DIARY FOR APRIL.

1. Tues... Master and Reg. in Chancery, and Clerks and Deputy Clerks Crown, to make returns of fees.
6. SUN... *Palm Sunday.*
7. Mon... County Court Term begins.
8. Tues... Local Treasurers to return taxes and School rates in arrear to County Treasurers.
10. Thurs.. Last day for Masters and Reg. in Chy. and Clks. and Dep. Clks. Crown to pay fees to Prov. Treas.
11. Fri.... *Good Friday.*
12. Sat.... County Court Term ends.
13. SUN.... *Easter Sunday.* Storming of Magdala, 1868.
15. Tues... Pres. Lincoln assassinated, 1865. Assessors in Townships and Villages to complete Roll by this date.
20. SUN... *Low Sunday.*
23. Wed... *St. George.*
27. SUN... *2nd Sunday after Easter.*

CONTENTS.

THE

Canada Law Journal.

Toronto, April, 1873.

We must apologise for the delay in the issue of the index of last volume. It is now in the hands of the printer, and will be issued shortly.

The *Law Times* contains an obituary notice of the Right Hon. Sir William Fry Channel, who died on the 26th February last, in his sixty-ninth year.

Among the recent deaths of notable jurists may be mentioned that of Francis Lieber. He was born in the year 1800, and died at Philadelphia last October. His chief works were "The Manual of Political Ethics," "Legal and Political Hermeneutics," and Civil liberty and Self-government. He was professor in the South Carolina College, from 1835 to 1856, during which period he wrote the above treatises, some of which are prescribed as text-books for the law-course in the University of Toronto.

When speaking recently of the constitution of the Commission of Judges to whom estates bills are to be referred under a recent Act, we inadvertently stated that the learned Chief Justice of the Court of Appeal was of the number. This statement was incorrect. Perhaps "the wish was father to the thought." The Act speaks only of the Judges of "the Superior Courts of Law and Equity." The office is at best a thankless one, and for the sake of the veteran chief of the highest Court in the Province, we are glad he is not burdened with the additional labour it would throw upon him, even though the country loses thereby the benefit of his ripe experience and rare talents. He has well earned a release from the work he never shirked even in its minutest detail, and long may

he live to enjoy such a measure of repose as he may find consistent with his pleasure or his health.

At a recent meeting of the Agricultural and Arts Association an honourable gentleman is reported to have said—speaking of the ruling of a County Judge in a criminal case before him, wherein he held that a provision in an Ontario Act was *ultra vires*,—"That it was not merely a mistake, but a piece of impertinence to place his judgment above that of the Legislature of Ontario." If such language was used, it was *grossly* impertinent on the part of the speaker, and betrayed an amount of ignorance of the judicial position not usually found in the speaker's position in life. Vice-Chancellor Strong speaking on this subject says—"Suppose that a provincial legislature should assume to confer on a justice of the peace the power to try summarily a charge of felony; it cannot be doubted but that it would be the duty of the tribunal [a justice of the peace], although the lowest in the scale of jurisdiction to treat the Act as a nullity:" (*Re Goodhue*). The judge may have been right or wrong in his ruling; a provision in the Dominion Act may have escaped his attention; but however that may be, the language applied to the judge by this speaker was improper and unbecoming. Had the Attorney-General been there on this occasion, we believe he would not have allowed it to pass unnoticed, as did another member of the Government who would seem to have been present.

MARRIED WOMAN'S ACT OF 1872.

It was not to have been expected that the Married Woman's act of 1872, should be long in force without questions arising under it for adjudication. It was decided in *Merrick et al.* v. *Sherwood*, 22 C. P. 467, that an action at law might be maintained against a married woman who was sued apart from her husband in respect of a debt incurred by her before the passing of the act. Mr. Justice Gwynne in his judgment (in which Galt, J., concurred), referred to the liability in equity of a married woman's separate estate for her debts, before the act, and to the essence of the debt consisting in this, that it was incurred by virtue of a credit given to the married woman upon the faith of *her* estate. The ninth section, in the opinion of the learned judge, simply gave the appropriate remedies to and against the wife. From this judgment the Chief Justice of the Common Pleas dissented, holding that the act had not a retrospective effect, and that the defendant was not liable.

The other case we would now refer to is *Dingman* v. *Austin*, in which judgment has recently been given in the Queen's Bench. It turned upon the first section of the Act of 1872, which says that "the real estate of any married woman which is owned by her at the time of her marriage, or acquired in any manner during her coverture, &c., shall be held and enjoyed free from any estate or claim of the husband, &c., and any married woman shall be liable on any contract made by her respecting her real estate, as if she were a *feme sole*." The Chief Justice in giving judgment referred especially to the peculiarity of the wording, "*is* owned," in the first part of the section, as implying that there was no retrospective intent. He sums up the result of his argument in these words: "By a fair reading of the section it seems to me to apply to marriages which take place *after* the passing of the Act." He did not think that this view conflicted with the case of *Merrick et al.* v. *Sherwood*, in which it was not necessary to decide upon the meaning of the first section.

There is, therefore, the peculiarity in this Act, that one section is retrospective in its effect, and another is not. Without

desiring to question the correctness of the law laid down by the learned Chief Justice, his argument on *this* point would seem to show to what straits one is driven to give any reasonable interpretation to this perplexing Act; nor, apparently, do these two cases so far settle the law, as to leave it quite in a satisfactory state.

LAW REFORM IN ENGLAND.

The Lord Chancellor Selborne has introduced his measure for the reform of the Judicature into the House of Lords, and the bill appears to have been received with favour by the legal press. The main points of reformation to which the Lord Chancellor addresses himself, are first: to combine and harmonize the jurisdiction and practice of the various Superior Courts of Law and Equity in England, and this he proposes to accomplish by uniting into one Supreme Court all the existing Superior Courts of Common Law and Equity, and also the Courts of Probate and Divorce, of Admiralty and of Bankruptcy. In furtherance of this object he advocates the separation of the Supreme Court, to be constituted into several divisions with co-ordinate jurisdiction, and lays down several details for the uniform administration of justice and particularly in regard to modes of trial. The next great point upon which he seeks to amend the English legal system is to abolish the artificial separation of legal and equitable jurisdiction. He proposes to lay down as a principle, that where there is any variance between the rules of law and those of equity, the rules of equity shall prevail. Working out the same idea, his bill empowers the Supreme Court to give effect to the equitable rights and remedies of plaintiffs, and to the equitable defence and counter-claims of defendants; to take notice and provide for the equities of other parties, and to stay proceedings by its own order, (thus abolishing *injunctions*).

The *Law Times* gives a sketch of what the result would be if Lord Selborne's bill became law, of which we gladly avail ourselves as giving a bird's-eye view of the whole scheme. The future constitution would be as follows:—

Privy Council.

For colonial and ecclesiastical appeals and non-judicial questions which may be referred to it.

House of Lords.

For English and Irish appeals, and to feed the Supreme Court of Appeal.

Supreme Court of Appeal.

To be composed of five *ex officio* members—viz., the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron; the two Lord Justices of Appeal in Chancery, the four salaried Judges of the Privy Council; and three Judges to be transferred from the present courts of first instance; with power to Her Majesty to appoint as additional Judges any persons who may have filled any judicial office in England which would qualify them to be members of the Judicial Committee of the Privy Council, or who may have filled the office of Lord Justice General and Lord Justice Clerk in Scotland, and Lord Chancellor or Lord Justice of Appeal in Ireland.

To have cognizance of all the business of the existing appellate courts except such as is saved to the Privy Council and House of Lords, as above stated, admiralty and lunacy appeals being transferred from the Privy Council.

Its decisions to be final.

The Supreme Court.

To be composed of twenty-one Judges, and to comprise all the present Superior Courts of Common Law and Equity, the Admiralty Court, and the London Court of Bankruptcy. The Judges will be the eighteen Common Law Judges, the Master of the Rolls, the Vice-Chancellors, the Judges of the Court of Probate and Divorce, and the Judge of the Court of Admiralty, minus three, to be transferred to the Court of Appeal.

President: The Lord Chief Justice of England. First Division: Judges of the Court of Queen's Bench. Second Division: President—Master of Rolls; the existing Judges of the Court of Chancery, and the Judge of the Court of Admiralty. Third Division: The Judges of the

Court of Common Pleas. Fourth Division: The Judges of the Court of Exchequer.

Business of the Court.

To be distributed according to the divisions: Crown business in the First Division (Queen's Bench); admiralty, bankruptcy, and business for which the Court of Chancery is the only available machinery, and such cases as separate themselves from ordinary actions, Second Division; Common Pleas business in the Third Division (Common Pleas); and revenue business in the Fourth Division (Exchequer).

To be a court of appeal from the inferior courts.

To have power to transfer causes from any one division to any other.

Sittings of the Court.

Single judges will sit in matters hitherto disposed of by single judges, and there will be a plurality of judges in other cases, not to exceed three.

Official referees to be attached to the divisions to act as arbitrators in cases unfit to be tried by jury; references to be compulsory as to questions of fact.

Continued sittings in London to be provided for.

Abolitions.

The Courts of Common Pleas of Lancaster and Durham.

The division of the legal year into terms.

New Procedure.

Formal proceedings to be taken in the local registries in the country.

Rules

To be framed as a schedule, but to be open to modification or alteration by the judges.

ATTACHMENT OF DEBTS—DIVISION COURT JURISDICTION.

The Act of 1869, to amend the Acts respecting Division Courts, gave new and extensive jurisdiction to these courts, and, as might be expected, important questions were raised on nearly all its clauses. Very shortly after the Act came into operation a question of very general interest arose as to the power of the courts to try and determine claims against garnishees where the indebtedness to the primary debtor exceeded in amount the general jurisdiction of the Division Courts. Several of the judges held that the power existed—amongst them, if our memory serves us, the judges of Wellington, Elgin, Brant and Simcoe—but no case fairly on the point has been decided by the courts above. It has always seemed to us that the Division Courts must of necessity have jurisdiction in such cases, otherwise the garnishee clauses in the Statute would to a great extent be valueless, and the language in the clauses and the forms support this view.

The point referred to has been recently very carefully considered by the judge of Wentworth, and we have obtained the judgment which Judge Logie delivered in the first Division Court in *Sandercock v. Reid—McCarthy* garnishee. The debt due by the garnishee to the primary debtor was upon a contract for building a house—contract price being $460 and extras $78—the amount due by garnishee was insufficient to pay all in full. Several questions arose at the trial, but we shall only refer to the material ones. It was contended for the garnishee that the subject matter of the debt was beyond the amount which the court had jurisdiction to deal with; 2nd. Questions as to priority amongst the primary creditors came up—priority being claimed by one who had obtained a judge's order after judgment over another creditor who was first in time, but preceeded by the attaching summons against debtor and garnishee. We extract the following from the judgment of the learned judge.

It is provided by section 5 of the Division Courts Act of 1869 (32 Vict., ch. 23) that when any debt or money demand of the proper competence of the Division Court, and not being a claim strictly for damages, is due from any party to any other party, either on a judgment or otherwise, and any debt is due and owing to the debtor from any other party, it shall be lawful for the party to whom such first mentioned debt or money demand is so due and owing, to attach and recover in the manner therein provided, any debt due and owing to his

debtor from any other party, or sufficient thereof to satisfy the primary creditor. Section 6 directs the mode of procedure when the primary creditor's claim is a judgment, and declares subsection 2 that the service of the judge's order on the garnishee shall have the effect of attaching and binding in his hands all debts due and owing from him to the primary debtor or sufficient thereof to satisfy the judgment. Subsection 6 of the same section empowers the judge to give judgment against the garnishee for the amount so owing by him, or sufficient thereof to satisfy the judgment. When the primary creditor's claim is not a judgment, the mode of procedure is pointed out by section 7. Subsection 3 authorizes the judge to give judgment against the garnishee for the amount found to be due from the garnishee to the extent of the amount found to be due from the primary debtor. Section 9 enacts that in all cases under the Act (except where an attaching order has been served, already provided for) service of the summons on the garnishee shall have the effect of binding in his hands the debt sought to be garnisheed from the time of such service.

If the claim of the primary creditor against the primary debtor is of the competence of the Division Court, the Court has jurisdiction, and service of the attaching order or of the garnishee summons, as the case may be, binds the debt due by the garnishee, whatever be its amount, to the extent of the primary creditor's claim, and being bound the primary creditor may proceed to recover, although in order to do so the judge may have to investigate an account exceeding the jurisdiction of the Court. The words of section 5 are that he may attach and recover; sections 6 and 7 state how he may recover. There is nothing in the statute limiting the right to recover against the garnishee, to cases where the Court would have jurisdiction to try the question of indebtedness in actions between the primary debtor and garnishee. On the contrary, the intention of the Legislature seems to have been, not only to attach the debt, but also to enable the creditor in all cases to enforce the attachment and recover in the same court, and not to compel him to go into equity to make the attachment effectual for the recovery of the debt. The Court having jurisdiction in the original matter between the primary creditor and primary debtor, that jurisdiction draws after it the right to try and determine the amount due by the garnishee, although it may involve the investigation of an unsettled account exceeding $200. It is in principle not unlike the case of an interpleader where the Court has jurisdiction to try and dispose of the claimant's rights, though in doing so the title to land may be involved: *Munsie v. McKinley*, 15 U. C. C. P. 50.

With regard to the question which has been raised as to the priority between these creditors, I think that service of a garnishee summons where judgment has not been obtained, binds the debt due by the garnishee as fully as service of an attaching order after judgment. The statute makes no distinction, but states the effect of service in each case to be the same, that of binding the debt in the hands of the garnishee. If an attaching order served after a garnishee summons had priority because it was a judge's order upon a judgment, service of the garnishee summons would not have the effect, which the statute expressly says it shall have, of binding the debt from the time of service. The garnishee must rank in the order of service, the last one taking the small balance which will be left in the hands of the garnishee after payment of the other two claims; but the two primary debtors are not entitled to have their costs paid out of the moneys in the hands of the garnishee, these moneys being bound only to the extent of their respective claims.

LAW SCHOOL—INAUGURAL ADDRESS.

The Treasurer of the Law Society, the Hon. John Hillyard Cameron, opened the Law School by an address, the leading features of which we give below, for the benefit of those who had not the good fortune to be present. As the address was an extemporary one, delivered without the use of notes of any kind, we do not pretend to give it *ipsissima verba*, but we believe our reporter has faithfully sketched the substance. It is always a pleasure to listen to a speech delivered by the eloquent leader of the Bar of Ontario, on any subject. In this case that pleasure was enhanced by the speaker treating of a matter in which he has always taken the heartiest interest, and to which he has devoted much thought and time.

