute law of the Dominion, but might be interpreted as meaning the general law of any province of Canada; that this case should be decided according to the law of Quebec regulating the rights and duties of proprietors of land situated on different levels; and that under such law, the Crown, as proprietor of land on the higher level, was bound to keep the drain thereon in good repair and was not relieved from liability for damage caused by neglect to do so by the ignorance of its officers of the existence of the drain. Appeal dismissed with costs.

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DIONNE v. the Queen.—Quebec.—May 6, 1895.—Pension—Commutation —Transfer or cession—R. S. P. Q., Arts. 690, 693. D, a retired employee of the Government of Quebec, surrendered his pension for a lump sum to the Government, and his wife brought an action to have it revived and the surrender cancelled. By Art. 690 of R. S. P. Q. "the pension or half pension is neither transferable nor subject to seizure," and by Art. 683 the widow of D. would have been entitled to an allowance equal to one half of his pension. Held, reversing the decision of the Court of Review, Strong, C. J., and Sedgwick, J., dissenting, that D, after his retirement was not a permanent official of the Government of Quebec and the transaction was not, therefore, a resignation by him of office and a return by the Government, under Art. 688, of the amount contributed by him to the pension fund; that the policy of Art. 690 is to make the right of a retired official to his pension inalieniable even to the Government; that D's wife had a vested interest jointly with him during his life in the pension and could maintain proceedings to conserve it; and therefore that the surrender of the pension should be cancelled. Appeal allowed with costs.

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N. A. GLASS Co. v. Barsalou.—Quebec.—May 6, 1895.—Contract—Construction.

of—Agreement to discontinue business—Determination of agreement. B, a manufacturer of glassware, entered into a contract with two companies in the same trade, by which in consideration of certain quarterly payments, he agreed to discontinue his business for five years. The contract provided that if at any time during the five years any furnace should be started by other parties for the manufacture of glassware, either of the said companies could, if it wished, by written notice to B, terminate the agreement "as on the first day on which glass has been made by the said furnace," and the payments to B. should then cease unless he could show "that said furnace or furnaces at the time said notice was given could not have a production of more than $100 per day." Held, affirming the decision of the Court of Review, that under this agreement B. was only required to show that any furnace so started did not have an actual output worth more than $100 per day on an average for a reasonable period, and that the words "could not have a production of more than one hundred dollars per day" did not mean mere capacity to produce that quantity whether it was actually produced or not. Appeal dismissed with costs.

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THE Queen v. Filion.—Exchequer—11 March, 1895.—Crown—Negligence of servants or officers—Common employment—Law of Quebec—50 & 51 Vic., c. 16, s. 16 (c). A petition of right was brought by F. to recover damages for the death of his son caused by the negligence of servants of the Crown while engaged in repairing the Lachine canal. Held, affirming the decision of the Exchequer Court, Taschereau, J., dissenting, that the Crown was liable under 50 & 51 Vic., c. 16, s. 16 (c); and that it was no answer to the petition to say that the injury was causd by a fellow servant of the deceased the case being governed by the law of the the Province of Quebec, in which the doctrine of common employment has no place. Appeal dismissed with costs.

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VILLAGE of Pointe Claire v. Pointe Claire Turnpike Road Co.—Quebec.—6 May, 1895.—Statute—Construction of—Retroactive effect of—Municipal Corporation—Turnpike Road Company—Erection of toll gates—Consent of corporation. A turnpike road company had been in existence for a number of years in the village of Pointe Claire, and had erected toll gates and collected tolls therefor, when an Act was passed by the Quebec Legislature, 52 Vic., 43, forbidding any such company to place a toll or other gate within the limits of a town or village without the consent of the corporation. Sec. 2 of said act provided that "this act shall have no retroactive effect," which section was repealed in the next session by 54 Vic., c. 37. After 52 Vic., c. 42 was passed, the company shifted one of its toll gates to a point beyond the limits of the village, which limits were subsequently extended so as to bring said gate within them. The Corporation took proceedings against the company, contending that the repeal of sec. 2 of 53 Vic., c. 43, made that act retroactive and that the shifting of the toll gate without the consent of the corporation was a violation of the said act. Held, affirming the decision of the Court of Queen's Bench, that as a statute is never retroactive unless made so in express terms, sec. 2 had no effect, and its repeal could not make it retroactive; that the shifting of the toll gate was not a violation of the act, which only applied to the erection of new gates; and that the extension of the limits of the village could not affect the possessory rights of the company. Appeal dismissed with costs.

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Town of Trenton v. Dyer et al.—Ontario.—6 May, 1895.—Statute—Directory or imperative requirement—Municipal corporation—Collection of taxes—Delivery of roll to collector—55 Vic., c. 48 (O). By s. 119 of The Toronto Assessment Act (55 V., c. 48), provision is made for the preparation in every year by the clerk of each municipality of a "collectors roll" containing a statement of all assessments to be made for municipal purposes in the year, and s. 120 provides for a similar roll with respect to taxes

payable to the treasurer of the province. At the end of s. 120 is the following: "The clerk shall deliver the roll, certified under his hand, to the collector on or before the first day of October." Held, affirming the decision of the Court of Appeal (21 Ont. App. R. 379), that the provision as to delivery of the roll to the collector was imperative, and its non-delivery was sufficient answer to a suit against the collector for failure to collect the taxes. Held, also, that such delivery was necessary in the case of the roll for municipal taxes provided for in the previous sections as well as that for provincial taxes. Appeal dismissed with costs.