The interest was kept up throughout by numerous anecdotes and incidents of early professional life in this Province, related in

the happiest manner and evidencing the wonderful memory of the lecturer :—

The learned Treasurer of the Law Society began by saying it gave him great pleasure to attend the opening of the Law School, and to see so many past and present students before him. All who knew anything of the Law Society knew that the great object sought to be attained was the education of men who were coming to the Bar. Nothing to which they could devote themselves was so conducive to their ultimate welfare and to the interest of the whole country. They were probably aware that the position of the Law Society was a foremost one. It might not be amiss, on that occasion, to allude to the history of the Society of which they were members, and the duties and benefits attached to it. It was nearly eighty years since a voluntary society was formed by those, who, having been admitted to the Bar, desired that a high education should be available for their successors ; and so they framed a code of regulations, which they desired should be in force with that object in view. That voluntary society remained such only a short time. From 1791 they dated their status as a separate Province. Six years later, in 1797, the voluntary society became a legal organization. Under the Statute by which it had become incorporated, it had sought to fulfil the obligations laid on it by law. It was a singular circumstance that in this Province of all the British dominions, for a long series of years, it was the only Society that required an examination for men claiming to be admitted to the Bar ; and to its founders they were indebted for a system that has since been so fully adopted elsewhere, for the training of men who so much affected the destinies of the people at large. In the early days of the Province, before his student days, a class, called the Trinity Class of Students, was formed in order that young men coming to the Bar should become acquainted with the principles and practice of the law in this Province. That class existed for many years, and before many then present were born ; that very room was the scene of their discussions. After some years the Trinity Class died ; but it was productive of much good, and it might have been still more productive of benefit if it had continued ; and there was no doubt that the class then opened might be of much advantage to them as a means of placing themselves before the public with all the knowledge that could be acquired. In the position which the Law Society had been obliged to assume, it had been his desire, during a practice extending over thirty-four years, as far as lay in his power, to afford every facility to men to enter the profession with every possible educational advantage. There was no higher duty than that of training young men ; and their duty was best discharged in carrying out that purpose. For years past they had endeavoured to accomplish that object, and it was only now that they had acquired the power of giving the men, who, by earnest study, had acquired the necessary education through the profession itself, the advantages which they might have acquired by a University course : and to give to these men the same privileges in shortening their legal course that were enjoyed by those who had taken a University degree. He concluded from their presence there that night that their efforts had been successful. Since the Law Society had determined on this course, he had had many letters from the country from men claiming that non-residence should not debar them from these privileges. But the plea these gentlemen put forth was not a tenable one, because they might qualify themselves for the examination by cramming ; whereas the object the Society had in view was to impart a groundwork of thorough knowledge : and they might be assured that any time or money that might be devoted to residence there and an attendance on the Law Society lectures would redound to them most abundantly in their subsequent career. The object of the Society could only be successfully carried out by the plan decided on. They had adopted this system before it was adopted in any other part of the Dominions of Great Britain : and he had received letters from eminent men in the old country with reference to its working (cheers). Only recently in consequence of a threat made by the present Lord Chancellor, then Sir Roundell Palmer, the Inns of Court had combined in doing in England that which had been done for a long time past in this Province. The Benchers had endeavoured to carry out the objects of the Society perfectly : and the satisfaction they had themselves felt in training an able body of men would be reflected on them in the days to come. The position of the Province at that moment, with regard to education, was different from what it had ever been before 1870. At that moment the necessity for a larger education with regard to legal subjects was patent to all. Originally they had only to do with their own Province; but in a short time they would have a Supreme Court; and it could not be but that every man would feel that he must be prepared

to take his position in that court if necessary; and if heretofore their practice had been confined to local questions it must hereafter be extended to a much larger range; and they must acquire a knowledge of the law in other Provinces. Their reading would have to be much more extensive, reaching even to the law of the United States, which was constituted on a similar Federal basis to that of Canada, and, therefore, it would be that the student here who desired to occupy a position of high honour would have to follow a course different from heretofore. Every man who enters the law must believe that that particular profession is the one for which he is most adapted; and many a man gets credit for more ability than he is entitled to, but he must know that success has been due to advantageous circumstances. In the course of his experience he has found that there was much that could not be learnt in books; and he thought the altered relations between masters and clerks was in this respect a great loss to students, and for this and other reasons was to be deprecated. In his early days the payment of a premium was made to the masters instead of the clerks receiving salaries; and it was a duty incumbent on the masters to give clerks the advantages of their experience. This had been done in days gone by; and he believed that many gentlemen now in practice had a pleasant recollection of the Saturday afternoons that he had devoted to imparting to his pupils such knowledge as he thought would be of service to them. The change to which he referred had arisen from the altered position of clerk and master: and he hoped that the Law Society would occupy that position which the masters originally occupied in the matter of education. There were three things they must ever keep before them: they were—System, Perseverance, and Self-denial; and they might be certain that if they kept those before them they might be sure they would not fail when they entered on their professional career. Every man engaged in the profession who took those three words for his motto, would not fail to occupy a high position. The honorable gentleman then drew attention to the difference between Attorneys and Barristers in the old country, and said that opinions were varied as to the advantages of the two systems, one party having a preference to the English system, and another preferring that which prevailed here; and he pointed out the advantages of the latter in that it enabled one who was thoroughly conversant with a case, to carry it through from beginning to end. A difficulty that was in the way of students was the enormous number of books that were supposed to be necessary for them to read. Some said they must read Blackstone, others said Blackstone was a by-gone work. But when they came to look at the books necessary to read they would find they were very few. They might be devided into four divisions—Treatises, Commentaries, Reports and Digests. When they looked at them all, and considered them, they would see that it was not the number of books they read, but how they read them. In his opinion it was only a few books that a student required. If they would take a small number of books, and read them again and again, they would do themselves a thousand times more good than the discursive reading of a thousand books. They should take Blackstone, Story and Kent. They should take these and diligently read them, and if they read them thoroughly, he would tell them that they were laying the best foundation for their future. He also advised every young man going into an office always to have a pencil in his hand for the purpose of noting down any cases that he might meet with. This was advantageous in enabling him to put his hand on any cases to which he might wish to refer; but in ordinary practice he deprecated the use of notes. In his own practice he never used notes, and he had found that it was advantageous to trust entirely to his memory. But the commonplace book was valuable for the purpose stated. In going into a court they should make themselves familiar with every point in a suit. He warned them to beware of what was called sharp practice, for it was a ruinous one. The profession was a liberal one, and this should be always borne in mind; and sharp practice was not only injurious to clients but to brother members of the profession. He called attention to the advantages they enjoyed to those of a by-gone day. All technicalities were now removed; and he referred to the differences in matters of practice in this respect and what it had been in days gone by. The Law was divided into two parts—Principles and Procedure. Now, whether intending to become Barristers or Attorneys, they were, most of them, prosecuting the same object. He had told them how they might gain knowledge, and had pointed out the advantages attending the use of a commonplace book; now he would add—never take any instructions or retainer from a client without putting it in writing. With regard to the conduct of cases, he laid it down that tact was of as much value as talent. He held that indeed tact was talent. No profes-

sion, probably, required so much varied knowledge as that of the law. They were liable every one to have submitted to them most diverse questions. One day it might be a surgical case, another that of a mill, and another one of complicated accounts; indeed the variety was so great that it was difficult to say where one's knowledge ought to end. Mr. Cameron proceeded to show how that lack of knowledge may have caused a strong point in a case to be overlooked; or led to a point being argued that was better left alone; and instanced cases where men had evinced ignorance in speaking of a vegetable poison as a mineral one, and on points of anatomy. He spoke of suits which had been lost through ignorance of mechanics; of the different effect of water on an over-shot and under-shot wheel. He believed that no man would go far astray if he devoted six months to a course of lectures on anatomy, and a certain period to book-keeping. The next point insisted on was that a practitioner at the Bar should never be driven from a course he had decided on, simply because his client did not approve of it, nor be too anxious to make well better, and instanced the cases of *Staunton* v. *Weller*, and that of a forged deed. In the former an action was entered for recovery of damages from a stage coach proprietor. A non-suit had been moved for when the defendant desired the driver should be put into the witness box. He was called and proved that in the case of the accident he acted on the judgment of a passenger at his side rather than his own, whereupon the judge held him responsible for the accident and a verdict was returned for plaintiff. A two-fold lesson was inculcated by this illustration. Mr. Cameron next commended the practice of patience and perseverance and showed the value of them by instancing the case of some deeds which had been lost in Canada in the war time of 1812, and which after years and years of search all over the world had been discovered in the possession of a high official who had supposed them to be burnt. He next proceeded to notice the practice of Criminal Law; and said that that was attended with far more difficulties than was generally supposed. It was thought that anyone could take up a defence in a Criminal Case. This was a great mistake. It was a very serious responsibility that might involve the character or the life of the client. He would advise them for one thing never to allow a client to tell them he was guilty, for they would thereby encumber themselves with a weight hard to bear. It was their duty always to conduct the case of a client as if they were simply his mouthpiece, but it was unwise to begin with a knowledge that might prove embarrassing. In the whole course of his professional career he had never had to defend more than one who had told him he was guilty, and that one was acquitted. He then mentioned the case of an artilleryman who shot his sweetheart, and detailed a remarkable chain of circumstantial evidence in the prisoner's favor which resulted in his acquittal. There were other things they would also have to remember. It was often said Mr. A. B. or Mr. C. D. had the ear of the Court. If they examined they would find there was a reason for that. Some men made it a practice not to state a case fairly and this often prejudiced the court against them. There was no favor conceded to any particular lawyer, but the fact was rather that A. B. or C. D. was perfectly reliable; and they themselves would find that there was nothing more proper or profitable than to place a case fairly and honestly before the court. Their profession was a liberal one in every way and an honorable one; it bore more weight of responsibility than any other. They were entrusted with secrets which, if known, would be most disastrous. They were treated with the most implicit confidence; and as long as that was the case they could not but hope that they would urge on every one coming into it, to maintain that honour which had been the glory of the land from which they had sprung, and which should be the glory of this land also. He hoped that the high standard that had been maintained in this country at the Bar and on the Bench would still be kept up; and they only claimed that, with a more extensive field, they would have in the rising men, not only those who would maintain the glory of the past, but would add a lustre to it. They had every educational advantage, and he impressed on them the necessity of their availing themselves of it. In his remarks he had kept himself from scientific questions because these would be brought under notice in the course of lectures then begun. He concluded by speaking in commendatory terms of the gentlemen who were joined with him in conducting the affairs of the Society and the education of the students.

Mr. Cameron concluded a long, practical, useful and eloquent discourse, extending over an hour and a half, amid the most enthusiastic applause. The attendance of both students and practitioners was very large, the lecture-hall and passages being crowded.

ADMINISTRATION OF JUSTICE.

We have just received a copy of the Bill submitted to the Provincial Legislature by Hon. Attorney-General Mowat, entitled "An act for the better administration of Justice in Ontario."

The Bill, though brief, will effect most material alterations in our judicial system, and it has evidently been prepared with great care. Without committing ourselves to all its provisions, we may say that the hasty examination we have made has impressed us most favorably with the measure, and we commend it to the fair and candid consideration of every member of the profession in the legislature.

When the *Law Journal* was commenced nearly twenty years ago, it was announced to be wholly and exclusively a legal publication, and we added "it is almost needless to say we can have, editorially, no politics." Perhaps it is too much to hope that lawyers in the House can approach the consideration of legal measures submitted by their political opponents in the same spirit—though in the best interests of law reform, we would it were possible—and the Attorney-General, we think, may reasonably claim a fair and candid consideration of his measure. No doubt *he* will be prepared to listen with candour to any suggestions that may be offered, or to any objections that may be urged by those competent to form an opinion on both sides of the House. Nor ought the fact that it is in his power to secure a majority for any legal measure the Government may submit, render him impatient of fair discussion on the merits, or intolerant of suggestions for improvement in the Bill.

Few lawyers are insensible to the anomaly which the distinction between "Law" and "Equity" produces in our system of jurisprudence; different courts of Justice, administering justice on different, and sometimes antagonistic principles—rights held entitled to consideration and protection in one court, not acknowledged in the other. The abstract truth will be denied by none, that in whatever courts justice may be administered, uniform principles should prevail—principles most consonant to rational justice. How this may best be accomplished has been earnestly debated for more than half a century in England, and of late years the subject has engaged the attention of thinking men in Canada. One mode has been suggested, "The fusion of Law and Equity," as it has been called—fusion immediate and complete. Another mode, by cautious, gradual improvements, commencing with the most salient points, removing the anomalies, imperfections and defects in each system, and bringing them into unison—making in the end Law and Equity one and indivisible.

The first plan was supposed to find favour with a former Government, and perhaps there is even one gentlemen in the present Government who would not hesitate to exercise at once all the absolute and despotic power the Prætor possessed under the Roman constitution, and in one brief clause dethrone and banish the *Common Law* into the land of forgetfulness, placing the *genius of Chancery* in its stead. However that may be, Mr. Mowat as the head of the Government seems to have adopted the latter and safer plan; the even tenor of the magisterial pursuits, with its responsibilities, has taught him doubtless to distinguish between law reform and revolution; and broader and better views of the requirements of an enlightened jurisprudence have shown him that to subvert with one blow a system which has grown with our growth, and which is so intimately interlaced with our relations and dealings, would be little short of madness. In a word, the head of the Ontario Government recognizes the fact that to destroy one

system without first building up another on a plan better adjusted to the requirements of substantial justice, would not be the act of a statesman or a jurist. He doubtless felt that so to build would be a work so vast and important as to require absolute and entire devotion to the subject for a longer period than any Government or any member of it could give. The Attorney-General has therefore taken up certain defects, and though they are few in number, the question with us is whether he has not possibly attempted too much at first.

We have only time to do more than make a brief reference to some of the clauses in this Bill.

The first section lays down a rule dimly recognized as the law exists, but sound in principle, and which, if carried out, must prove beneficial. No doubt this section is intended to be a key to the whole statute, and subsequent clauses would be read having regard to this legislative direction.

Section 2 requires much consideration. "A purely money demand" is leaving a good deal to interpretation, and may admit of much difference of opinion in the application of the terms to particular cases. We are not now prepared to say that a better term could be employed if designed to be used in the broadest and most comprehensive sense, and it is difficult to understand how such cases should have gradually passed to the exclusive jurisdiction of a Court of Equity. The rigid rule as to judgments and as to parties in the Common Law Courts was no doubt the great barrier. Section 8, in particular, seems a necessary complement to section 2; a careful examination of the clause may suggest an alteration in the language. The principle of the proposed enactment we approve.

Section 3. This enlargement of the equitable plea, &c., has our entire approval, and we think it is so framed that its value cannot be impaired by a narrowing-down process, which to a great extent curtailed the benefit of the similar provision recommended by the framers of the English C. L. P. Act.

Sections 4, 5, 6, and 7 relate to equitable defences, &c., in ejectment, and with respect to them we should like to hear some explanation before expressing an opinion beyond this, that the principle of allowing equitable defences to avoid the necessity of a suit in Chancery ought to be extended to actions of ejectment. A demurer to a notice is a new feature, and in considering these clauses it ought to be borne in mind, that the notice is no part of the record. To be in keeping with the proposed change the notice or its equivalent should form an integral part of the record.

Without committing ourselves to details we may say that the proposed enactments in sections 9 and 10 are in our opinion desirable and necessary. They aim at a tangible evil, a standing reproach in our system of administration, an evil against which foreign jurists have levelled many a shaft. It is absurd when a suitor comes to a Court of *Justice* to obtain justice that he should be told "we cannot give you the article here, begin again in another Court;" "but," the suitor says, "this is a Court of Justice, render to me my due." "No, you cannot have (e. g.) equitable justice here, go next door." We are aware that the argument pushed would lead to a larger measure of relief than Mr. Mowat proposes, but that in good time; the clause is a step in the right direction. Sections 32 to 34 are provisions in the same connection.

Sections 11 to 15 relate mostly to procedure, and we shall not now pause to examine them.