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DOMINION OF CANADA v. Province of Ontario and Quebec. *In re* Arbitration respecting Provincial accounts.—6 May, 1895.—Construction of Statute—B. N. A. Act, ss. 112, 114, 115, 116, 118—36 Vic., c. 30 (D)—47 Vic., c. 4 (D)—Provincial subsiides—Half-yearly payments—Deduction of interest. By s. 111 of the B. N. A. Act, Canada is made liable for the debt of each province existing at the Union. By s. 112, Ontario and Quebec are jointly liable to Canada for any excess of the debt or the Province of Canada at the Union over $62,500,0000, and chargeable with 5 per cent interest thereon. Secs. 114 and 115 make a like provision for the debts of Nova Scotia and New Brunswick, exceeding eight and seven millions respectively, and by s. 116, if the debts of those provinces should be less than said amounts, they are entitled to receive, by half-yearly payments in advance, interest at the rate of 5 per cent on the difference. Sec. 118 after providing for annual payments of fixed sums to the several provinces for support of their governments and an additional sum per head of population, enacts that "such grants shall be in settlement of all future demands on Canada and shall be paid half-yearly in advance to each province, but the government of Canada shall deduct from such grants, as against any province, all sums chargeable as interest on the public debt of that province in excess of the several amounts stipulated in this act." The debt of the Province of Canada at the Union exceeded the sum mentioned in s. 112, and on appeal from the award of arbitrators appointed to adjust the accounts between the Dominion and the Provinces of Ontario and Quebec, Held, affirming said award, that the subsidy to the provinces under s. 118 was payable from the 1st of July, 1867, but interest on the excess of debt should not be deducted till 1st of January, 1868; that unless expressly provided interest is never to be paid before it accrues due; and that there is no express division in the B. N. A. Act that interest shall be deducted in advance on the excess of debt under sec. 118. By 36 Vic., c. 30 (D), passed in 1873, it was declared that the debt of the Province of Canada at the Union was then ascertained to be $73,006,088.84 and that the subsidies should thereafter be paid according to such amount. By 47 Vic., c. 4, in 1884, it was provided that the accounts between the Dominion and the provinces should be calculated as if the last mentioned acts had directed that such increase should be allowed from the coming into force of the B. N. A. Act, and it also provided that the total amount of the half-yearly payments which would have been made on account of such increase from July 1, 1885, should be deemed capital owing to the respective provinces bearing interest at 5 per cent, and payable after July 1st, 1884, as part of the yearly subsidies. Held, affirming the said award, Gwynne, J., dissenting, that the last mentioned acts did not authorise the Dominion to deduct in advance from the subsidies to the provinces half-yearly, but leaves such deduction as it was under the B. N. A. Act.

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VILLAGE of St. Joachim de Lapointe Clare v. The Lapointe Claire Turnpike Road Company. Quebec, May 6. A turnpike road company has been in existence for a number of years in the village of Lapointe Claire, and had erected toll-gates and collected tolls therefor, when an Act was passed by the Quebec Legislature, 52 Vic., c. 43, forbidding any such company to place a toll

or other gate within the limits of a town or village without the consent of the corporation. Section 2 of said Act provided that "this Act shall have no retroactive effect," which section was repealed at the next session by 54 Vict., c. 36. After 52 Vict., c. 43, was passed, the company shifted one of its toll-gates to a point beyond the limits of the village, which limits were subsequently extended so as to bring said gates within them. The corporation took proceedings against the company, contending that the repeal of section 2 of 62 Vic., c. 43, made that Act retroactive, and that the shifting of the toll-gate without the consent of the corporation was a violation of said Act. Held, affirming the decision of the Court of Queen's Bench, that as a statute is never retroactive unless made so in express terms, section 2 had no effect, and its repeal could not make it retroactive; that the shifting of the toll-gate was not a violation of the Act, which only applied to the erection of new gates; and that the extension of the limits of the village could not affect the possessory rights of the company.

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BARRINGTON v. The City of Montreal. Quebec, Oct. 8. B, applied for a mandamus to compel the city of Montreal to carry out the provisions of one of its by-laws, which was granted by the Superior Court, whose judgment was reversed by the Court of Review, and the petition for mandamus dismissed. B. then instituted an appeal from the latter judgment to the Supreme Court of Canada; and on motion to quash such appeal, held, that the case was not within the provisions of 54-55 Vict., c. 25, s. 4, allowing appeals from the Court of Review in certain cases; and the appeal not coming from the Court of Queen's Bench (the court of highest resort in the province), there was no jurisdiction to entertain it. Dangon v. Marquis, 3 S.C.R., 251, and McDonald v. Abbott, 3 S. C. R., 278, followed. Appeal quashed without costs.

ONTARIO CASES.

Supreme Court of Judicature.

High Court of Justice.

QUEEN'S BENCH DIVISION.

THE Queen v. Coursey. (Rose, J., in Chambers, August 31.) Held, that where there is a conviction for an offence under the by-law set out in the schedule to R.S.O., c. 205, as distinguished from any of the provisions of the Act itself, an appeal will lie from such conviction to the Quarter Sessions, notwithstanding section 112, whieh has no application.

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YOUNG v. Erie & Huron Railway Co. (Master in Chambers. Oct. 2.) Where a party complies with a demand for particulars of his claim, he will not be restricted at the trial to the particulars given by him, without any order for the purpose.

CHANCERY DIVISION.

TOWNSHIP of Morris v. County of Huron. Meredith, C.J., July 16.) The saving provisions of s. 15 of 57 Vict., c. 50 (O.), do not operate so as by implication necessarily to exclude the application for the Interpretation Act, R.S.O., c. 1, s. 8, s-s. 43. Held, that a township corporation which had obtained an award against a county corporation under s. 633 (*a*) of the Consolidated Municipal Act, 1892, for part of the cost of the maintenance of certain bridges, was, notwithstanding the repeal of s. 533 (*a*) by s. 14 of 57 Vict., c. 50 (O.), entitled to recover the same up to the date of the passing of the latter Act.

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THE Toronto General Trusts Co. v. Wilson, *et al.* (Meredith, C.J. July 18.)

A testator by his will devised as follows: "I give and bequeath to my executors out of my pure personalty the sum of $10,500, to be paid out by my executors as follows: $3,500 to Wycliffe College, $3,500 to the Bishop of the diocese of Algoma for the support of missions of the said diocese, and the balance, to wit, the sum of $3,500, towards the support of any mission or missions which may be undertaken or established by the Rev. E. F. W., the said Mr. W. having left the Shingwauk Home with the intention of establishing a new mission elsewhere." Held, that the bequest of the latter $3,500 for the support of the missions to be undertaken was valid, but was not a bequest to the Rev. E. F. W., and that the executors had a discretion to apply the corpus of the fund, so far as it was necessary to resort to it, as well as the income for the support of the missions.

PRACTICE.