The 16th, 17th and 18th sections relate to the mode of trial of issues of fact and will not very materially alter the present law. In our judgment they do

not go far enough, and leave room also for doubt when read with similar clauses in the Law Reform Act. We should like the rule to be that all issues of fact should be tried by a Judge, the exception being only in cases of libel and slander, and in cases where, upon applications made before trial, the Court or Judge saw fit to direct the issues to be tried by a jury. If the trial by jury in civil cases were thus dispensed with there would be no occasion for section 20, but while trial by jury exists there ought to be some means of keeping juries within their proper sphere. The theory of our mode of trial at Nisi Prius is that the jury determine the facts, the Judge declaring the law. But those familiar with procedure know how difficult it is to confine juries to their sole duties, how often they go beyond them and usurp the functions of the Judge. They may or may not accept the law as laid down by the Bench, and there is always a difficulty, unless the jury will answer questions put to them, which they may refuse to do as the law stands, and insist on finding a general verdict. In actions for malicious arrest, false imprisonment, and actions by and against corporations, &c., the evil is very marked. The 20th section is apparently designed to remedy this by requiring the jury to give a special verdict. Our impression is that it will be better to provide that distinct questions should be framed beforehand and submitted to the jury, something similar to the plan in the Indian Code of Procedure. No doubt under section 20 the Judge could at Nisi Prius frame and submit to the jury questions in determination of the issues, and require the jury to answer them, but this in complicated cases is not always an easy task, and it would seem much better to have them prepared *deliberately* before-hand. Strong opinions have been expressed as to the propriety of this change both *pro* and *con*. We shall refer to these conflicting views on a future occasion.

The 21st section is calculated to save an unnecessary waste of judicial strength and the avoidance of delay.

The clauses for the examination of parties, &c., we do not stay to examine in detail, but recognize their great value, and similar powers have worked well in Chancery procedure.

The 36th and subsequent sections for assisting a party to obtain the fruit of his judgment or decree, may remove some difficulties that now exist, and as provisions in aid will be found valuable in plain cases where there is no contest. It is not, we apprehend, intended by this section, nor would it be wise that judges should, in all cases brought before them under it, summarily dispose of those many doubtful and difficult questions which arise where sales are impeached on the ground of a fraudulent intent to defeat creditors. It very frequently happens, and notably so in this class of cases, that the truth cannot be reached without having the witnesses and parties brought face to face with each other and subjected to a very searching cross examination. Whilst, therefore, this section will be useful in cases where the fraud is so palpable as not to leave any room for doubt, and where there are no other complicating circumstances, it is not likely that judges will very freely exercise the large powers proposed to be given to them. We presume there would be an appeal from any decision under this section as in other cases, but it would be well to provide that on an appeal a direction might be given for the trial of the disputed point on an issue or by bill under section 38.

When the Bill goes into committee the language of all these clauses will no doubt be carefully examined and any necessary alterations and additions made.

The 45th section will prevent County Court cases being carried out of the Court in which they are instituted, often to the

detriment of the suitors proper in the Superior Courts.

There will be some trouble in practically carrying out the theory laid down in section 46. A difficulty will at once arise as to how a taxing officer in one Court is to tell what the costs of the suit would have been if brought in another Court, having entirely different machinery. This is a matter which will require consideration and amendment.

The 47th and 48th sections meet our unqualified approval. "The advancement of justice, and the prevention and redress of fraud," in other words, substantial justice, ought to be paramount to mere technical rules, and the very ample powers of amendment here given will greatly aid the Courts in the administration of justice.

The 54th and 55th sections put a very important jurisdiction upon a proper footing. The power to try criminal cases by a judge without a jury was conferred by an Act of Canada introduced by the late Hon. J. Sandfield Macdonald, and that it has worked well and satisfactorily, we shall on a future occasion show. The Dominion Parliament could only confer the jurisdiction. Very nearly what is proposed to be done by this Bill, we happen to know that the first Premier of Ontario intended to submit to the Legislature. We do not by this remark desire to detract from the credit due to Mr. Mowat as the framer of this provision or to suggest that he was aware of Mr. Macdonald's intention: far from it,—but it could not fail to engage his intention that what at first was regarded as a doubtful experiment had proved a great success, as shewn by the very large number of persons charged with crime who accepted the jurisdiction, the proportion outside of the cities being over four-fifths of the whole number of persons committed for trial. The proposed enactment will so far as the Legislature of Ontario can do it remedy the main imperfections, but further legislation in the Dominion will be required to complete the design and give the tribunals *all* the powers and facilities that a Criminal Court should possess.

We have given all our available space to this brief notice of the leading provisions in this most important Bill, and whatever difference of opinion may prevail as to some of the provisions—the object the Bill aims at, the moderate range and character of the proposed enactments, and the able and careful manner in which it is framed, claim for it, we repeat, a grave and candid consideration.

We would in conclusion suggest that the Act should not come into force for some time to be limited by it. This would give time for practitioners to see it and understand it before being called upon to act under its provisions.

The Bill reads as follows:—

Her Majesty, &c., enacts as follows:—

LAW AND EQUITY COURTS.

1. The courts of law and equity shall be, as far as possible, auxiliary to one another respectively, for the more speedy convenient and inexpensive administration of justice in every case.

EQUITABLE POWERS OF LAW COURTS.

2. Any person having a purely money demand may proceed for the recovery thereof by an action at law, although the plaintiff's right to recover may be an equitable one only, and no plea, demurrer or other objection on the ground that the plaintiff's proper remedy is in the Court of Chancery, shall be allowed in such action: but the court shall have the discretionary power hereinafter mentioned to transfer equity matters to the Court of Chancery when the ends of justice so require.

3. Any party to an action at law may, by plea or any subsequent pleading, set up facts which entitle him to relief upon equitable grounds, although such facts may not entitle such party to an absolute, perpetual and unconditional injunction in a court of equity, and although the opposite party may be entitled to some substantive relief as against the party setting up such facts: and such plea or other subsequent pleading shall begin with a statement that it is on equitable grounds.

4. Any defendant in an action of ejectment, or any other person not named in the writ, who has obtained leave to appear and defend, may, in addition to the notice denying the plaintiff's title, and asserting title in himself, state by way of defence any facts which entitle him on equitable grounds to retain possession; and such statement shall begin with the words "For a defence on equitable grounds."

5. Such defence on equitable grounds may be set up as to the whole of the property mentioned in the writ, or may be limited to part thereof.

6. When a defence on equitable grounds is set up under the two preceding sections, the plaintiff may, within the same time as he may now reply to a plea on equitable grounds in any other section, file a statement, setting up any facts which avoid such defence on equitable grounds; and such statement shall begin with the words "For a reply to the defendant's statement on equitable grounds."

7. The plaintiff, instead of filing a statement under the foregoing section, may demur to the statement of facts filed by the defendant, or he may file a statement in reply as to part, and demur as to other part.

8. For the purpose of carrying into effect the objects of this Act, and for causing complete and final justice to be done in all matters in question in any action at law, the court or a judge thereof, according to the circumstances of the case, may, at the trial or at any other stage of an action or other proceeding, pronounce such judgment, or make such order or decree as the equitable rights of the parties respectively require, and may make such rule or order as to adding third persons as parties to any proceeding, striking out parties, or treating parties named plaintiffs as defendants, or parties named defendants as plaintiffs, and as to costs, and may direct such enquiries to be made and accounts to be taken, as shall seem reasonable and just; and may as fully dispose of the rights and matters in question as a court of equity could do.

9. In case it appear to a Court of Common Law or a judge thereof, that any equitable question raised in any action or other proceeding at law, cannot be dealt with by a court of law so as to do complete justice between the parties, or may for any other reason be more conveniently dealt with in Chancery, the court or judge may order the action or proceeding to be transferred to the Court of Chancery; and such order of transference may be made by the court or judge *sua sponte*, or upon the application of either party on notice to the other parties interested.

10. When an order is made under the foregoing section the proper officer of the Court of Common Law shall annex together all pleadings and papers filed with him, and transmit the same, together with the order of transference or a copy thereof, to such officer of the Court of Chancery as the order shall direct.

11. When, in the opinion of a Court of Common Law or a judge thereof, it is necessary or proper in any action to take accounts or make enquiries, which cannot so conveniently or properly be taken or made under the existing practice at law, or by the means now available for the said courts, as they might be in Chancery, the court or judge may order such accounts and enquiries to be taken and made by the master or any of the local masters of the Court of Chancery, instead of ordering a transference of the suit generally to the said Court of Chancery.

12. When an order is made under the preceding section, the master to whom the reference is directed shall proceed therein, and all the orders of the Court of Chancery as to the powers of the master, and as to the proceedings in the master's office, shall apply thereto, as if the reference had been made by an order of the Court of Chancery.

13.—[Master's report to be filed and become absolute in fourteen days unless appealed from.]

14. The appeal from a report referred to in the preceding section shall be to a judge in chambers or to the court in term, but when the appeal is taken to the court in term, the notice of appeal shall be returnable not later than the fourth day of the term next after the filing of the report.

15. [On transfer from a county court, and reference costs to taxed on lower scale.]

16. [Equitable issues to be tried without a jury, except on judge's order for a jury.]

17. In sections of libel, slander, criminal conversation, seduction, malicious arrest, and false imprisonment, all questions which might heretofore have been tried by a jury, shall be tried by a jury, unless the parties in person or by their attorneys or counsel waive such trial.

18. All other legal issues shall be tried as heretofore; but the court in which the action or proceeding is pending, or a judge thereof, may upon application being made before trial, or the presiding judge may, upon the trial, direct that the issue or issues shall be tried and assessed without the intervention of a jury.

19. When in any action or other proceeding at law both legal and equitable issues are raised, such issues shall be tried at the same time unless

the court or a judge thereof, or the judge presiding at the trial shall otherwise direct.

20. Upon any trial by a jury where the court or a presiding judge shall otherwise direct, it shall not be lawful for such jury to give a general verdict, and it shall be the duty of such jury to give a special verdict if the court or presiding judge shall so direct: but this section shall not apply to actions of libel.

21. The judges of each of the Superior Courts of Common Law may sit separately, or two may sit separately from the third, either at the same time or at different times, for the hearing and disposing of such matters and the transaction of such business as may from time to time in that behalf be directed by general or other rules or orders of the court: and the judgments, decrees, rules, and orders made by a single judge, or by two judges, in such case, shall have the force and effect of, and be deemed for all purposes to be the judgments, decrees, rules and orders of the court; and the judgments, decrees, rules and orders of any judge, or of any two judges sitting separately as authorized by this Act, shall be deemed to be the judgments, decrees, rules and orders of the court in which the action or other proceeding may be pending, although the judge or judges pronouncing or making the same may not be a judge or judges of such court; but such judgments, decrees, rules and orders shall be subject to appeal or rehearing before the full court, in term, or otherwise, in such cases as the court, by general orders or rules or otherwise, from time to time direct or appoints; and any judge, or any two judges so sitting separately shall have all the powers of the full court, subject to any general orders or rules in that behalf. But when any one or two of the judges before the passing of this Act could have sat as and for the full court, he or they may and shall under the like circumstances continue to do so notwithstanding this Act.

22. The proceedings before two of the judges, or any one of the judges sitting separately, as aforesaid, shall shew on their face in the motion paper, or in any judgment, decree, rule or order to be given or made, that the business was carried on by two, or by one only of the judges, as follows: "In [*styling the court*] Before Justice [*naming the Judge, or, if before two Judges* "Before and Justices," *naming them.*]

23. [Decision of questions of fact or law may be reserved at trial.]

EVIDENCE, EXAMINATIONS.

24. Any party to an action at law, whether plaintiff or defendant, may at any time after such action is at issue obtain an order for the oral examination, upon oath, before a judge or any other person specially named by the court or a judge, of any party adverse in point of interest, or in case of a body corporate of any of the officers of such body corporate, touching the matters in question in the action; and any party or officer examined may be further examined on his own behalf, or on behalf of the body corporate of which he is an officer, in relation to any matter respecting which he has been examined in chief; and when one of several plaintiffs or defendants has been examined any other plaintiff or defendant united in interest may be examined in his own behalf or on behalf of those united with him in interest, to the same extent as the party examined: Provided that such explanatory examination must be proceeded with immediately after the examination in chief, and not at any future period except by leave of the court or a judge; and for the purposes of the preceding clause when the officer of a body corporate has been so examined as aforesaid on behalf of such body corporate, such body corporate shall be deemed to be fully represented by such officer.

25. Any party to be examined orally under the provisions of this Act shall be so examined by the judge or other person specially named in the order for examination; and such examination shall take place in the presence of the parties, their counsel, attorneys, or agents; and the party so examined orally shall be subject to cross-examination and re-examination; and such examination, cross-examination and re-examination shall be conducted as nearly as may be in the mode now in use in courts of common law on a trial at nisi prius, or in chancery at the hearing of a cause.

26. The depositions taken upon any such oral examination as aforesaid shall be taken down in writing by the examiner, not ordinarily by question and answer, but in the form of a narrative; and when completed shall be read over to the party examined, and shall be signed by him in the presence of the parties, or of such of them as may think fit to attend: Provided always, that, in case the party examined shall refuse or be unable to sign the said depositions, then the examiner shall sign the same; and such examiner may upon every examination state any special matter to the court if he shall think fit: Provided also that it shall be in the discretion of the examiner to put down any particular question or answer, if there should appear to be any special reason for so doing, and any question or questions which may be objected

to shall at the request of either party be noticed or referred to by the examiner in or upon the depositions; and he shall state his opinion thereon to the counsel, attorneys, agents, or parties, and if requested by either party he shall on the face of the depositions refer to such statement.

27. When the examination before the examiner shall have been concluded, the original depositions authenticated by the signature of such examiner shall be returned and kept in like manner as depositions are directed to be returned and kept by the one hundred and ninety-third section of the Common Law Procedure Act.

28. The sheriff, gaoler, or other officer having the custody of any prisoner may take such prisoner for examination under the authority of this Act, by virtue of a writ of *habeas corpus* to be issued for that purpose, which writ may be issued by the court or judge under such circumstances as such court or judge may by law issue a writ of *habeas corpus ad testificandum*.

29. The order for the examination of a party adverse in point of interest, or of the officer of a corporation, referred to in the twenty-fourth section of this Act, shall be granted as of course upon the production, by the party purposing to examine of an affidavit of such party, or of his attorney or agent, stating that the deponent believes that the party purposing to examine, whether plaintiff or defendant, will derive material benefit in the action or other proceeding from such examination, that there is good cause of action (or of defence) upon the merits, and (if the application be made on the part of the defendant) that the examination is not sought for the purpose of delay.

30. Any party or person refusing or neglecting to attend at the time and place appointed for his examination, or refusing to be sworn or to answer any lawful question put to him by the examiner, or by any party entitled so to do, or his counsel, attorney or agent, shall be deemed guilty of a contempt of court, and proceedings may be forthwith had by attachment: Provided always, that if the party under examination shall demur or object to any question or questions which may be put to him, the question or questions so put, and the demurrer or objection of the witness thereto shall be taken down by the examiner and transmitted by him to the office of the court to be there filed; and the validity of such demurrer or objection shall be decided by the court or a judge; and the costs of and occasioned by such demurrer or objection shall be in the discretion of the court or judge.

31. The distinction between local and transitory actions at law is hereby abolished, and the plaintiff may sue out the writ for the commencement of any action from any such office as under the practice heretofore in force he might have sued out such writ in a transitory action.

JURISDICTION OF CHANCERY IN LEGAL MATTERS.

32. Where a suit is instituted, or where a petition is filed in the Court of Chancery for the purpose of establishing the title of the plaintiff to any real property, no objection to such suit or proceeding shall be allowed upon the ground that such plaintiff should first have sued at law, or would have an adequate and complete remedy at law by action of ejectment or otherwise; and if it shall appear upon the hearing or other determination of such suit or proceeding that the plaintiff or petitioner is entitled to the possession of such real property, he may obtain an order against the defendant or respondent for the delivery of such possession, and writs of execution shall issue accordingly.