SUMMERFELDT v. Johnston. (Meredith, C.J. July 17.) Where judgment is given for the plaintiff upon his claim with costs, and for the defendant upon his counterclaim with costs, the amounts to be set off, the costs should be taxed so as to allow the plaintiff the costs on his claim as though he had wholly succeeded in the suit, and the defendant the costs of the counterclaim as though he had wholly succeeded in the suit.

MANITOBA REPORTS.

IN THE QUEEN'S BENCH.

RURAL Municipality of Springfield v. La Corporation Archiepiscopale Catholique Romaine De St. Boniface. September 24, 1895.—Taylor, C. J.—A purchase of exemption from taxation is binding on another municipality when the territory exempted is changed to another municipality. This bill was filed for payment of taxes alleged to be due to the plaintiffs, and for a declaration that the lands in question were subject to taxation. Defendants were patentees and owners of certain lands in the municipality of St. Boniface, which was incorporated in 1880. In Nov. 1882, defendants entered into an agreement with the Municipality of St. Boniface to sell to the municipality certain lots, the consideration being one dollar and the complete entire and absolute exemption of all taxes, statute labor, contribution of any kind, or municipal change whatever in favor of defendants, for a period of 20 years, from 1881 to 1900, inclusive on all real and personal property belonging to defendants in the actual limits of the Municipality and which would not be rented, or from which the defendants would derive no annual revenue. In 1883, the Town of St. Boniface was incorporated as a municipality and took with it as such municipality a portion of the territory formerly covered by the original municipality of St. Boniface. Subsequently by an act of legislature certain sections were transferred from the municipality of St. Boniface to the plaintiffs' municipality, part of which sections were owned by defendants. After the transfer the plaintiffs assessed the lands belonging to defendants, for taxes, but defendants disputed the plaintiff's right to recover for the same, contending that they were exempt under the agreement made with the old municipality of St. Boniface; except as to school rates which had been tendered to plaintiffs but they refused to accept same. Held, that this was not properly a case of exemption from taxation. It was not that in the ordinary sense. It was a case of a contract under which the defendants paid in advance the taxes, for a term of years upon certain property and the ordinary rules by which a contract is to be construed should be applied to it. The plaintiffs were entitled to a decree for payment of the taxes, liability to which was admitted

by defendants, without interest as they were tendered by defendants and payment refused. The defendants were entitled to a declaration that except as to the taxes, liability to which was admitted, the lands in question were not liable to taxation for the period and on the terms set out in the agreement. The defendants were entitled to their costs to be set off *pro tanto* against the amount due by them.

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Wood v. Guillett. September 26, 1895. Taylor, C. J.—Security for costs by an absent plaintiff where he possesses unencumbered real estate.—Caston v. Scott, 1 Man. R. 117 overruled—The Court of Appeal, England, governs even where decisions are contrary in our own Courts. This was a suit on the equity side of the Court in which the defendant had obtained an order for security for costs. The plaintiff then moved to discharge the order on the ground that he owned property in the Province. Upon the motion the statement was made that he was the owner of unencumbered real estate worth $6,000, and a half interest in other large estates; this was not contradicted. The defendant relied on Caston v. Scott, 1 Man. R. 117, as a decision that the ownership of unencumbered real estate within the Province was not sufficient answer to the application for security for costs. Held, that the order moved against should be discharged, but without costs. In re Howe machine Co., 1 Ch. D. 125; In re Appolinaris Co., 39 W. R. 309. In Trimble v. Hill, 5 A. C. 342; the Judicial Committee of the Privy Council laid it down that a Colonial Court ought to follow a decision of the Court of Appeal in England, because that is a judgment by which all the Courts in England are bound until a contrary determination has been arrived at by the House of Lords. This was acted upon by the Q. B. D. in Ontario, in Hollenden v. Foulkes, 26 O. R. 61. There is the undoubted authority of the Court of Appeal in England that a litigant resident out of a jurisdiction will not be required to give security for costs, if he has within the jurisdiction property available for execution and sufficient to answer every possible claim for costs by the opposite party. If the Court held the possession of goods and chattels sufficient to relieve from giving security, the ownership of unencumbered real estate should be sufficient; where that Court disregarded a decision of the Court of Appeal and followed an Ontario decision of the Court of Appeal in England. A decision of the Court of Appeal in England should be followed here even if in doing so, that is preferred to a decision of the full Court here.

BRIEFS FROM EXCHANGES.

The Supreme Court Vacancies.—The retirement of Mr. Justice Fournier brings to a close a most interesting career. He was the Minister of Justice who introduced the measure that established the Court of which he afterwards became a member. He, too, fought vigorously to make the Court one of final resort in Canada for all Canadian cases. The motion in the House was vigorously opposed, but he succeeded after a very patriotic speech in favor of finality in carrying the clause as it now exists in the Supreme Court Act. He then thought that the prerogative right to appeal would not be exercised as much as it is. He, of course, was a leading authority on questions arising under the Lower Canada Code. Of his decisions his fellow French Canadians are better able to judge.

The appointment of Girouard, Q.C., of Montreal, to the vacancy is one about which Western members of the bar have little to say. He seems to have been appointed to represent Quebec in the Court. Such an argument does not apply in the case of its prototype the Supreme Court of the U.S., or indeed, the Judicial Committee of the Privy Council. If Quebec is entitled to two members of the Court, Western Canada is at least entitled to one. It has been stated on what we believe to be good authority, that Mr. Justice Killam is likely to be appointed to the seat about to become vacant. In speaking of Mr. Justice Killam we do not express our own opinion but one of many members of the Manitoba bar. As a lawyer it has been stated that it would be unfortunate for Manitoba if he be removed. On purely legal questions his influence with the other members of the Court is extremely noticeable, especially during term. When a case is being argued before him, his want of prejudice is marked. He may be wearied by the tiresome remarks of a junior member of the bar dealing with threadworn legal maxims, or by the long drawn out argument of a leader, but each receives the same kind attention. For the junior, the utmost sympathy and consideration is shewn, and we never yet, if the Judge decided against him, heard a junior complain that the Judge had shewn a want of consideration or prejudice. On matters relating to the Torrens system of transfer he would be a great strength to the Court above. On Municipal Law his judgments are regarded with great respect as valuable opinions and even on constitutional matters as a leading member of the local opposition and as a judge until his judgment on the School question reversed by the Supreme Court, but reestablished by the Judicial Committee, was delivered. He often has given a new interpretation to the constitution which only a few months later was held to be of binding authority elsewhere, notably the Local Option cases. In banking matters, his judgment in *re* Bank of Hochelaga v. Merchants' Bank decides many questions of law which are not elsewhere discussed and in such a way that no appeal was entered, as both sides were satisfied with his decision. If it is an honor to Mr. Justice Killam to be raised to the Supreme Court, we think that not a member of our bar would but like to see him there. His removal, however, would be distinctly regretted by every one of them.—*Western Law Times.*

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SOLICITORS ASSOCIATIONS IN ENGLAND.—Once again the members of the Law Society have had their provincial muster. One cannot but admire the zeal of the solicitors who journeyed to Liverpool and read, or listened patiently to the reading of, all sorts of papers upon all sorts of legal subjects. But how much more life would be put into the proceedings if members delivered addresses and debated legal topics and passed effective resolutions, instead of wading verbatim through lengthy manuscripts. Or the papers, some of which are excellent, might be printed

and circulated before, instead of after, the meeting. Discussion then would be quickened and argument stronger. The author of the paper could introduce the subject in a five minutes' speech, and answer his critics when they had had their say.—*Law Journal*, Eng.

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CANADIAN copyright is exciting a good deal of interest. Mr. Hall Caine has sailed for Canada to discuss with the authorities the Canadian copyright question. Speaking to a representative of Reuter's agency on the subject of the attitude of authors towards the modification of the Canadian Copyright Bill, suggested by the Colonial Office, Mr. Hall Caine said;—"It is due to Canada that, as the representative of English authors, I shall say my first word on the subject in Ottawa; but, while declining to discuss either the principle or the details of the question, I can only express regret at the antagonistic attitude adopted by the Canadian Minister of Justice in his recent speech at Toronto." "English authors," he continued, "cheerfully admit the right of Canada to govern herself, whether wisely or unwisely, but what they complain of is, that the Canadian demands cover the right to govern one section of the English people. I think, however, that Sir C. H. Tupper will, perhaps, in a cooler moment, reconsider his determination not to discuss the action of Canada's Legislature, and I do not believe that the present Canadian Ministry are committed to this copyright question in the same way as the late Sir John Thompson was. I do not for a moment doubt that I shall have a friendly and hospitable reception." We trust that Mr. Hall Caine will have a friendly reception. There is no doubt these international legal copyright difficulties want settling.—*Law Journal*, Eng. *Ibid.*

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"RIDICULOUS and misleading is a statement which I read in another American law journal on the subject of a university career. There is an unwritten law, says the writer, that the barrister should be a university man. "For the highest success at the English Bar a university education is regarded as essential." What, then, about the Lord Chief Justice of England, who was a solicitor first and a barrister afterwards? In the ordinary sense of of the term, Lord Russell had no university education. And what, again, about Sir Edward Clarke, to whom the same may be said? A university education affords advantages to members of both branches of the profession, but to talk about it being essential either for one or the other is simply silly."—*The Brief*, Eng.

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The Trial of Lunatics.

SOME discussion has been raised by Dr. Forbes Winslow at the procedure on the trial of supposed lunatics, but it is not easy to see any good reason for altering the present practice. It is not desirable, save in extreme cases, to relegate a man accused of murder to an asylum without trial. And three alternative cases may arise. A man may kill

another under the impulse which the law would regard as insane, but the maniacal symptoms may have ceased temporarily or permanently at the date fixed for trial. In such a case there can be no option except to try the man for the crime. The only question of fact would then be whether it was possible, in the opinion of doctors. for such a man ever to recover sufficiently to be fit to plead —*i.e.* whether what may be called moral insanity must also affect intellectual capacity. The second case would be when the man killed another while sane, and subsequently became insane, say, because of an injury suffered after the killing. In such a case the usual course would be to try the capacity of the man to plead on arraignment, inasmuch as if insane he could not make a proper defence. The third case is where the man's insanity existed at the date of the killing and on arraignment. Here, too, a trial would be superfluous. All these matters are complicated by the long-standing dispute between doctors and lawyers on the criteria of insanity and the probabilities of its being continuous and not recurrent, and upon the desire of the doctors to have their expert views accepted without criticism wherever expressed. —*Law Journal*, Eng.

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Mixed Juries in Quebec.

In the interest of the administration of justice it is to be lamented that in cases where nearly all the witnesses are of the same nationality as the accused, counsel cannot or do not act in concert in an endeavor to secure a jury speaking the language of the prisoner. Mixed juries are objectionable on several grounds. In the first place there is the obvious objection that the trials usually take nearly double the time that would be consumed if no translation of evidence and no duplication of the addresses of counsel and of the judge's charge were necessary. Take the Demers case, for instance, in which after a trial lasting a whole month the jury have disagreed. This case would probably have been concluded within sixteen or seventeen days if the jury had been composed of persons speaking the same language. In the next place, we have a strong impression that the jury never follow or appreciate the evidence so well if it has to be translated; and this is especially true if the translation is a poor one, or if the interpreter becomes over-fatigued, as is apt to occur in the course of a long trial. Still more important is it that during a trial in which the evidence is long and complicated the jury should be able to communicate freely with one another, without the cumbersome medium of an interpreter. A curious example of the embarrassments which may arise from the inability of the jury to converse with one another occurred two years ago to the learned judge who presided at the Demers trial. His honor was trying a case at Ste. Scholastique, and the evidence was so clear that he expected the jury would find a verdict without leaving their seats—a result which would have enabled him to take the

train of that afternoon. But the jury expressed a wish to retire, and some time later when an officer was sent to ascertain whether they were ready to come into court, he returned with a negative reply. Another long wait ensued without any intimation from the jury. Meantime it was evident from the noise proceeding from the jury room that a discussion of the liveliest description was in progress. The clamour increased, until finally the judge sent an officer for the purpose of finding out the cause of the excessive vociferation. The messenger returned in a few minutes with the explanation. It appeared that six of the jury spoke English and did not understand a word of French, and the other six spoke French and did not understand a word of English. The two sections had raised their voices in a vain attempt to make themselves mutually understood. An interpreter was then sworn in and dispatched to the jury room. He quickly discovered that the jurors were all agreed, that they had been all agreed from the first, but they had been unable to discover the fact!—*Legal News*, Montreal.