33. No objection shall be allowed on demurrer or upon the hearing of any cause in the Court of Chancery, upon the ground that the subject matter of the suit or other proceeding is exclusively or properly cognizable in a court of law: but in case at any stage of a cause in chancery it appear to the court or a judge thereof that the suit may for any reason be more conveniently, expeditiously, or inexpensively carried on or dealt with in a court of law, the Court of Chancery or a judge thereof may order the suit to be transferred to such one of the courts of common law as the said court or judge may think proper; and such order may be made by such court or judge *sua sponte*, or upon the application of either party to the court or judge on notice to the other parties interested.

34. When an order is made under the foregoing section the proper offices of the Court of Chancery shall annex together all the pleadings and papers filed with him, and transmit the same together with the order of transference or a copy thereof, to such office of the court of common law as the order shall direct.

LAW AND EQUITY.

35. When a transfer has been made under either the ninth section or the thirty-third section of this Act, the suit, action or other proceeding shall thereafter proceed in the court to which it has been transferred; and the judges of such court and the officers thereof shall have the same powers and perform the same duties in relation

thereto, and the practice and orders of such court shall in all respects (or as nearly as may be) apply as if the suit had been originally instituted as an action, suit or proceeding in such court; but no further or other pleadings shall be necessary than the original pleadings in the court from which such suit, action or proceeding was transferred, unless specially ordered by the court or judge.

FRAUDULENT CONVEYANCES.

36. Where a judgment creditor or a person entitled to money under a rule decree or order at law or in chancery, alleges that the debtor has made a conveyance of his lands which is void, as being made to delay, hinder or defraud creditors, or a creditor, it shall not be necessary to file any bill in equity for the purpose of setting aside such conveyance, but the court or a judge in chambers may, upon the application of the judgment creditor, call upon the judgment debtor and the persons to whom the conveyance has been made, or who have acquired any interest thereunder, to show cause why the lands embraced therein, or a competent part thereof, should not be sold to realize the amount to be levied under the execution.

EXECUTION AGAINST EQUITABLE ESTATES.

37. When any judgment creditor in an action at law or a person entitled under a rule decree or order as aforesaid, alleges that the debtor is entitled to or has an interest in any land which cannot at present be sold under legal process, but could be rendered available in equity for satisfaction of the debt, the court or a judge in chambers may, upon the application of the creditor, call upon the debtor and the trustee or other person having the legal estate in the land in question, to shew cause why the said land or the interest of the debtor therein, or a competent part of the said land, should not be sold to realize the amount to be levied under the execution.

38. Upon any application under either of the two preceding sections, such proceedings shall be had, either in a summary way or by the trial of an issue, or by inquiry before an officer of the court, or under the eleventh section of this Act, or by a bill in chancery, or otherwise, as the court or judge may deem necessary or convenient for the purpose of ascertaining the truth of the matters in question, and whether the lands or the debtor's interest therein are in equity liable for the satisfaction of the execution.

39. Where in a summary way or upon the trial of any issue, or as the result of any enquiries under the three preceding sections, any land or the interest of any debtor therein, is found liable to be sold, an order shall be made by the court or judge declaring what land or what interest therein is liable to be sold; and such order shall be a sufficient warrant to the proper sheriff or other officer to proceed with the sale of the said land and interest.

40. The sale and conveyance by the sheriff, in pursuance of such order, shall have the same effect as such sale and conveyance would heretofore have had if the land so sold had been saleable under ordinary legal process.

INTERPLEADER.

41. In cases of proceedings for interpleader by reason of any levy or seizure by a sheriff, and in case such sheriff have more than one writ at the suit or instance of different persons against the same property, it shall not be necessary for the sheriff to make a separate application on each writ, or in each cause; but he may make one application, and may make all the persons who are execution creditors parties to said application for an interpleader; and the court, or judge before whom the application is made, shall take such proceedings, and make such order thereon and therein, as if a separate application had been made upon and in respect of each writ.

42. In case there are writs from several courts, including one or more of the superior courts, against the same goods, and whether at the suit or instance of the same plaintiff, or of different plaintiffs, the application for such interpleader shall be made to the superior court, or to one of the superior courts, or to one of the judges thereof, and such court or judge shall dispose of the whole matter, as if all of the writs against the goods had been issued from the said court. And in such case the county court or division court shall have no cognizance of or jurisdiction whatever in the matter.

43. In any such case as in the next preceding section mentioned, the superior court or judge thereof, shall make such order with respect to staying proceedings on the several writs, or with respect to directing a sale of the goods or property in question as may be necessary, and with respect to the final disposition or order to be made as to the goods or the proceeds thereof, and in all other matters whatsoever, as fully as if all the writs had been issued from the said court.

44. In all cases where specific goods, chattels, deeds, securities, or valuable papers, or other articles of the like kind, are demanded in detinue, and the plaintiff has judgment to recover the same or their value, the court or any judge

thereof shall, at the request of the plaintiff, where a recovery or delivery of the property in specie is desired, direct a writ of execution to issue on the judgment commanding the defendants specifically to deliver up forthwith the property demanded, and, in case of refusal, that the defendant be arrested and detained in prison until he complies with the terms of the writ, and also that the goods and chattels of the defendant to double the value of the property in question be taken and kept until the further order of the court to insure or enforce obedience to the writ.

COUNTY COURTS.

45. All issues of fact and assessment of damages in actions in any county court may be tried and assessed at the sittings of assize and *nisi prius* for any county other than that in which the venue is laid, upon an order being obtained for that purpose; and such order may be granted upon similar grounds to those upon which an order changing the place of trial would be granted in the Superior Courts of Common Law.

46. In no event shall any master, clerk, or other taxing officer, tax or allow to any party suing for an equitable right at law, or for a legal right in equity, nor shall such party be entitled to recover by reason thereof, any further or additional costs than would have been taxed, or allowed, or recoverable if the equitable right had been sued for in equity, or the legal right had been sued for at law; and the opposite party shall be entitled, without any order for that purpose, to set off against the costs of the party suing as aforesaid, the additional costs, if any, incurred by such opposite party, through the change of jurisdiction.

INFORMALITIES AND AMENDMENTS.

47. No proceeding either at law or in equity shall be defeated by any formal objection.

48. [Amendments may be made at any time or in any manner to secure justice.]

49. [Powers to the judges to make general rules and orders.]

50. [A fourth court of assize, &c., in the County of York to be held between Easter term and 1st of July.]

51. The sittings of the Courts of Assize and Nisi Prius in the County of York may, in the discretion of the said chief justices and judges of the Superior Court of Common Law, be held separate and apart from the Courts of Oyer and Terminer and General Gaol Delivery in the said County, and either on the same or on a different day.

52. [In County of Wentworth a third court of assize, &c., to be held between Michaelmas and Hilary terms.]

53. When the judge of the county court, or the junior or the deputy judge (as the case may be) officiating in the office of county court judge is present, it shall not be necessary, in order to constitute a court or sittings of the general sessions of the peace, or a quorum at any sittings thereof, that any associate or other justice of the peace should be present at such court or sittings.

54. The judge of every county court, or the junior or deputy judge thereof, authorized to act as chairman of the general sessions of the peace for any county, is constituted a court of record for the trial, out of sessions and without a jury, of any persons committed to gaol on a charge of being guilty of any offence for which such person may be tried at a court of general sessions of the peace, and for which the person so committed consents to be tried out of sessions, and without a jury; and the court so constituted shall have the powers and duties which the Act passed in the session of the Parliament of Canada held in the thirty-second and thirty-third years of Her Majesty's reign, and chaptered thirty-five, purports to give, so far as the Legislature of this Province can give the same; and every judgment, proceeding, cost, matter, or thing had or done under or by virtue of the said Act, shall hereafter be held to be as valid as if the said Act had been an Act of the Legislature of this Province.

55. The court constituted by the preceding section shall be called "The County Judge's Criminal Court" of the county in which the same is held.

56. [Fourth sittings of County Court and General Sessions to be held in County of York on 2nd Tuesday in September.]

57. It shall not be necessary, in any proceedings, to make a judge's order for the payment of costs a rule of court, but writs of execution may be issued, in pursuance of the said order, in the same manner, and shall have the same force and effect as if the same had been issued in pursuance of a rule of court.

58. Section 127 of the Common Law Procedure Act is hereby repealed.

59. This Act may be cited as "The Administration of Justice Act of 1873."

LAW SOCIETY EXAMINATIONS.

We have already published the Rules of the Law School and given other information on that subject. The following table will be found of much practical use to Students and articled Clerks. We may mention that it is generally understood, that in the examination for call, admission, and the intermediate, one half of the maximum number of marks must be obtained to pass; and, to get rid of the oral ordeal, three fourths must be obtained. On oral examinations candidates must obtain at least one-fourth of the number of marks.

The following is the table referred to:—

For Call—Written questions—Friday before Term—10 a.m. to 4 p.m.

" " Viva voce questions—Friday and Saturday before Term—11 a.m.

" " With honors — Saturday before Term—10 a.m.

For Attorneys—Written questions — Thursday before Term—10 a.m. to 4 p.m.

" " Viva voce questions — Thursday, Friday, and Saturday—11 a.m. Number of questions from 10 to 15 by each Examiner on written Examinations.

Intermediate—Written questions—Tuesday before Term—10 a.m. to 3 p.m. From 7 to 10 questions by each Examiner.

" " Viva voce questions—Wednesday before Term—11 a.m.

Scholarships— 2nd Thursday and Friday in Michaelmas Term—10 a.m.

Law School—Monday before Term—10 a.m.—Candidates must obtain the minimum number of marks with each examiner, as well as the minimum of the aggregate number of marks of all the Examiners.

When we look at the above and see the bill of fare provided for those who wish to learn their profession, it can scarcely be said that ample opportunity for doing so is not given.

SELECTIONS.

THE LATE DR. LUSHINGTON.

In our obituary columns appears a notice of a career seldom, if ever equalled in the history of our judicial bench. There is, perhaps, no instance of a Judge who has continued to hold office for a period of forty years, and who, during the whole of that time, was so distinguished for all the greatest qualities that can be possessed by a Judge as was Dr. Lushington. He held many offices; but his great learning, his universal courtesy, his kindness to all, and the unvarying rectitude of his decisions gained him such respect and veneration, that even his political opponents, and they were many and powerful, conceded to him much that would not have been granted to others, and which has proved most advantageous to the country. So great, indeed, was the respect accorded to him, that when it was proposed at his suggestion, to extend the jurisdiction of the court over which he presided, members of both Houses of Parliament not unfrequently suggested giving not merely the jurisdiction asked for, but even larger powers. This was done not only by his political friends, but by his opponents, and hence it is impossible to avoid drawing the conclusion that in so doing they were influenced, not merely by the supposed advantage of the extended jurisdiction, but also by the character of the man to whom they were about to entrust it. Indeed it may be said that to Dr. Lushington's personal influence and character is due the fact that the High Court of Admiralty, as an Instance Court distinguished from a Prize Court, attained the high position in which he left it only six years ago. By the legal Profession he was regarded merely as an eminent Judge, and indeed his life has been so long that his political fame has almost passed into history. It is as a Judge that we shall briefly call attention to his career.

In the year 1828 he was appointed Judge to the Consistory Court, but he principally earned his judicial eminence as Judge of the High Court of Admiralty. When he was first appointed to the latter office he found the jurisdiction of the Court in that restricted condition by which it had been placed by the numer-

ous prohibitions of the Common Law Courts, but very soon afterwards this condition of things was materially altered. The only matters within the jurisdiction of the Instance Court at that time were causes of tort committed on the high seas, causes of salvage, causes of possession, causes of hypothecation or bottomry, and seamen's wages. By the Admiralty Court Act of 1840 (3 & 4 Vict. c. 65) the court acquired jurisdiction over claims of mortgagees when a ship or its proceeds were under arrest of the court; over questions of title arising as to any ship or the proceeds in the registry in any cause; over appeals as to distribution of salvage; over causes of damage, whether arising on the high seas or in the body of a county; over causes of towage; and over causes of necessaries supplied to foreign ships. By this Act there was introduced for the first time the practice of taking evidence *vivâ voce* before the court or a commissioner. The Act practically placed the court on a level with the Superior Courts at Westminster, giving the Judge all the privileges of the Judges of those courts. The Judge was also empowered to make rules of Court, and it is to this power, afterwards exercised as it was by Dr. Lushington, that we are indebted for the present practice and procedure of the court, which hits the happy medium between the lengthy forms of the Chancery Court and the too short and too technical procedure of the courts of common law, and will probably form the basis of any new system of pleading which may be introduced by the proposed reforms. It must not be supposed, however, that this change in the procedure took place without opposition. It is a fact worthy of remark, that a Judge, who at the time of this change was already at the advanced age of seventy-two years and had been accustomed for thirty-six years to an old-established system, should have carried, in the face of the most determined opposition, extensive reforms in his court. In Nov. 1853 the present learned Registrar of the Admiralty Court, Mr. Rothery, was appointed, and very soon after that date were introduced the changes mentioned. They began in July 1854 by rules of court providing for the sitting of the court on any day it might appoint, and not only during its regular session, so that it became a court sitting from day to day throughout the legal year. A reform more worthy of remark is a rule of 11th Dec. 1854, providing for the collecting of the court fees by means of stamps. This was the first introduction of stamps into the practice of our courts. The reform which created the chief opposition was an order of court of July 1855, approved by the Privy Council in December of that year. This introduced the present system of preliminary acts in collision cases; practically abolished the long and expensive procedure by plea and proof by providing that no witnesses should be examined until the pleadings in a cause should be concluded; allowed the presence of proctors at the examination of the witnesses by the registrar or commissioner, which had not up to that time been permitted; gave power to have the evidence taken down by a shorthand writer; and provided for the printing of all evidence before the hearing of a cause. This order created so much opposition that thirty-two different firms of proctors presented a memorial to the Judge, praying that it might not be enforced. It was enforced, and as a natural sequence, there followed in 1859, the present rules of court, which created still stronger opposition among the proctors, who appealed to the Queen in Council. The question was referred to the Privy Council, and the Proctors were heard on their own behalf, and the Registrar in support of the order, before one of the largest boards that ever sat. The Privy Council affirmed the order, and this was the corner stone of the present practice. The power of the court was still further extended by the Admiralty Court Act 1854 (17 & 18 Vict. c. 78), and it was under this Act that some of the amended rules mentioned were made. In 1859 the court was thrown open to the Profession generally, and in 1861 the jurisdiction was finally extended by 24 Vict. c. 10. That such changes could have been effected whilst any other Judge was in office may be well doubted, and Dr. Lushington is fairly entitled to the credit of having raised the position of his court.