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Negligence and Electric Locomotion.

In this era of electrical and cable cars the decision recently given in the case of Thatcher v. The Central Traction Company is of more than passing importance. It was held in that case that it does not constitute negligence *per se* for a man to drive along the left-hand track of a street railway which occupies a public street. The Court says: "If the gripman recklessly ran on at a high rate of speed when the probable consequence was a collision, that was negligence for which defendant is answerable. As is held in Ehrisman v. The Railway Company, 150 Pa. 180: "It is not negligence *per se* for a citizen to be anywhere upon such tracks (railways on streets). So long as the right of a common user of the tracks exists in the public, it is the duty of passenger railway companies to exercise such watchful care as will prevent accidents or injuries to persons who, without negligence on their own part, may not at the moment be able to get out of the way of a passing car." Or, as is said in Gilmore v. The Railway company, 153 Pa. 31: "Street railway companies have an exclusive right to the highways upon which they are permitted to run their cars, or even to the use of their own tracks." In both these cases the Court is speaking of the relative rights of the public and the railway companies on the streets of cities and boroughs where the grant is of the right to occupy the surface in common with the public. The construction of the track and the form of the rail are with view to the user in common. The right of the waggon, in certain particulars, is subordinate to that of the railway. The street car has, because of the convenience and exigencies of that greater public which patronizes it, the right of way. Whether going in the same direction ahead of the car, or in

an opposite one to meet it, the driver of the waggon must yield the track promptly on sight or notice of the approaching car. But he is not a trespasser because upon the track. He only becomes one if, after notice, he negligently remains there."—*Michigan Law Journal.*

LAW SCHOOL DEPARTMENT.

Ode to "Snell."

Oft did I hear of thee, my dearest friend,
Ere yet I knew the beauties of thy page.
Warned of thy subtle, strong destroying power,
I wrestled with thee, and got many a fall.
Heedless, again to try a fall I came,
And found, exulting, I could hold my own.
Henceforward we were friends. Oh, Snell! what hours,
What happy days, were spent with thee at hand!
Like pearls that lie in deepest ocean hid,
Thy beauties must be deeply sought, alone.
Then dost thou speak in golden parables
Of Trusts, Election, Satisfaction, Fraud,
Conversion, Re-conversion, Marshalling of Assets.
So dost thou lead us on from height to height,
Till Equity to us becomes alone
In study of the law a true delight.
In after years our thoughts of thee are kind,
Our student clouds were silver-lined with Snell!
Long may'st thou live! And though editions change,
All reverent students call thee "dear old Snell."

*

MR. JUSTICE OSLER will preside at the public debate on the 19th inst, Miss Ella Walker of Montreal, will sing, and Miss Evelyn DeLatre Street will also be one of the artists in addition to Mr. Owen A. Smily, and Mr. A. M. Gorrie. Glionna's Orchestra has also been engaged, and the open meeting will no doubt be a great success. The debate is resolved "that the state should provide free education for the masses." Messrs. Kilgour and Montgomery, for affirmative and Messrs. Stewart and Barnum, for the negative. Tickets are free and can be had from members of the committee, and will be only given to those who have paid their fees.

*

THE programme for the regular weekly meeting of the Literary Society on Saturday, November 16th, includes songs by Messrs. R. K. Barker, and James Macdonald, an essay by H. A. Clarke, and the debate resolved that the Act of the Ontario Legislature allowing the client to make a bargain with his solicitor for remuneration in a lump sum is detrimental to the client rather than the solicitor. Messrs. Langley and Thompson for affirmative, E. F. Lazier and J. R. Brown for negative.

*

THE second meeting for the month of November, was held in Convocation Hall on Saturday, November 19th. President Lamport was in the chair, and a large attendance of members were present. On motion of Mr. Church, Mr. Peter White was appointed representative on

the Society at the annual convocation dinner at Trinity College. Arrangements for the public debate on the 19th were completed. It was also decided to hold a public debate with Varsity at an early date, and the executive will arrange the details. Public debates with Trinity and other sister colleges will likely be held during the year. The programme for the meeting of Nov. 9th, included a capital violin solo by Mr. Mero; and well rendered songs by Mr. B. W. Thompson. The debate was a lively one, and some of the speeches bristled with eloquence that made old Convocation Hall think of days long since gone by, when the "Blackstock's," "Nesbitt's," "Ewart's," "Fullerton's," "McDougall's," and "Kapelle's," the society Cicero's of the past, held forth.

The subject was, Resolved that the world is approaching the time described by Tennyson in Locksley Hall:

When the war-drum throbbed no longer, and the battle flags were in the Parliament of man, the Federation of the world.

THE affirmative was introduced by Mr. W. R. Percy Parker, and was upheld on the floor of the house by Messrs. T. L. Church, J. R. Brown, J. K. Arnott, F. H. McLean. The negative by Messrs. Griffin, Barnum, and Langley. The President's decision was in favor of the affirmative. The society asked the executive to push the question of a proposed reading room. At 11.10 p.m. the society adjourned, as several of the members intended to go to church next a.m.

*

THE morning lectures are given as usual at 9.10 a.m. The afternoon lectures to the first year are now given at 3.15 p.m., and to the second and third years at 4.30 p.m.

THE examination papers for the past year will shortly appear in this journal.

*

THE Moot Courts in the second and third years have been very successful this year.

*

INTERCOLLEGIATE Debates with Varsity, Queen's and Trinity will be held during the coming year.

*

WE invite all who desire to discuss any topic of interest to the law students body to use the BARRISTER freely.

*

THE BARRISTER will be mailed to students for $1 a year. Address the Law Publishing Co., 97 Confederation Life, Toronto.

*

STUDENTS of the third year will please save up $160 and have it ready for next March, as the "fee system" is still a factor with the benchers.

*

THE football men are represented on this year's Literary Executive by Messrs. Peter White. E. H. McLean, S. Storey, O. A. Langley, H. C. Becher.