In construing the statutes conferring the new jurisdiction upon the Court of Admirality, and in elucidating the law as administered in that court as an instance court, Dr. Lushington did good service to the public and the Profession. His

judgments, however, in the prize cases which arose during the Russian war attracted much attention by their luminous and elaborate expositions of the principles of law which guide the decisions of those courts both in England, America, and on the Continent. On this subject, however, a very common misapprehension has arisen among the Profession. It is commonly understood, and indeed was stated in the *Times* only the other day that the learned Judge's opinion as to the principles on which such cases should be decided was very different from that entertained by Lord Stowell, and that he considered that neutrals should be treated more leniently than they had been by that great judge, and should not be so indiscriminately condemned as they had been in the beginning of the century. This statement is not quite accurate. It was not Dr. Lushington's opinion that caused a change in the treatment of neutrals, but the opinion of the Privy Council, presided over by the Right Hon. Pemberton Leigh, afterwards Lord Kingsdown. A perusal of Dr. Lushington's judgments in *The Franciska* (Spinks' Prize Cas. 111), and *The Ostsee* (*Ib.* 174), will show that Dr. Lushington held the strongest opinion that he ought to follow the principles laid down by Lord Stowell in every particular, and it was only when these cases went up to the Court of Appeal that the stringent rules hitherto applied were relaxed. This is clearly shown by a judgment of Dr. Lushington in *The Leucade* (Spinks' Prize Cas. 217), where he takes some pains to show that the law laid down in the two former cases by the Privy Council is not as he considered it to be, as based upon Lord Stowell's opinions; whilst at the same time he gives a most unqualified submission to the decisions of the appellate tribunal. He pointed out that very few of Lord Stowell's judgments had ever been reviewed on appeal, and that it was for the appellant court, and not for the court of first instance to lay down finally the principles which should guide his decisions. The appellate court, on the other hand, did not hold itself bound by Lord Stowell, and allowed themselves to be governed by a more liberal feeling towards neutrals. This is the real secret of the difference between the decisions of the Court of Admiralty in its earlier and later stage. There never was any real doubt as to the proper construction of Lord Stowell's opinions.

Another case of great public interest decided by Dr. Lushington was that of the Banda and Kirwee booty. This came before him under the first Admiralty Court Act, and it was the first case in which the principle was laid down that bodies of troops which, although they did not take part in the actual capture, yet contributed to it by being part of, and acting as supporters to, the same army corps, were entitled to participate in its fruits. Among ecclesiastical matters may be mentioned his judgments in *Westerton* v. *Liddell*, delivered in the Consistory Court before he was appointed Dean of Arches, and the celebrated "Essays and Reviews" case decided by him as Dean of Arches.

Dr. Lushington is an extraordinary instance of a man whose powers both of mind and body must have gone through the greatest possible amount of labour throughout a life extending far beyond the ordinary limits, and yet who retained his faculties undisturbed to the very last. It is but the other day that he sat as Master of the Faculties, the only office he retained, and heard and decided a question in a way which many a younger man might envy. England has lost an able and faithful servant, and the judicial Bench one of its most brilliant ornaments. —*The Law Times.*

The decentralization of the English bar, likely to follow the adoption of the second report of the judicature commission, is exciting much alarm among both barristers and solicitors. This report advocated extending the authority and jurisdiction of the county courts, and thus localizing legal business. Mr. Justice Blackburn, dissenting from the report of the commission, said: "I attach much importance to the keeping up the great Central bar of England. The only real practical check on the judges is the habitual respect which they all pay to what is called the opinion of the profession, and the same powerful body forms, as I think, a real and principal check on the abuse of patronage by the government." —*Albany Law Journal.*

CURIOSITIES OF THE LAW REPORTERS.

Every man who has had occasion to consult the reporters or even the statutes, must have been occasionally amused by some quaintness or oddity of expression. Mr. Heard has made a collection of these curiosities, and has certainly disentombed a number of good things worth looking through. He leads off by Mr. Macqueen's observation on the *Barton's Hill Coal Company* v. *Reid and M'Guire.* "Reid and M'Guire were both victims to the same accident, which, though melancholy, has settled the law;"—doubtless a great satisfaction to the public, if not to Reid and M'Guire. Lord Abinger had a clear way of putting a point. When a question was raised by Government, with respect to the right of persons to take water from Portsmouth Harbour, Lord Abinger said: "An old woman must not take a bucket of water from that harbour, lest a seventy-four should not float." This is well matched by "March on Slander," in 1648, where it is said, with reference to the encouragement of actions of slander, "Though the tongues of men be set on fire, I know no reason wherefore the law should be used as bellows to blow the coals." Indeed the book abounds with neat epigrammatic utterances. The statute 1 Edw. II. enacts that a prisoner who breaks prison is guilty of felony; but if the prison be on fire, this is not so, "for he is not to be hanged because he would not stay to be burnt." The judgment in a very recent leading case, in the Court of Exchequer Chamber, concludes thus tersely: "In the result we come to the conclusion that the case of the plaintiff, so far as it relies on authority, fails in precedent; and so far as it rests on principle, fails in reason." In the course of the argument in *Lincoln* v. *Wright,* Lord Langdale observed: "All interrogatories must, to some extent, make a suggestion to the witness. It would be perfectly nugatory to ask a witness if he knew anything about something."

Vesey, junior, the reporter—of whom Lord Campbell says, "I knew him well; when near eighty he was still called Vesey, junior"—represents Lord Erskine as having decided an important point in medical astronomy, giving as marginal note, "In cases of lunacy, the notion that the moon has an influence is erroneous." We wish that we could get a few more authoritative and binding decisions of a similar character. For instance, what is the influence of the moon on the weather? Would the Court pronounce that too erroneous?

It may be a consolation to the Bar to know that many years ago the Court of Common Pleas refused to hear an affidavit read, because the barrister therein named had not the addition "esquire" to his name.

It is recorded of the saints of the Republic, that in reciting the Lord's Prayer they would never say, "Thy Kingdom come," but always "Thy Commonwealth come." From a similar spirit probably, though with better sense, the Court of King's Bench was styled during the time of "Style's and Aleyn's Reports," the Upper or Public Bench.

Blackstone is not commonly caught tripping. But he is here: "The royal fish are whales and sturgeons, which, when either cast ashore or caught near the coast, belong to the crown." Blackstone notices a curious distinction made by the old legal authorities, which is that the whale is to be divided between the King and Queen, the King taking the head and the Queen the tail, the reason assigned being that the Queen might have the whalebone for her wardrobe, although in fact the whalebone is found in the head and not in the tail. But then he has the support of Lord Chief Justice Abbott, who, in summing up a case, said, in *Montison* v. *Jefferies,* "No attorney is bound to know all the law. God forbid that it should be imagined that an attorney, or a counsel, or even a judge, is bound to know all the law."

We suggest the following from "The two Supream laws of the Realm," found in "The practice unfolded" of Chancery, 1672, to the publishers of the next edition of "Bleak House:" "The princes of this land have appointed two supreme seats of Government within this Land: the one of Justice, wherein nothing but the strict letter of the Law is observed; and the other of Mercy, which in the rigour of the Law is tempered with the sweetness of Equity, the which is nothing but Mercy qualifying the rigour of Justice." From the same work comes this

also: "A vexatious plaintiff, *in forma pauperis*, and not able to pay costs upon the dismission, hath been ordered by the Lord Egerton to be whipped, upon the equity of the statute 23 Hen. VIII. c. 15, and not to be admitted *in forma pauperis*."

Certain rules of evidence, which are now considered fundamental, were repeatedly violated, if not altogether unknown in the seventeenth century. In the trial of Mr. Hawkins, a clergyman, for stealing money and a ring from Henry Larimore, in September, 1668, Lord Hale admitted evidence to show he had once stolen a pair of boots from a man called Chilton, and that, more than a year before, he had picked the pocket of one Noble. In summing up, Lord Hale said, after referring to the cases of Chilton and Noble, "This, if true, would render the prisoner now at the bar obnoxious to any jury."

We do not remember to have met with the following before. The jurymen in Penn and Mead's case were fined (Bushell, of course, among them), and the court threatened to slit their noses. The commonest way of punishing a jury—the recognized way—when they could not come to a unanimous verdict, was to put them in a cart and shoot them into the nearest ditch. In Noy a precedent is cited in these words:—"The jurors acquitted a prisoner contrary to their evidence, and for that they were fined and imprisoned, and bound for the good behaviour of the prisoner during his life."

The propcsition for conducting all law proceedings in English was most strenuously opposed. The reporters who delighted in the Norman French were particularly obstreperous. "I have made these reports speak English," says Style, in his preface (A.D. 1658), "not that I believe they will be thereby more generally useful, for I have been always, and yet am, of opinion, that that part of the common law which is in English hath only occasioned the making of unquiet spirits contentiously knowing, and more apt to offend others than to defend themselves; but I have done it in obedience to authority, and to stop the mouths of such of this English age, who, though they be confessedly different in their minds and judgments, as the builders of Babel were in their language, yet do think it vain, if not impious, to speak or understand more than their own mother tongue." And Bulstrode, in the preface to the second part of his Report, says, "that he had many years since perfected the work in French, in which languag he had desired it might have seen thee light, being most proper for it, and most convenient for the professors of the law."

In the Statutes at large some funny things may be found. There is one which is not to be brought to book, and must be given as a tradition of the time when George III. was King. Its tenor is that a Bill which proposed, as a punishment of an offence, to levy a certain pecuniary penalty, one half thereof to go to his Majesty, and the other half to the informer, was altered in committee, in so far that, when it appeared in the form of an Act, the punishment was changed to whipping and imprisonment, the destination being unaltered.

In "Hortensius," p. 259, note, a most amusing instance of identification of counsel with client is related. It occurred in the case of a counsel for a female prisoner who was convicted on a capital charge, and on her being asked why sentence of death should not be passed upon her, he rose and said, "If you please, my Lord, *we are with child*."

He was, however, wrong in point of law, pregnancy cannot be taken advantage of in arrest of judgment, but only in stay of execution.

Some of the most amusing curiosities are those which consist of high flown language. That of some of our judges has been wonderfully luxuriant at times. But we are beaten altogether by the American Bench and Bar. Here is a glorious extract from a passage addressed in solemn argument to the Supreme Court of the United States:—"Fraud vitiates every thing into which it enters; it is like the deadly and noxious simoon of arid and desert climes; it prostrates all before its contaminating touch, and leaves death only and destruction in its train. No act, however solemn; no agreement, however sacred, can resist its all-destroying power."

The following, however, is yet finer; it occurs in a recent case in Pennsylvania. Mr. Justice Lewis thus discourses of a condition in a will in restraint of marriage:

"The principle of reproduction stands

next in importance to its elder born correlative self-preservation, and is equally a fundamental law of existence; it is the blessing which tempered with mercy the justice of expulsion from Paradise; it was impressed upon the human creation by a beneficent Providence, to multiply the images of himself, and thus to promote his own glory and the happiness of his creatures; not man alone, but the whole animal and vegetable kingdom are under an imperious necessity to obey its mandates. From the lord of the forest to the monster of the deep; from the subtlety of the serpent to the innocence of the dove, from the celastic embrace of the mountain Kalmia to the descending fructification of the lily of the plain, all nature bows submissively to this primeval law. Even the flowers which perfume the air with their fragrance, and decorate the forests and the fields with their hues, are but curtains to the nuptial bed. The principles of morality, the policy of the nation, the doctrines of the common law, the law of nature and the law of God, unite in condemning as void the condition attempted to be imposed upon his widow."—*Law Magazine.*

PROOF OF TELEGRAPHIC MESSAGES.

An English lawyer has pointed out, in a letter to the *Times*, the difficulty of proving contracts within the Statute of Frauds, where the party sought to be bound has sent his message by telegraph. He states that at the end of six months the originals of telegraphic despatches are destroyed, in accordance with the routine of the department; and that, unless the dispute between sender and receiver has ripened within that time, the plaintiff is pretty sure not to have secured the original memorandum signed by the defendant or his agent, before its destruction at the Post Office. Now, Mr. Lascelles proposes that after the expiration of some such fixed term as the Post Office may deem necessary for the purposes of comparison, &c., the originals shall be forwarded to the persons to whom they are addressed, upon the request of such persons, provided such request be made within a fixed period—say of six months. This seems a valuable suggestion, but we are rather inclined to think that the original of every telegraphic despatch ought to be forwarded to the party addressed at the earliest date consistent with the arrangements of the Post Office. Of course this plan would entail some additional cost on the Post Office; but the senders should be compelled to fold the messages, and deliver them in open addressed envelopes to the operator. This scheme would be productive of good in three ways. First, an error in the telegraphic message would be corrected by the despatch itself, and in many cases the mischief likely to arise from the error might be averted. Second the receiver of the message and original despatch would always be able to adduce proof to satisfy the Statute of Frauds, assuming the memorandum itself to be sufficient. Third, a more effective stop would be put on false, suppositious, and libellous messages; because the party addressed would at once be put in possession of the manuscript of the actual sender. At the present price of inland messages, we should think that the department ought not to begrudge the public every reasonable help in the transactions of business, even at the risk of some additional expenses in the employment of folders and the extra bulk of the mails.—*Irish Law Times.*

TRUTH IN THE WITNESS BOX.

Not a fortnight ago Mr. Justice Grove in trying a horse cause, found the evidence very contradictory, and thereupon took occasion to observe that "it was lamentable to see that in this country, which used to be a truth-loving country and which formerly prided itself on possessing the virtue of veracity, perjury was scarcely looked upon as a crime." Horse warranty causes, running down cases by land, and collision cases at sea, have always been remarkable for the conflict of evidence adduced on either side; and, at least as to these, there is no reason whatever for supposing that witnesses in this country have ever been remarkable for veracity. But putting aside causes of this class, which, from circumstances well known to practitioners, are to be considered as a distinct class, we do not for a moment admit the fairness of the criticism passed by the learned judge on English witnesses. His Lordship displayed in his invective a misconception

of the course of legal history, and of the rules which govern this department of human morality. We should be astonished in no small degree if any judge, lawyer, or historian could point out to us the precise period of our early Nisi Prius history, at which witnesses were distinguished for love of the truth, and juries were not driven to decide between contradictory masses of evidence. But without being even so exacting as this, we may safely push his Lordship home on one point. Until a comparatively recent date the evidence of parties to the cause was altogether excluded; and common observation would invite the conclusion that the testimony of indifferent persons was less likely to be false than that of persons strongly tempted to change, modify, or at least colour their knowledge of the facts at issue. When the Legislature of this country determined to throw down the barriers which kept out a cloud of witnesses in every cause, it did so with full appreciation of the peril necessarily arising from the temper, the bias, the irresistible zeal, of all partisans. Bentham never ignored the possibility of deception arising from all these causes. He only argued that truth was the grand object to be attained, and that the shortest and safest way to it was to listen to all those who knew the facts. The certainty of a measure of falsehood was accepted for the chance of securing a larger measure of justice in the long run. And who is there that is prepared to say that Bentham and the Legislature which followed his teaching was wrong, and that we ought to walk back upon the footsteps of our progress, because we have discovered that men who are interested in a cause are less worthy of confidence than those who are absolutely impartial?—*The Law Journal.*

Her Majesty's gracious speech at the opening of parliament has rarely promised such changes in the law proper as are foreshadowed in the speech from the throne delivered yesterday by the Lord Chancellor. Foremost among intended measures is a Bill for the formation of a Supreme Court of Judicature, including provisions for the trial of appeals. Next comes a Bill to facilitate the transfer of land, and besides these two great measures, specially mentioned, there is in the speech a general promise of "various other Bills for the improvement of the law." Among these unnamed Bills, it would not be presumptuous to place the Code of Evidence to be introduced by the Attorney-General. On the border land between the law proper and the general law of the land stands an intended Bill to amend the general acts regulating railways and canals. The principal Bills for social improvement mentioned in the Speech are Bills to amend the system of local taxation, and the education Act, 1870. No Bill of a purely political character finds its place in the programme, unless the question of University education in Ireland is to be regarded as such. Experience teaches us that in matters of law reform "the expected" does not always or even generally happen, and the retrospect to be made by us in August next will, we may be sure, differ very considerably from the prospect now offered by the Royal Speech.—*The Law Journal.*