*

The Law Journal, Eng., publishes the report of several law students societies in England, one society is reported as having decided in the negative the subject: "That Trilby does not merit its present popularity."

*

OSGOODE did splendidly this year at football. The thanks of the law student body is due to the football teams, managers, and captains for their work. The players turned out in all kinds of weather to the practices, and did their best this year to recover the championship. Well done, Osgoode! Try again.

Osgoode Legal and Literary Society.

(THIS paper is the official organ of the Osgoode Legal and Literary Society, the proceedings of which Society are recorded under this department.)

The regular weekly meetings of the Literary Society began on Saturday, Nov. 2nd. About 50 members of the Society were present. Great interest is being manifested in the Society this year, and in Mr. Peter White, Jr., the Society has a popular and energetic Secretary, who will be of great assistance in securing good programmes. A large amount of routine and general business was reported by the Executive. A public debate will be held on Tuesday, November 19th, in Convocation Hall.

Miss Walker of Montreal, will sing, and there will be the usual informal dance after the programme is concluded. Messrs. Montgomery, Moore, Stewart, and Kilgour will be the debaters. Tickets can be had from the Committee, and will only be issued to those who have paid their fees.

The Auditors report showed a balance of over $60 in the treasury; left by last year's officers, which speaks well for last year's Executive. The programme for the evening of Nov. 2nd included a guitar solo by Mr. E. C. Clarke, a recitation by Mr. Hunter, and the debate resolved "That the history of a nation is the history of its great men." Messrs. Boultbee and Kappelle supported the affirmative, and Messrs. C. A. Stuart and Montgomery the negative. The following also spoke from the floor of the house, Messrs Arnott, Barnum, and Kilgour. The decision of the chair was in favor of the negative This was a very successful meeting, much enthusiasm prevailed, and it was at a late hour when the Society adjourned.

The officers for 1895-6 were all elected by acclamation as follows:—

President, W. A. Lamport; 1st Vice Pres., Mr. F. C. Knowles; 2nd Vice Pres., Mr. H. H. Shaver; Sec., Peter White Jr.; Treasurer, O. A. Langley; Sec. of Com., Mr. Stuart Storey; Committee, E. H. McLean, H. C. Becher, and J. Kilgour.

*

LAST year's officers left a balance of over $60 in the treasury. As there was no election we hope every student will pay his fee, and attend the meetings and take an interest in the Society. The weekly meetings are on Saturday evenings at 8 p.m., in Convocation Hall. The annual fee is $1.

*

BRADFORD LAW STUDENTS' SOCIETY.—The first annual meeting of this session was held in the grand jury room of the West Riding Court House, Mr. J. Trewavas presiding.— Messrs. H. Damaine, F. Greaves, A. C. Halligey, and H. F. Walker were elected ordinary members.—The subject for discussion was, "That the principle laid down in Foakes v. Beer, L.R.9 App. Cas. 605, is unreasonable, although according to law." Mr. J. W. Barraclough, who opened the debate in favor of the affirmative, was supported by Mr. A. Maguinness and opposed by Messrs. J. W. Perkins and S. Neumann. Messrs. F. W. G. Bolton, W. Dunn, and J. Greaves also spoke. On the vote being taken the principle was upheld by a majority of one.—*Law Journal*, England.

THE LATEST HISTORY OF THE ENGLISH LAW.

We hear constant reference made to the history of law in general, and the history of English law in particular, without stopping to consider that the word law is thus used without strict regard to meaning. Properly speaking only Almighty God makes laws both for man's guidance and the government of the universe.

What we commonly call laws are really only statutes, customs, traditions etc., subject to constant amendment and repeal, and applicable only to those over whom the law-making power has jurisdiction and control.

When Almighty God alters a law that is called a miracle. On the other hand it begins to be considered little short of miraculous when "the legislature" does not alter its laws. This is one of the many differences between divine and human decrees. The rules of conduct and the definitions of right and wrong laid down by the divine law are immutable and universal; the commands and prohibitions of the state changeful and restricted.

The authors of the most recent work on this subject, which we will refer to later, decline to commit themselves to any hard and fast definition of law as being beyond the province of the legal historian, so we can do no better than follow their example.

The history of English law is also a misnomer. There is but little law of purely English, i. e., Saxon origin. It is Saxon law supplemented by Roman, Danish, and Norman law, and modified by international law, treaties and obligations and the doctrines of the canon law. To write its history is a task appalling in its magnitude and in the learning required for its adequate performance.

Until very recently the most useful work on this subject was Reeves' "History of the English Law." The latest edition of this work was published by W. F. Finlason in 1869. The first edition was published in 1787, and covered the period from the Romans to the end of Elizabeth's reign. Students who had read the last chapter of Blackstone "on the rise, progress and gradual improvement of the laws of England," were often no doubt tempted to seek out Reeves' history, but the three large and learned volumes have generally had the effect of making most students look upon the work as an "excellent book of reference" It is much to be regretted that the time for the study of such books is so short.

The latest work on this great subject is "The History of the English Law before the time of Edward I." by Sir Frederick Pollock and Fred. William Maitland, L.L.D., published this year.

In treating of the history of the law of the twelfth and thirteenth centuries, the authors have the advantage of more texts and records than Reeves or Blackstone.

They say; "The twelfth and thirteenth centuries have been fortunate in our own age. Very many and some of the best and most authentic

of the texts on which we have relied in the following pages were absolutely unknown to Blackstone and to Reeves. To the antiquaries of the seventeenth century high praise is due; even the eighteenth produced as it were out of due time, one master of records, the diligent Madox; but at least half of the materials that we have used as sources of first-hand knowledge have been published for the first time since 1800 by the Record Commissioners, or in the Roll Series, or by some learned society, the Camden, or the Surtees, the Pipe Roll, or the Selden."