Mr. Edwin James has addressed a petition to the Lord Chief Justice of the Queen's Bench, to the Lord Chief Justice of the Common Pleas, to the Lord Chief Baron of the Court of Exchequer, and to the rest of the judges of those courts, asking them to appoint a day for hearing an appeal against the order vacating his call to the Bar; Mr. James asks that that order may be reversed, and his name restored to the books of the Society of the Inner Temple. Mr. James recites in his petition the whole story of his embarrassments, his flight from England, and his expulsion from the Bar after twenty-five years of practice as an advocate, and part of the time as a Queen's Counsel. The petition concludes by giving nine reasons why the order of the Benchers was not just, and ought to be revised. They are briefly that there was no specific charge preferred against him, no evidence of any misconduct, professional or otherwise, adduced, and that the Benchers constituted themselves accusers and judges, and refused his counsel reasonable time to address them. The order he maintains is invalid, since it does not inform him upon what charges of misconduct he has been disbarred; the decision was hasty; no chance was given him of explaining or rebutting testimony, and hearsay evidence

was taken. Finally, Mr. James urges that the Benchers conducted the inquiry unjustly and inquisitorially, inquiring into private matters not under their cognizance, and that charges and insinuations were made by Benchers, who afterwards acted as judges, and unfairly influenced the majority of the Benchers against him.—*The Law Times.**

The *Pall Mall Gazette* has told a good story concerning a dinner at the White Hart, in Windsor, at which the Mayor and Corporation of the royal borough amazingly enjoyed themselves. Not wishing to put an end to their festivities at 11 P. M., the guests induced some three of the justices there present to hold a petty sessions, and grant the landlord special leave to keep open house till midnight. The anecdote is a good one, and suggests a variety of important considerations; among others, the probability that what was done, or alleged to have been done, at Windsor will be elsewhere, giving only sufficient social influence to the revellers. At the close of this month, the Home Circuit will give a dinner to the two new judges at a public tavern, and it is just possible that some of the juniors will seek to prolong the merry time beyond the closing hour. Every year the Attorney-General gives a dinner to the bar on Her Majesty's birthday, and hitherto the hour fixed for dinner has been so late as to render the termination of the feast by 11 P.M. impossible. We shall anticipate a dispensation for that occasion with much interest, being among those who are unable to see why the banquets of great people are 'quite a different thing' from the 'free and easies' of little people.—*Law Journal.*

The following clever lines are going the rounds of the legal press and are worth preserving. The man who makes his own will is of course a well known toast at Bar dinners. The following is an amplification of the sentiment :—

THE JOLLY TESTATOR WHO MAKES HIS OWN WILL.

AIR :—*Argyll is my name.*

Ye lawyers who live upon litigants' fees,
And who need a good many to live at your ease ;
Grave or gay, wise or witty, whate'er your degree,
Plain stuff or Queen's Counsel, take counsel of me.
When a festive occasion your spirit unbends,
You should never forget the Profession's best friends,
So we'll send round the wine, and a light bumper fill
To the jolly testator who makes his own will.

He premises his wish and his purpose to save
All disputes among friends when he's laid in his grave ;
Then he straightway proceeds more disputes to create
Than a long summer's day would give time to relate.
He writes and erases, he blunders and blots,
He produces such puzzles and Gordian knots,
That a lawyer intending to frame the deed *ill*,
Couldn't match the testator who makes his own will.

Testators are good, but a feeling more tender
Springs up when I think of the feminine gender :
The testatrix for me, who like Telemaque's mother,
Unweaves at one time what she wove at another.
She bequeaths, she repeats, she recalls a donation,
And she ends by revoking her own revocation ;
Still scribbling or scratching some new codicil ;
Oh ! success to the woman who makes her own will.

'Tisn't easy to say, 'mid her varying vapors,
What scraps should be deemed "Testamentary Papers ;"
'Tisn't easy from these her intention to find,
When, perhaps, she herself never knew her own mind.
Every step that we take there arises fresh trouble :
Is the legacy lapsed ? is it single, or double ?
No customer brings so much grist to the mill
As the wealthy old woman who makes her own will.

The law decides questions of *meum* and *tuum*
By kindly consenting to make the thing *suum* :
The Æsopian fable instructively tells
What becomes of the oysters and who gets the shells.
The Legatees starve, but the Lawyers are fed ;
The Seniors have riches, the Juniors have bread ;
The available surplus, of course, will be *nil*
From the worthy testators who make their own will.

You had better pay toll when you take to the road,
Than attempt by a by-way to reach your abode ;
You had better employ a Conveyancer's hand,
Than encounter the risk that your will shouldn't stand.
From the broad, beaten track when the traveller strays,
He may land in a bog or be lost in a maze ;
And the law, when defied, will avenge itself still
On the man and the woman who make their own will.

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* The petition of Mr. James has been refused.

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

NOTES OF RECENT DECISIONS.

GROVES v. MCARDLE.

Insolvent Act of 1869—"*Trader*"—*Pleading several matters—Estoppel.*

Action by official assignee to recover a debt due to an insolvent. Plea that insolvent had not been a trader within the insolvent act of 1869. Leave to take issue on this plea, to reply specially that defendant was estopped from this defence, and to demur was refused.

PLIMSOLL v. BLACK.

Pleading several matters.

A plea of payment, and a plea of payment into Court cannot be pleaded together to the same cause of action.

MCDONALD v. MCEWAN.

Pleading—Further time to plead.

When further time to plead is allowed by order, the extra time is to be computed from the date of the order, and not from the expiration of the original time allowed by law.

ABELL v. GLEN.

Covenant—Never indebted—Nullity or irregularity.

To an action in covenant the defendant pleaded never indebted.

Held, not a nullity, but merely an irregularity. Treating a pleading as a nullity does not prevent its afterwards being attacked as an irregularity.

ENGLISH REPORTS.

COURT OF COMMON PLEAS.

BEST AND ANOTHER. v HILL.

Equitable plea—Set-off of unliquidated damages—General issue.

Declaration for money lent, money paid, and commission for the plaintiffs having for and at the request of the defendant, provided the money for paying, and paid divers bills of exchange.

Plea on equitable grounds that defendant assigned to plaintiffs for sale, and as security for the payment of the said moneys, and of certain accommodation acceptances of the plaintiffs' goods described in certain bills of lading which defendant also assigned to plaintiffs as security as aforesaid, and in order that plaintiffs might, out of the proceeds of the said goods and by proper sales thereof, pay and satisfy the said moneys and acceptances. Allegation that the plaintiffs took possession of the goods and bills of lading, and took such bad care of part of the said goods that the same were deteriorated in value, and were sold by plaintiffs at lower prices than they might have been, and plaintiffs also negligently sold the same goods below the market price, and received the proceeds thereof. Further allegation that the said goods might, and ought to have realised by the sales thereof more than sufficient to have paid and satisfied the said moneys and acceptances, and that through the mere negligence, &c., of plaintiffs, the security of the said goods became lost to the defendant, and the said goods and the proceeds thereof became and were insufficient to discharge the said acceptances and moneys.

Demurrer:

Held, first, that the plea was bad as amounting to a set-off of unliquidated damages; and secondly, that it could not be supported as a plea of the general issue.

[27 L. T. N. S. 490—Nov. 14, 1872.]

The declaration stated that the plaintiffs sued the defendant for money lent by the plaintiffs to the defendant, and for money paid by the plaintiffs for the defendant at his request, and for commission for and in respect of the plaintiffs having for the defendant at his request by their bankers, being their agents for that purpose, provided the money for paying, and paid divers bills of exchange, and for interest upon money due from the defendant to the plaintiffs, and by the plaintiffs forborne at interest to the defendant at his request, and for money found to be due from the defendant to the plaintiffs on accounts stated between them.

The fourth plea (as amended) was as follows: And for a fourth plea, and as a defence on equitable grounds, the defendant says that he assigned and transferred to the plaintiffs for sale, and as a security and means for the payment of the said moneys in the declaration mentioned, and certain accommodation acceptances of the plaintiffs certain goods mentioned and described in certain bills of lading, which the defendant then also assigned and transferred to the plaintiffs as a security for the payment of the said moneys and acceptances, and in order that the plaintiffs might by and out of the said goods, and by the due and proper sales of the said goods, pay and satisfy the said moneys and acceptances. And the defendant further says that the plaintiffs took possession of the said goods under and by virtue of such bills of lading, and took such bad and improper care of a part of the said goods whilst the same were in their possession as aforesaid, that the same when sold by the plaintiffs as hereinafter mentioned became and were in bad condition, much deteriorated in value, and the same by reason thereof, were sold by the plaintiffs at much lower and

inferior prices than they might and would have been; and the plaintiffs also negligently and improperly sold the several goods at prices much below the market prices, of such several goods when sold, and before this suit received the proceeds thereof; and the defendant further says that the said goods before this suit could and might and ought to have been sold and realised the sales thereof, and but for such bad and improper care, and negligent and improper sales, would have realized sufficient, and much more than sufficient, to have fully paid and satisfied the whole of the moneys in the declaration mentioned, and the said acceptances and claims of the plaintiffs in respect thereof, and now sued for, if the same had been taken due and proper care of by the plaintiffs as aforesaid, and sold with due and proper care; and that by and through the mere negligence, wilful default, and improper conduct of the plaintiffs as aforesaid, and in effecting such sales, the security of the said goods became and was wholly lost to the defendant, and the said goods and the proceeds thereof became and were before this suit and are insufficient to discharge the said acceptances and moneys now sued for.

Demurrer to fourth plea and joinder.

Cohen in support of the demurrer.—(1.) This is simply an attempt to set-off a claim for unliquidated damages against a debt. The doctrine of equitable set-off is explained in *Rawson* v. *Samuel* 1 Craig & Ph. 178, where Lord Cottenham says: "We speak familiarly of equitable set-off as distinguished from the set-off at law, but it will be found that this equitable set-off exists in cases where the party seeking the benefit of it can show some equitable ground for being protected against his adversary's demand. The mere existence of cross demands is not sufficient: *Whyte* v. *O'Brien*, 1 S. & S. 551, although it is difficult to find any other ground for the order in *Williams* v. *Davis*, 2 Sim. 461 as reported. In the present case there are not even cross demands, as it cannot be assumed that the balance of the account will be found to be in favour of the defendants at law. Is there, then, any equity in preventing a party who has recovered damages at law from receiving them, because he may be found to be indebted upon the balance of an unsettled account, to the party against whom the damages have been recovered? Suppose the balance should be found to be due to the plaintiff at law, what compensation can be made to him for the injury he must have sustained by the delay? The jury assesses their damages as the compensation due at the time of their verdict. Their verdict may be no compensation for the additional injury which the delay in payment may occasion." And in Story's Equity Jurisprudence, ss. 1436, 1443, where the doctrine of the civil law is also treated. This is not a case in which a court of equity would grant an immediate, unconditional, and permanent injunction to restrain the plaintiffs. There is no general equity to restrain a person from suing because the opposite party has a claim which he may bring forward at some future time. If the plea means that the cause of action arose from the neglect of the plaintiffs, and not otherwise, such plea is unknown in actions of debt. (2) My learned friend cannot maintain that the plea amounts simply to the general issue. The court cannot put this interpretation upon it, unless that be clearly its meaning. The agreement between the parties did not stipulate that if any deficiency was occasioned by the plaintiffs' negligence, the defendant should not be liable for the balance. There was a debt which has not been swept away by anything.

Butt, Q.C. *Baylis*, and *F. P. Tomlinson* for the defendants.—This plea is good, for the court can do entire justice between the parties: Bullen and Leake's Prec. Plead., p. 556, note; *Mutual Loan Fund Association* v. *Sudlow* 28 L. J. 108, C. P. The plaintiffs having agreed to take their money out of the proceeds of the goods, have prevented themselves from doing so by their own transaction. As to there being no equity see *Stimson* v. *Hall*, 1 H. & N. 831; *Beasley* v. *D'Arcy*, Scholes & Lef. 403, note.

Bovill, C. J.—The claim which the defendant endeavours to set-off by his equitable plea is a claim for unliquidated damages. That claim therefore would not be available as a defence at law. Neither could the Court of Chancery deal with the matter. If the defendant had asked for an injunction the Court of Chancery would certainly not have granted it immediately and unconditionally, but would have imposed terms. The terms would probably have been that the parties should proceed to try the question at law, and ascertain the amount of damages. Considerable delay might thus be caused, and there would have to be a further provision for compensation for that delay, and terms imposed as to bringing money into court. In *Rawson* v. *Samuel* it must be taken that for purposes of the decision the damages to be set-off were liquidated, because they were to be ascertained by taking an account. From one point of view they were unliquidated, because there was a long account, and the balance had to be ascertained. Lord Cottenham, at p. 177, says: "Whatever weight may be attached to this statement of belief as to the probable balance of a lon and complicated account, the case is

certainly not one in which the plaintiffs in equity can ask the court to assume that the balance will be in their favour." And again, "It was said that the subjects of the suit in this court and of the action at law arise out of the same contract; but the one is for an account of transactions under the contract, and the other for damages for the breach of it. The object and subject matter are therefore totally distinct; and the fact that the agreement was the origin of both, does not form any bond of union for the purpose of supporting an injunction." It seems impossible to distinguish that case from the present, and I am of opinion that this plea of an equitable set-off cannot be supported. It was then contended that it might be supported as a plea of "never indebted." It amounts to this, however, only if it appears that no debt arose, but the declaration and plea show that a debt did arise. How was it to be satisfied? It cannot be said that it carried its own payment out of the dangers arising from the breach. The claim for breach of the agreement is a cross claim. There was no agreement that the debt which is admitted by the plea and declaration was to be paid out of the damages, or that the deficiency was to be made good out of the damages.

Keating, J.—I am entirely of the same opinion. It is conceded that a claim for unliquidated damages cannot be set off at law, and no authority has been cited to show that the Court of Chancery would deal with such a claim until the amount had been ascertained. In *Rawson* v. *Samuel* it was so. In the Irish case cited, the unliquidated demand was first liquidated before it was dealt with. For the reasons stated by my Lord I agree that the plea cannot be supported as amounting to the general issue.

Brett, J.—I am of the same opinion. The plea is bad at law because the damages are unliquidated. It is also bad in equity, first, because the claims are unconnected; and secondly, because the damages being unliquidated, the Court of Chancery would not grant an immediate and unconditional injunction. Also, it does not amount to a plea of the general issue. The agreement, taken most favourably for the defendant, is that if there is a deficiency on the sales, the defendant will pay it, *i.e.*, become indebted to the plaintiffs for money advanced. On that the debt arose. There the defence is that the deficiency was caused by the plaintiffs' own fault. That is, if true, a matter for a cross action.

Denman, J.—I am of the same opinion.

Judgment for plaintiffs.

COURT OF APPEAL IN CHANCERY.

Gaunt v. Fynney.

Nuisance—Noise—Vibration—Light—Delay—Damages.

The defendant in Jan., 1865, erected a steam-engine in a shed adjoining the stable belonging to the plaintiffs, by which the stable was rendered unfit for horses, and some inconvenience occasioned in the plaintiffs' dwelling-house. No complaint was made by the plaintiffs until June, 1870.

Held (affirming the decision of the Master of the Rolls), that an injunction could not be granted under the circumstances to restrain the defendant from working the engine.