Strange to say, however, the authors state that they do not find themselves in any better position to write the history of the law subsequent to the accession of Edward I. than were these two learned writers of the last century, and they give this as one of their reasons for concluding their commentary at this period. They tell us, which indeed every school-boy knows (at least every law-school boy) that the lawyer of to-day has constantly to shelter himself behind statutes as early as Edward I, when expounding the intricacies of our own modern real estate law, and "were Parliament to repeal some of those statutes and provide no substitute the whole edifice of our land law would fall down with a crash." On the subject of constitutional history the authors have not dealt with as being a matter apart, which has been more fully dealt with than the history of the other branches of the law. In the introduction they say: "We have left to constitutional history the field that she has appropriated. An exact delimination of the province of law that should be called constitutional must always be difficult, except perhaps in such modern states as have written constitutions. If we turn to the middle ages we shall find the task impossible and we see as a matter of fact that the historians of our constitution are always enlarging their boundaries. Though primarily interested in such parts of the law as are indubitably constitutional they are always discovering that in order to explain these they are compelled to explain other parts also. They cannot write about the growth of Parliament without writing about the law of land tenure, 'the liberty of the subject' can only be manifested in a discourse on civil and criminal procedure. It may be enough therefore if, without any attempt to establish a scientific frontier, we protest that we have kept clear of the territory over which they exercise an effective dominion."

They have however compiled learned and lengthy chapters on Anglo-Saxon law; Norman law; Roman and Canon law; English law in the early middle ages; the early land laws; the early law of contract and inheritance; family law; crime and tort; and last but not least procedure, which is of such value in tracing the origin of the different legal doctrines and forms of action.

The authors have but little faith in the continuance in modern English law of any trace of the customs and laws of the ancient Britons. Blackstone, however, ascribes to the custom of gavelkind and to the ancient

custom of dividing a deceased person's estate between his widow and all his children which has since been revived by the statute of distributions an undoubted British origin.

We are not in a position, of course, to express any opinion of a work which has cost two able men so much labor, but we think we may be permitted to express the idea which has constantly been before us while perusing these volumes. This is, the difficulty of adequately realizing the fact that there did exist a people with a noble history in its past and a great destiny for its future, going about its daily duties, loving, fighting, marrying, dying, working, idling, fishing, studying doing good, and committing sin, no doubt, in short, living much as we do and looking after their duties, their interests and their families quite as well as we do, yet in a moral and intellectual as well as legal condition and atmosphere so totally different from ours.

A synopsis of a few of the changes in manners and modes of thought will suffice to show the almost complete mental and moral metamorphosis which has taken place in England since the earlier ages of its history.

We learn that Latin was first for many years, and then French, the language of the law courts. So let us hope that this latter language which for several centuries served the ends of England and of Englishmen, in which generations of her lawyers spoke, and in which many of her statutes were enacted, will receive at the hands of late Englishmen even in a distant colony of the empire the grateful consideration due to a former ally.

We read also how murder as well as lesser crimes was atoned for by payment, every man having his price according to his rank, a tuelf-hynd man being dearer to kill than a twy-hynd fellow of no degree. The inclination to consider the property or wealth of the parties concerned as an argument affecting the punishment for crime, which is so often thrown in the faces of the law courts of to-day is therefore not an evil of recent origin, but has an ancestry at least ancient if not honorable.

How men where of two classes, freemen and slaves, and so continued even in the time of Bracton, who wrote in the 13th century. Nor was the bondage of any mitigated character for the master could sell his slave at will like any arab raider in Africa fifty years ago.

How an accused person who was unable to clear himself by his own oath, or who could not produce the necessary number of witnesses or "oath-helpers" required by an unbending law was obliged to prove his innocence in the ordeal of hot iron or boiling water, or other equally barbarous test. This was the ordinary procedure in criminal trials until the end of John's reign, when the Church, which for a long time had viewed such a pagan custom with disapproval, condemned it openly and strongly and the ordeal was abandoned forever.

How trial by battle though unknown in Anglo-Saxon times because of the disfavor in which it was held by the church, had a recognized place in Norman judicial procedure. Trial by combat must not be confused, however, with the practice of private war which was permitted if not justified in England even before the Conquest, and which so far continued a common practice that when Edward I. sent the Earls of Gloucester and Hereford to prison for

making war upon each other, it was more for the breach of the royal prohibition on the practice than because the offence itself was unlawful.

We are also rather surprised to find that during the middle ages, down at least to Edward I.'s time the great jurists were all Italians, the best text books were written by Italians, and the men to whom the King confined his legal conscience and whose advice he asked on the great law suits referred to him, were Italians. And so long did this influence last that even Bracton's book though thoroughly English in substance is markedly Italian in form and arrangement.

Heresy was formerly not only in England but all over Europe a civil crime punishable with death by burning. The recent date (1401) of the first English enactment condemning this practice, as compared with the early rise of heresy in Europe where ordinances were passed against it as much as four centuries earlier, shows how slow was the progress of unbelief in England after it had become prevalent on the continent.

We also note a fact which accords but ill with the principle of "equal rights for all and special privileges for none" so widespread and so powerful at the present day. The Jews were the King's villeins. Whatever they acquired, they acquired for the King, and could possess no property of their own. Nor were their very lives secure, for the King could even sell them into slavery like the most degraded serfs.

It seems strange that two such immense volumes should be produced upon the history of the law prior to Edward I., but besides the reason already given, we must remember that during this reign an immense amount of law-making and law-amending was done. All Europe indeed was affected with a law craze. In the chapter of Roman law the authors say:—"In the first years of the twelfth century came a great change. Irnerius began to read and teach the Digest at Bologna. Very soon a powerful school had formed itself around his successors. The fame of "the four doctors" Bulgarus, Martinus, Jacobus, Hugo, had gone out into all lands; the works of Placentinus were copied at Peterborough. From every corner of Western Europe students flocked to Bologna. It was as if a new gospel had been revealed. Before the end of the century complaints were loud that theology was neglected, that the liberal arts were despised, that Seins and Titius had driven Aristotle and Plato from the schools, that men would learn law and nothing but law."

People nowadays are loud in their complaint that law is engrossing far more of the youth of this country than can profitably be spared to her; that the fields and the workshops, if not theology and the arts, are neglected for the law office; but the antiquity of the complaint may make us content to believe that it is not fatal.

Among the numbers of law students in this country it is to be hoped that many will look over these valuable volumes and that some at least will peruse them carefully. Sooner or later the history of the law must be brought down from the reign of Edward I. to our own day. What a noble field lies open for one of the many graduates at Osgoode Hall! Among the numbers who annually pass their examinations at Osgoode Hall there must be some who by nature or inclination are unfitted for the active practice of the law, and what more laudable ambition can there be than to follow in the footsteps of two such great jurists and finish the mighty work which they have so ably begun.