A nuisance by noise, supposing malice to be out of the question, is a question of degree. It is not every occasional and accidental noise more loud or harsh than usual, that will entitle a plaintiff to an injunction where the general case of "habitual nuisance" is not satisfactorily proved.

Bill dismissed.

[27 L. T. N. S. 569—Nov. 4th, 1872.]

This was an appeal from a decree of the Master of the Rolls (reported 26 L. T. Rep. N. S. 208). A full statement of the facts and arguments will be found in the judgment of the Lord Chancellor.

Sir *R. Baggallay*, Q.C. *Anderson*, Q.C. and *Rowcliffe*, for the plaintiffs, relied upon: *Hindley* v. *Emery*, 13 L.T. Rep. N.S. 272; Rep. 1 Eq. 52; *Durell* v. *Pritchard*. L. Rep. 1 Ch. App. 244; *Cooke* v. *Forbes*, 17 L. T. Rep. N. S. 371; L. Rep. 5 Eq. 166; *Goldsmith* v. *Tunbridge Wells Commissioners*, 14 L. T. Rep. N. S. 154; L. Rep. 1 Ch. App. 349; *Yates* v. *Jack*, 14 L. T. Rep. N. S. 151; L. Rep. 1 Ch. App. 295; *Dent* v. *Auction Mart Company*, L. Rep. 2 Eq. 238; 14 L. T. Rep. N. S. 827; *Saville* v. *Kilner*, 26 L. T. Rep. N. S. 277; Joyce on injunctions, p. 201. The *Solicitor-General* and *Fry*, Q. C. for thedefendant, referred to *Curriers' Company* v. *Corbett*, 12 L. T. Rep. N. S. 169; on app. 13 L. T. Rep, N. S. 154; *Robson* v. *Whittingham* L. Rep. 1 Ch. App. 442; 13 L. T. Rep. N. S. 730: *Clarke* v. *Clark*, L. Rep. 1 Ch. App. 16; 13 L. T. Rep. N. S. 482; *St. Helen's Smelting Company* v. *Tipping*, 12 L. T. Rep. N. S. 766; 11 H. L. Cas. 642, 650; *Crump* v. *Lambert*, L. Rep. 3 Eq. 409; 17 L. T. Rep. N. S. 133; *Soltau* v. *De Held*, 2 Sim. N. S. 133.

The Lord Chancellor (Selborne).—The plaintiffs, who are unmarried ladies living at Leek, in Staffordshire, ask for an injunction (with damages) to restrain an alleged nuisance by noise and vibration, and to restrain alleged trespasses by encroachment on land and obstruction of light. The Master of the Rolls has made a decree refusing an injunction, but grant-

ing an inquiry as to damages, from which decree both parties appeal. Leek is a town in which the silk manufacture is carried on. The plaintiffs' house faces a street, called Derby Street, to the south, and has a garden of some size to the north; with two stables to the east, separate from the house and from each other. Eastward and southward of the nearer of these stables (called the old stable) which is about nineteen yards from the house and garden, is a silk mill belonging to, and worked by, the defendant. The plaintiffs state that the defendant was formerly in the employment of the plaintiffs' father, who was a mill-owner carrying on the silk manufacture in part of the buildings now occupied by the defendant. The defendant states that the plaintiffs' father (from whom they derive their title) deliberately placed his house (the same house in which the plaintiffs now live) close to the mill. The mill has, however, been much enlarged, by the addition of new buildings, since that time. Down to the winter of 1864-5, it was worked by hand-power; and a narrow strip of land between the northern part of it and the eastern wall of the plaintiff's old stable remained unbuilt upon. In that winter the defendant caused this intervening space to be covered over, and erected a small steam-engine of about 4-horse power in the chamber so formed, connecting this engine by proper gearing with the machinery in the mill, which from that time forward was worked by steam. The plaintiffs made no complaint of any annoyance till the summer of 1870; and they were in the habit of keeping three or more horses or ponies in the old stable, till the end of Oct. in that year. I consider it to be admitted upon the plaintiffs' pleadings, and established by their evidence, that there was no nuisance from noise or vibration, either to the house, or to the garden, or to the stables, prior to the end of May, or the beginning of June, 1870. But the plaintiffs allege that the defendant's mill then began to be worked with such a degree of noise as to become after that time a serious nuisance; that they remonstrated, and received promises of redress; but that nothing was effectually done to remedy the evil; and that in and after Oct., 1870 the noise and vibration increased daily, destroying, or materially diminishing, the comfort, salubrity, and value of their house and garden, and rendering the old stable unsafe and unfit for horses; in consequence of which their horses were removed from it at the end of Oct., or the beginning of Nov., 1870. The bill was filed on the 28th Nov., 1870. The question of trespass has emerged during the progress of the controversy, but this rests on distinct grounds, and must be separately considered. The case, thus made, is met by the defendant with a general denial of the material facts alleged. He says that no changes have been made in his engine or machinery since Jan., 1865, except some which were made in 1870 to meet (as far as possible) the plaintiffs' objections; that the manner of working them has been throughout, both in kind and in degree, the same; that there has been no increase, either of noise or vibration; that the state of things of which the plaintiffs now complain is a mere continuation of that which existed without complaint during the five preceding years, and which is admitted not to have then constituted a nuisance. In these statements he is supported by the evidence of every witness in the cause who has any knowledge of the interior working of the mill. [His Lordship then referred to the evidence.] If the defendant's evidence is believed, the plaintiffs' case fails. The burden of proof as to this part of the case rests wholly on the plaintiffs. The Scotch law has a phrase which in cases of this nature may well admit of a negative, as well as of a positive, application. It forbids a man to use his own rights "*in emulationem vicini*." Neighbours everywhere (and certainly in a manufacturing town) ought not to be extreme or unreasonable, either in the exercise of their own rights or in the restriction of the rights of each other. The ruling approved by the House of Lords in the *St. Helen's Smelting Company's* case that "the law does not regard trifling inconveniences," and that "everything is to be looked at from a reasonable point of view," and the observations of Lord Cranworth seem to be particularly applicable to such a case as the present. [His Lordship then read passages from the report, 11 H. L. Cas. 650.] There may, of course, be such a thing as a legal nuisance from noise in a manufacturing or other populous town, of which the case of *Soltau* v. *De Held* (2 Sim. N. S. 133) is an example. But a nuisance of this kind is much more difficult to prove than when the injury complained of is the demonstrable effect of a visible or tangible cause; as when waters are fouled by sewage, or when the fumes of mineral acids pass from the chimneys of factories or other works over land or houses, producing deleterious physical changes which science can trace and explain. A nuisance by noise (supposing malice to be out of the question) is emphatically a question of degree. If my neighbour builds a house against a party wall next to my own, and

I hear through the wall more than is agreeable to me of the sounds from his nursery or his music-room, it does not follow (even if I am nervously sensitive or in infirm health) that I can bring an action or obtain an injunction. Such things to offend against the law must be done in a manner which, beyond fair controversy, ought to be regarded as exceptive and unreasonable. I am far from saying that there may not be cases in which the owner of a house very near a mill in a manufacturing town may be entitled to protection against noises resulting from the introduction into the mill of new machinery, or of new modes and processes of working. But in every case of this kind it ought to be clearly made out that the mill-owner has exceeded his rights. When there has been no introduction of new machinery, and nothing new in the manner of working—when everything within the mill has gone on without change in the usual and accustomed course of the manufacturer's business—a plaintiff undertaking to prove that at and after a definitive time the noise from the mill admitted to have been previously lawful and harmless, became excessive and noxious, imposes upon himself (to say the least) an arduous task. And how have the plaintiffs acquitted themselves of this burden? I see no reason to doubt that they, and their servants and friends who were witnesses in this case (several of whom have not been cross-examined), do themselves believe that the considerable increase of noise of which they speak has really taken place, and are persuaded that this noise is a serious nuisance. But it is not impossible that this should be the case, and yet that the witnesses for the defendants (none of whom have been cross-examined) should be believed. Those who compare the noise which they hear to-day with the noise which they heard months or years ago, are witnesses (within certain limits) to impressions upon the mind, rather than to facts. Those who speak of the manner in which the engine and machinery have been worked, and the business of the mill carried on, speak of facts, and not of impressions on the mind. Mr. Fry made a happy use in part of his argument of a passage in a recent work upon mental science (*a*) which (treating of the influence of the mind upon the sense of hearing) says "that the thought uppermost in the mind, the predominant idea or expectation, makes a real sensation from without assume a different character." Every one must have had some experience of the truth of this statement; a nervous, or anxious, or prepossessed listener hears sounds which would otherwise have passed unnoticed, and magnifies and exaggerates into some new significance originating within himself sounds which at other times would have been passively heard, and not regarded. In the present case, I have no doubt that a real "whirring sound," such as the plaintiffs' witnesses describe, did proceed from the machinery in the mill when at work, at all times before as well as after the erection of the steam-engine in 1864-5. I have no doubt that this sound (and also the sound of the steam-engine after its erection) was often, if not always, perceptible in the plaintiffs' garden, and in some of the rooms of their house, especially when the windows were open; I have no doubt that it was louder and more audible at some times, and when the wind was in particular quarters, than at other times, and other states of the wind. I have no doubt that it must always have been more or less heard in the old stable, where the heads of the horses, as they stood in their stalls, were turned towards the wall (described as a thin wall), on the other side of which the engine was fixed; and where there was a small window, which but for its being closed by certain boards would have opened directly into the engine room itself. But all this is admitted to have gone on from January, 1865, to June, 1870, without amounting to a nuisance. In June, 1870, a sudden noise had alarmed the servants of the plaintiffs, and since that time the plaintiffs had entertained the idea of some danger from the boiler used by the defendant. From this time forth the engine and its noises were to the plaintiffs a permanent source of irritation and uneasiness. [His Lordship then examined the evidence on both sides as to the house, and as to the effect of the noise and vibration on the horses in the stable.] Witnesses for the plaintiffs have stated that on one occasion the horse of a visitor when put in the stable was so terrified that he had to be removed; but this evidence does not make a powerful impression on my mind. The case of *Cooke* v. *Forbes*, L. Rep. 5 Eq. 166, shows that it is not every occasional and accidental noise which might frighten a horse in a stable on a particular day that will entitle a plaintiff to an injunction, if the general case habitual nuisance alleged in the bill is not satisfactorily proved. His Lordship came to the conclusion that no sufficient case was made out, and that the bill, so far as it sought relief on the ground of nuisance, must be dismissed. As to the trespass, it appeared that part of the defendant's engine-house overhung the plinth of one of the plaintiffs' walls. The defendant, however, disputed the right of the plaintiffs to the plinth, a question which he could not then determine. It was enough to

dispose of that, that the defendant had been in possession for more than five years without remonstrance on the plaintiffs' part. A bill for an ejectment by way of mandatory injunction could not be supported under these circumstances, and that part of the bill must also be dismissed. His Lordship continued: There is left only one more question; that of the obstruction of the window in the plaintiffs' old stable by the board, placed against it, and also by the roof of the defendant's engine-room. As to this, I have felt some embarrassment. On the other hand, it seems to me that an unlawful obstruction by the defendant of an ancient, though not very valuable, light of the plaintiffs had been established. On the other hand, this obstruction took place nearly six years before the bill was filed, under the very eyes of the plaintiffs or their servants, who can never have gone into the stable without perceiving it; and the light does not appear to have been for any practical purpose missed or wanted since its obstruction. A bill for an injunction in such a case would (I think) before the passing of Lord Cairns' Act, have been dismissed, and the plaintiffs would have been left to their remedy at law. Since this Act, if the bill were not dismissed, I should certainly agree with the Master of the Rolls in thinking the case one for an inquiry as to damages, and not for an injunction. But, finding myself obliged to leave the plaintiffs to their legal remedy (if any) as to the other matters complained of, and being of opinion that the obstruction of light is so connected with the other alleged trespass as to make it possible that some injustice might be done if damages as to the light were given here, and the plaintiffs at the same time left in possession of all their legal remedies as to the plinth of their wall and the disputed slip of land, I have come to the conclusion that the bill ought to be altogether dismissed, without prejudice to any action which the plaintiffs may be advised to bring. The costs of the suit will follow the event; the plaintiffs' appeal petition will be dismissed with costs. There will be no costs of the defendant's appeal; but the deposit will be returned.

COURT OF PROBATE.

MORRIT v. DOUGLAS.

Testamentary Suit—Execution — Acknowledgment — Know and approve of the contents.

The two attesting witnesses were called in to witness the testator's will, which had been written by another person. The testator's mark was on the will when they were asked to sign, but they did not see him make it. The testator said nothing about the will to them, and the will was not read over to him.

Held, not to be duly executed, and that the testator did not know and approve the contents.

[27 L. T. N. S. 591—Dec. 10, 1873.]

GEORGE MORRIT, farmer, late of Barley, in the county of York, died 18th Jan. 1863, leaving a will bearing date 9th May, 1862, which after disposing of all his property was executed in the following form:

In witness whereof I have subscribed my name, this ninth day of May in the year of our Lord one thousand eight hundred and sixty-two.

THOMAS MORRIT + my mark

In witness of the testator's signature we have subscribed our names in the presence of the testator, and in the presence of each other.

THOMAS MORRIT + my mark.

GEORGE ROBINSON } Witnesses.
HENRY PARKINSON }

The will appointed no executors, and was propounded by the defendant, Mary Anne Douglas, the testator's daughter, and one of the residuary legatees. The plaintiff, the testator's son, pleaded in opposition undue execution, and that the testator did not know and approve of the contents, inasmuch as the will was not read over to him at the time of the execution, and that he was not aware of the contents. The plaintiff also gave notice that he insisted on proof in solemn form, and to cross-examine the witnesses. The case was tried before the court without a jury. George Robinson, one of the attesting witnesses, was dead, and Henry Parkinson, the other attesting witness, gave the following account of the transaction:

I recollect being called in to the house of Richard Douglas, who then resided at Barley. When I got into the house I saw Thomas Morrit, the testator, sitting in an arm-chair. Mary Ann Douglas, the defendant, and one Thomas Davis, were in the room. She and her husband got up and went out of the room. Thomas Davis said to me and Robinson, the other witness, "I want you to sign this will, it is of no use reading it over to you," and Robinson said, "No it does not matter to us." Thomas Davis then went out of the room. There was no other person in the room but Thomas Morrit, the testator, when Robinson and I signed our names. There was a mark on the will when we signed our names, but I cannot say who made it. The deceased never signed his name nor made any mark to any document in my presence. The will was not read over in my presence, nor did the testator speak of it or refer to it in any way whatever. The only conversation that took place in the room was, George Robinson asked the testator how he was, when he replied, "I am mending." The testator had broken his thigh a short time previously, and I don't think he was quite in his own mind.

Cross-examined:

The witness further said, Robinson and I went out when we had signed, I only noticed one mark on the will, it was the first.

G. H. Cooper submitted that the will was duly executed, and that the deceased knew and approved the contents. At this distance of time everything should be presumed in favor of the will. Parkinson saw the mark on the will before he signed, and what Davis said in the testator's presence amounts to an acknowledgment: *In the goods of Bosanquet*, 2 Robart. 577; *In the goods of Jones*, Deane & Swa. 3. As to knowing and approving the contents, Sir C. Cresswell held that there was no occasion for a man to know the contents of his will. He might delegate to another the task of making his will:

Middlehurst v. *Johnson* 30 L. J. 14; *Canliffe and Ormerod* v. *Cross*, 3 S. & T. 37; He also referred to—*Hastilow* v. *Stobie*, 35 L. J. 577, P. & M.; L. Rep. 1 P. & D. 64. *Cleare* v. *Cleare*, L. Rep. 1 P. & M. 655; 20 L. T. Rep. N. S. 457; *Allen* v. *Atkinson*, L. Rep. 1 P. & D, 655; 20 L. T. Rep. N.S. 404.