W. MARTIN GRIFFIN.

SPORTS.

We have received the November issue of that very excellent publication, "*The Athletic Life.*" It contains a review of sports at Osgoode during the past season; and a picture of our foot ball team. Our esteemed lecturer Mr. E. Douglas Armour, Q.C., has a very entertaining and interesting article in this issue, entitled "Toronto to Montreal." Osgoode's many sports would do well to keep posted on what is going on by reading this monthly journal. The price is one dollar a year.

*

Every supporter of "Osgoode" is glad to see Varsity win the final match for the championship of Ontario. In Counsell, Hobbs, Kingston and Barr, Varsity has a quartette of pursuers of the pig skin that any college might well be proud of. Queen's was travelling too much on its name this season and rode to a proper fall.

The Varsity boys are plucky sports, and they played a fast, clean, and scientific game of football, and outmatched and outplayed "Queen's" at every point. The Varsity team is a young one and will show up better next year even than this year. Their team was also a representative college football team, and contained no semi-professionals, like the team of Queen's University. Never in the history of the University did Varsity appear to have less chance of winning the Rugby championship, and football cranks were surprised when the Varsity team walked away from Queen's to the tune of 25 to 12.

The "Varsity" football team's celebrated victory will give an untold stimulus to sports in that University, and will do a great deal to restore public confidence in the institution. Well done, Varsity.

*

How did Queen's manage to defeat Osgoode Hall? is the question every one is asking. We had a very strong team this year and think we would have had a place in the finals this year if the tie system were abolished. This year's team is a young one and will be heard from next season. Sports were pushed more vigorously this season than at any period since 1892, and if the good work is kept up "Osgoode" will yet be vigorous. The thanks of the law student body in general is due our football teams for the way they strove to carry the black and white to victory.

*

We hope Varsity will defeat the winner of the final game in the Quebec Union. Varsity sustains a severe blow in the loss of Capt. Barr, whose injury received at practice, will render him unable to play football any more this season. We hope Mr. Barr will recover speedily. Varsity will probably play the final match in the east on Thanksgiving Day, and we wish the team success. This year's team has done the college credit.

*

The Toronto Evening News has something to say of Varsity; it says that, "Varsity's team will show up better next year even than this. That some of the team will not be in Toronto next year." That "Jack Counsell will next year captain Varsity's team. If there is one man at Varsity who knows how to run a Rugby football team that man is Jack; the popularity and wisdom of such an appointment could not be questioned."

WIG AND WIT.

"Much given to speech and seasoned anecdote,
And wit and repartee of Bench and Bar."
—*Valentine.*

*

LORD NORBURY, while presiding at a rather noisy trial, had to press a reluctant witness in order to get at his real profession. Being at length told that he kept a racket-court, his lordship remarked, "and a very good trade too; so do I, so do I."

*

JEKYLL one day received an invitation to Lansdowne House, but excused himself on account of having an engagement to meet the judges. During the dinner a a part of the ceiling at Lansdowne House fell in, and hearing of this, Jekyll afterwards remarked, "I was asked to *ruat cœlum*, but I dined instead with *fiat justitia*."

*

DUNNING, afterwards Lord Ashburton, was stating the law to a jury at Guildhall, when Lord Mansfield interrupted him by saying, "If that be law, I'll go home and burn my books!"—"My Lord," retorted Dunning, "you had better go home and read them."

*

AN Irish Colonel of Dragoons, previous to a trial in which he was the defendant, was informed by his counsel that if there were any of the jury to whom he had any personal objections he might legally challenge them. "Faith and so I will," replied the son of Mars; "if they do not bring me off handsomely, I will challenge every man of them."

*

A WARRINGTON justice once reproved a would-be-suicide thus: "Young man, you have been found guilty of attempting to drown yourself in the river. Only consider what your feelings would have been had you succeeded."

*

IT was Adolphus who "spotted" the chance which Dicken's missed in his court scene in Pickwick v. Bardell: "Chops and tomato sauce, *yours Pickwick*," cried Buzfuz, "what does this mean?" "Gentlemen," he might have said, according to Adolphus, "when I tell you that the popular name of the tomato is the love-apple, is it not clear what this base deceiver intended?"

*

ARABIN, presiding at a criminal trial, said to the jury, when allusion had been made to the inhabitants of Uxbridge, "I assure you, gentlemen, they will steal the very teeth out of your mouth as you walk through the streets. *I know it from experience.*"

*

THERE was once an old official of the Court of Chancery who remarked that "if there was anything of which Providence could be supposed to be ignorant, it was the event of a Chancery suit."

*

A PROMINENT lawyer of Buffalo, says the *Green Bag*, tells of a compromise he once made on behalf of a certain railway company with an Erie county farmer whose wife had been killed at a railroad crossing. A few months after the terrible bereavement, the husband, who had sued the company for $5,000 damages, came into the office and accepted a compromise of $500. As he stuffed the wad of bills in his pocket, he turned to the lawyer and cheerily remarked, "Vell, dot's not so bad after all. I've got fife hundret tollar, and goot teal better wife as I had before."

LORD CHANCELLOR ROSLYN, when Mr. Wedderburne, referring to a great law suit, said: "My ideas of justice are a little perplexed by this decision, and I consider it a striking example that no cause is either certain or desperate."

*

LORD HARWICKE is said to have decided, as Lord Chancellor towards the close of his office, a cause in which he had his first brief as junior counsel in the Court of Chancery.

*

AN American paper gives the following example of a "nigger" warrant. "You, you big constable, quick you catch um Jeremiah Offscow, strong you hold um, safe you bring um afore me.—THOMAS WARAN, Justice Peace." When Waban became superannuated, a younger magistrate was appointed to succeed him. Cherishing for age and long experience that respect for which Indians are remarkable, the new officer waited on the old man for advice. Having stated a variety of cases and received satisfactory answers, he at length propounded:—"When Indians get drunk, and quarrel and fight, and act like divvil, what you do den?" "Hah! tie um all up, and whip um plaintiff, whip um defendant, and whip um, witness."

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