Searle for the plaintiff.—The defendant has not discharged the burden of proof on him to show that it is the testator's will. As to acknowledgment in the cases cited, the will was signed by the testator, here there is only a mark. The plaintiff is bound to show that the deceased knew and approved the contents of the will:

Cleare v. *Cleare* (*sup.*) *Grodatre* v. *Smith*, L. Rep. 1 P. & D. 359. *Cur. adv. vult.*

Sir James Hannen.—The issues in this case were—First, whether the alleged will of Thomas Morrit, dated the 9th May, 1862, was duly executed; and, secondly, whether the deceased at the time of the execution of the said alleged will knew and approved of the contents thereof. The alleged will purported to be executed by the deceased by mark. One attesting witness, Henry Parkinson, was called, who stated that upon going into the room where the deceased was, a person named Thomas Davis said to him and the other attesting witnesses that "he wished them to sign Thomas Morrit's will." The witness in answer to the question, "Did Thomas Morrit hear that?" said "Yes, he sat close by." It is clear that the witness merely drew the inference that the deceased heard from the fact that he was near. No other evidence was offered to connect the alleged will with the deceased. The mark which is alleged to be that of the deceased was already on the paper when the witnesses were called in. The will was not read to or by the deceased in their presence, nor was any allusion made to it by anyone beyond the words uttered by Davis, and the witness stated that he thought the deceased was not exactly in his right mind at the time. At the hearing several cases were cited, which I have examined, but I do not think it necessary to comment on them, as they have not assisted me to come to a conclusion on the simple facts of this case. It is sufficient to say that the evidence entirely fails to satisfy me that the deceased either acknowledged the mark to be his, or that he knew what the contents of the alleged will were.

UNITED STATES REPORTS.

DISTRICT COURT.

Passmore v. Western Union Telegraph Co.

1. A regulation that a telegraph company will not be responsible for the correctness of messages unless repeated, is not so far contrary to private interest or the public good, as to justify a court of justice in pronouncing it void.
2. As to the time when a contract becomes binding by letter or telegram discussed.

Rule for a new trial and motion for judgment on points reversed.

[U. S. District Court—Jan. 25, 1872.—*Hare, P. J.*]

This is an action against the Western Union Telegraph Company, to recover damages for a mistake committed by their servants in the transmission of a telegraphic message from Parkersburg, in West Virginia, to Philadelphia. The telegram as originally written by the plaintiff was as follows:

"Parkersburg, April 14th, 1865.

"To P. Edwards, 423 Walnut street, Philadelphia."

"I hold the Tibb's tract for you. All will be right."

Unfortunately, through some unexplained mistake or accident, an *s* was substituted for an *h*, so that the message when delivered in this city read, "I *sold* the Tibb's tract, &c." Edwards thereupon broke off the contract into which he had entered for the purchase of the land. The mistake was not discovered until the second or third of May, when the plaintiff came to Philadelphia, and had an interview with Edwards, who said that supposing the telegram to be correct, had made other arrangements.

The jury found a verdict for the plaintiff subject to the opinion of the court on the following points:

1. "Whether the defendants are liable in this case, the plaintiff not having insured the message nor directed it to be repeated, and

2. "That the form in which the telegram was transmitted by the defendants and received by Edwards, did not discharge Edwards from his liability as a purchaser under his contract with the plaintiff, and therefore, that the damages

sustained by the plaintiff were not a necessary or legal consequence of the default of the Telegraph Company.

"It being agreed that judgment should be entered for the defendants if the court in banc were of opinion with them on either point."

The first point grows out of the terms and conditions prescribed by the company for the receipt and transmission of all messages. These were, *inter alia*.

"In order to guard against and correct as much as possible some of the errors arising from atmospheric and other causes appertaining to telegraphy, every important message should be REPEATED, by being sent back from the station from which it is originally sent. Half the usual price will be charged for repeating the message, and while this company in good faith, will endeavor to send messages correctly and promptly, it will not be responsible for errors or delay, in the transmission of delivery, nor for the non-delivery of REPEATED MESSAGES beyond TWO HUNDRED times the sum paid for sending the message, unless a special agreement for insurance be made in writing, and the amount of risk specified on this agreement and paid for at the time of sending the message. Nor will the company be responsible for any error or delay in the transmission of delivery, or for the non-delivery of an UNREPEATED message, beyond the amount paid for sending the same, unless in like manner specially insured, and amount of risks stated thereon, and paid for at the time."

If this regulation is valid, there is obviously an end of the plaintiff's case. It is conceded that he knew of the rule, and did not require the message repeated. He cannot, therefore, make the defendants answerable in damages consistently with the terms to which he tacitly agreed. It is a general principle that a man who seeks to enforce a contract, shall not recover more than the contract gives. It is for him to consider, in entering into the obligation, what shall be the limit of the liability on the other side. If he assents to a provision that the opposite party shall not be answerable in a given case, or unless certain conditions are fulfilled, he cannot rely on the disadvantageous result of the bargain as a reason for relief.

This consideration might be conclusive, if the action were *ex contractu*, or founded solely on the agreement between the plaintiff and defendants. Such, however, is not the case. It is an action *ex delicto* for the breach of a duty which the defendants owe to every man, to receive the messages which he may wish to send, and transmit them to their destination. This obligation was anterior to the contract, and is not necessarily susceptible of being modified by it. Having its foundation in a rule of law, it cannot be varied or restricted, except in subordination to the principles on which the rule depends. The maxim *quilibet postest renunciare juri pro se introducto*, does not apply when the right in question is conferred on the individual with a view to his protection and for the common good.

The plaintiff calls for the application of this doctrine to the case in hand. The condition against liability for unrepeated messages, is in his eyes, one which the defendants could not legally impose. It is, as he contends, virtually a stipulation for immunity against the consequences of their own negligence, and therefore invalid.

If such be the nature of the regulation, it cannot operate as a defence. The defendants are public agents, and as such bound to the exact diligence which is the condition precedent of all faithful service. Their charter was not conferred upon them merely as a means whereby gain might accrue without the risk incident to individual responsibility. It is a great and beneficial franchise confined to their hands for the better attainment of an object in which the community at large are interested. They are, therefore, not less than a railway company or a corporation organized to supply gas or water, under an obligation to exercise their peculiar function in a way to attain the end proposed, and must respond in damages to every one who is injured by a want of due care on their part or on that of the agents whom they employ. This, as the case of the *Telegraph Co.* v. *Dryburg* 35 Penna. 298, indicates, is true not only as it regards those who contract with them but of third persons who having entered into no relation of contract, are yet injured by their negligence.

The fundamental truth of the plaintiff's contention, is, therefore, undeniable; but, like most truths, it is limited by other and collateral principles. A railway, telegraph or any other company charged with a duty which concerns the public interest, cannot screen themselves from liability for negligence, but they may prescribe rules calculated to insure safety, and diminish the loss in the event of accident, and declare if they are not observed, the injured party shall be considered as in default, and precluded by the doctrine of contributory negligence. The rule must, however, be such, as that reason, which is said to be the life of the law, can approve; or at the least, such as it need not condemn. By no device can a body corporate avoid liability by fraud, for wilful

wrong, or for the gross negligence which, if it does not intend to occasion injury, is reckless of consequences, and transcends the bonds of right with full knowledge that mischief may ensue. Nor, as I am inclined to think, will any stipulation against liability be valid which has the pecuniary interest of the corporation as its sole object, and takes a safeguard from the public without giving anything in return. But a rule, which, in marking out the path plain and easily accessible, as that in which the company guarantees that every one shall be secure, declares that if any man prefers to walk outside of it, they will accompany him, will do their best to secure and protect him, but will not be insurers, will not consent to be responsible for accidents arising from fortuitous and unexpected causes, or even from a want of care and watchfulness on the part of their agents, may be a reasonable rule, and as such, upheld by the courts.

Applying this test to the case in hand, does the evidence disclose any sufficient ground for overruling a defence which is *prima facie* valid? The burden of proof is on the plaintiff. It is for him to show in what respect a regulation which he tacitly accepted, is so far hostile to the interest of the community, or of that portion of it which uses telegraphy as a means of communication, that the law should not suffer it to stand. Unless this is so clear as to be legally indisputable, the judiciary should obviously refrain from interfering with the contract as framed by the parties, and refer the subject to the legislature, who can at any time regulate the whole by statute.

We are fully aware of the importance of the question, and have no desire to relax the just measure of accountability in cases of this description. Telegraphy, like the other powerful instruments which science has placed at the disposal of man, is capable of being a source of injury instead of benefit. That the intelligence which it conveys is prompt, will serve no good purpose, if mistakes occur during the process of transmission. The difficulty of avoiding them is, notwithstanding, greater than might at first appear. The function of the telegraph differs from that of the post-office in this, that while the latter is not concerned with the contents of the missive, and merely agrees to forward it to its address, the former undertakes the much more difficult task of transcribing a message written according to one method of notation, in characters which are entirely different, with all the liability to error necessarily incident to such a process. Nor is this all. The telegraph operator is separated by a distance of many miles from the paper on which he writes, so that his eye cannot discern and correct the mistakes committed by his hand. It was also contended during the argument, that the electric fluid which is used as the medium of communication is liable to perturbations arising from thunder-storms, and other natural causes. It is, therefore, obvious, that entire accuracy cannot always be obtained by the greatest care, and that the only method of avoiding error is to compare the copy with the original, or in other words, that the operator to whom the message is sent should telegraph it back to the station whence it came.

So far the inquiry is plain; but here a question of some difficulty presents itself. Should every message be repeated, or only those which are of sufficient importance to make such a precaution requisite. In answering this question it must be remembered that the repetition of a message necessarily involves delay and expense. The mail may transmit any number of letters simultaneously, but a telegram has exclusive possession of the wires during its passage over the line. While one message is repeated, others are delayed, which at times may be of serious consequence. There is, moreover, an increase of cost, which, though trivial in each instance, would be formidable in the aggregate, and necessarily augment the rate of charging in a ratio which has been roughly calculated at one-half. Such must be the result, if every one who wishes to engage rooms at an hotel or put a question of friendly interest, must submit to the expense and possible delay of repetition.

On the other hand, the convenience of the opposite course is not less manifest. Instead of passing every message twice over the line, those only are to be repeated which from their importance demand peculiar care. And as the company cannot know what telegrams fall within this category, the question is referred to the person chiefly interested. Obviously he who sends a communication is best qualified to judge whether it should be returned for correction. If he asks the company to repeat the message, and they fail to comply, they will clearly be answerable for any injury that may result from the omission. If he does not make such a request he may well be taken to have acquiesced in the conditions which they prescribe, and at all events cannot object to the want of a precaution he has virtually waived. It is not a just ground of complaint that the power to choose is coupled with an obligation to pay an additional sum to cover the cost of repetition. If it were not, the

company would in all probability be called on to repeat every message, with the inevitable effect of putting the public to an increased expense, without any corresponding gain.

We are, therefore, inclined to think that the regulation in question, or at least so much of it as has been considered in this opinion, is well calculated to reconcile the economy and despatch which the mass of the community principally desire, with the security against accident which each individual is entitled to demand. But we limit ourselves to saying that it is not so far contrary to private interest or the public good, as to justify a court of justice in pronouncing it invalid.

We have not arrived at this conclusion without a just diffidence arising from the novelty of the subject and the want of any controlling authority in this State. But it is satisfactory to know that the principles set forth above are sustained by the judgment of the Supreme Court of Massachusetts, in *Ellis* v. *The Telegraph Co.*, 13 Allen, 226; and also by that rendered in *Camp* v. *The Telegraph Co.*, 2 Metcalf, Ky., 164.

We do not think it requisite to notice the second point, beyond saying that it presents a nice question, about which the books do not agree: See *Harris's* Case, Law Reports, 7 Chan. Appeals, 587; and the *British and American Telegraph Co.* v. *Colson*, Law Reports, 6 Ex. 108. The fair deduction from the authorities seems to be, that although an offer made through the post-office becomes binding as soon as the assent of the person to whom it is addressed is signified by mailing a reply, the contract is still subject to this condition, that the letter of acceptance shall reach its destination; and will fail if the opposite party does not receive notice within a reasonable time in that or some other way. The principle is the same, when a telegram is altered in passing over the line, and misleads a purchaser. We do not, however, express any opinion on this head, and leave it for the consideration of the court above. In deciding that the company is not answerable for unrepeated messages, we have in effect disposed of the whole controversy, and judgment is consequently entered for the defendant on the points reserved.

Judgment for the defendants.

We are pleased to notice by some of our exchanges that Mr. H. J. Morgan, of the Secretary of State's office in Ottawa, better known as the author of several useful Canadian works, has been called to the Bar of Quebec. At one time he held a very humble position in the Civil service, but by dint of industry and ability has already raised himself to a position of which he may feel justly proud. His example is one that we would like to see more generally followed by young men who enter the Civil service. Many of those who enter the service, being void of ambition, lead a sort of hum-drum existence, without any effort to utilise their leisure, of which they have a good share, by engaging in literary pursuits or in fitting themselves for the higher positions to which they should naturally and properly aspire.

A money bond void on payment of the money by instalments is not within either the Statute 4 & 5 Anne, c. 16, s. 13, or the Common Law Procedure Act 1860, s. 25, and a plea of payment into court of money sufficient to satisfy the claim of the plaintiff in respect of the unpaid instalment for default in payment of which the action is brought is bad.—*Preston* v. *Dania et al* 27 L. T. Rep. N. S. 612.

Mowat's Administration of Justice Bill, noticed in another place, we have learned, barely in time to mention, has passed the third reading with very few alterations. The body of the Act will not come into force till 1st January next. This is desirable; though, in suggesting a postponement, we did not contemplate so long a day: it will afford practitioners ample time for a deliberate and careful examination, and we hope to be able to give some exposition of its provisions assisting to its successful working.

No doubt a measure making such important alterations in procedure may be seriously clogged, if not blocked, by a hostile feeling on the part of those who have to work it out, and the hearty co-operation of the judges and the bar is always a great aid to success. We have no doubt that will be given to the new law, and we think the Attorney-General has acted wisely in postponing its operation. Secs. 53, 54, and 55 will come in force at once.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Hilary Term, 36th Victoria.

DURING this Term, the following Gentlemen were called to the Degree of Barrister-at-Law :

Robert Heber Bowes.
Allan John Lloyd.
James R. Roaf.
John George Killmaster.
Isaac Baldwin McQuesten.

And the following Gentlemen received Certificates of fitness :

R. McMillan Fleming.
J. Bruce Smith.
J. George Killmaster.
James R. Roaf.
Allan J. Lloyd.
Isaac B. McQuesten.
Peter Cameron.
Rupert E. Kingsford.
Alexander Sampson.
Wicksteed.

And on Tuesday, the 4th February, the following Gentlemen were admitted into the Society as Students of the Laws, their Examinations having been classed as follows :

University Class.

James Joseph Wadsworth, M. A.
Alexander Haggart, B. A.
Samuel Clarke Biggs, B. A.
Elliott Travers, B. A.
Julius Lefebvre, B. A.

Junior Class.

Charles H. Connor.
Thomas G. Meredith.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. HILLYARD CAMERON,
Treasurer.