DIARY FOR DECEMBER.

2. Mon. ..Last day for delivering appeal books.
3. Tues...County Court and General Sessions for York begin.
4. Wed. ..Armour, J., sworn in as Judge of the Court of Q.B., 1877.
5. Thurs..Rehearing term in Chancery begins.
6. Fri. ...Law Society Convocation meets.
7. Sat. ...Michaelmas Term ends. Rebels defeated at Toronto, 1837.
10. Tues. ..County Court Sittings, except York, begin.
11. Wed. ..Blake, V. C., sworn in, 1872.
15. Sun. ..Morrison, J., sworn in as a Judge of the Court of Appeal, 1877.
16. Mon. ..Sittings of Court of Appeal.
17. Tues ..First Lower Canada Parliament met, 1792.
24. Tues...Christmas vacation begins.
25. Wed. ..Christmas Day.
26. Thurs..Upper Canada made a Province, 1791.
27. Fri. ...Spragge, C., appointed Chancellor, 1869.
30. Mon...Nomination of candidates for Municipal offices.
31. Thurs..Law Society Convocation meets.

CONTENTS.

Canada Law Journal.

Toronto, December, 1878.

The Benchers, finding a sufficient surplus in the coffers of the Society, have decided to reduce the fees payable by Attorneys on taking out their annual certificates. The fees will, therefore, until further notice, be fifteen dollars, with the usual Barrister's fee of two dollars in addition. If anything has been paid, during the Term, anything in excess of the present fee, it will be refunded on application.

The legal journals in England complain that the universal stagnation of commerce has largely affected the professsion, and that new work is very limited. In the Chancery Division the list of causes for hearing this Michaelmas, contains 412 cases, being nearly 200 less than there were at a corresponding period a year ago. Even divorce business has fallen off, and it is suggested that there is in fact less cruelty and adultery than when money was plentiful; this is certainly an exemplification of the old saying, "it is an ill wind that blows nobody good."

Several judicial appointments were made recently in the Province of Quebec. Hon. J. T. Taschereau, having resigned his seat on the Supreme Court Bench, has been succeeded by Hon. H. E. Taschereau, formerly one of the judges of the Superior Court of Lower Canada. Some time since we called attention to the fact that the former had never complied with the terms of the Supreme Court Act by living at Ottawa. Mr. H. T. Taschereau, of Quebec, has been made a puisne judge of the Superior Court for Lower Canada, in the room of Mr. H. E. Taschereau. Hon. Maurice

Laframboise, of Montreal, has been appointed to a similar position in the District of Gaspé. In Ontario, Mr. Archibald Bell takes the place of Mr. Wells, as Judge of the County Court of the County of Kent. In Nova Scotia, Mr. R. N. Weatherbee has been appointed one of the judges of the Supreme Court of that Province *vice* Hon. J. M. Wilkins, resigned.

The Barrister who publishes the following advertisement ought to be encouraged. He is certainly *cheap*—we are not able to say, except from the card, whether he is the rest of it. He seems to suggest that if "advised" he may increase his charges. We humbly advise him to do so at once. He probably rates his own work at its proper comparative value, at least he ought to know most about it, but the difficulty is that most respectable clients will take him at his own valuation, and go to some one who is not *cheap* and—the other thing that generally goes with cheapness.

"A Card.

"I beg to inform the public that till otherwise advised I will reduce the charge for Conveyancing to the following prices :—

"Drawing Simple Deeds, including Affidavit of Execution - - $1.50
"Drawing Simple Mortgage, including Affidavit of Execution - $2.00
"Discharge of Mortgage - - - $0.50
"

"*Barrister, Leamington.*

"N.B.—Parties wishing to borrow money will find it to their advantage to give me a call as I am prepared to obtain loans at a low rate of interest, and on favourable terms."

A stranger who might happen to wander into Osgoode Hall about midday towards the end of last month, would conceive an exalted idea of the amount of law that is administered to the people of this Province. Facing the entrance he would find Common Law Chambers just winding up for the day. If he ventured through the labyrinth of passages, and put on his great coat to go across the *un*-covered way (the height of stupidity, inconvenience and absurdity by the way, is that same chaos, one cannot call it arrangement, of new offices, &c.) he would, if he did not lose himself, find the Master's office in full blast. He might then stumble up a back stairs and blunder into the wrong end of the Court of Appeal, and *not* be scowled at by that august body, for it is a most courteous Court; not the least so, by the way, in Osgoode Hall. On either side of the Hall he would find the Queen's Bench and Com mon Pleas hard at work. Passing then through the beautiful library, full of busy "limbs" and thoughtful dons, he would find one of the Vice-Chancellors holding Court in one room, and the Chancellor in another; with the Referee holding Chancery Chambers in yet another—fifteen Judges and judicial officers dispensing justice, which has been ground up for them by numerous officials, assisted by a perfect army of attorneys, solicitors, articled clerks and students. The stranger, as he left the precincts of Osgoode Hall, would probably remark that he had seen "more law to the acre" than he had ever seen before.

THE LATE CHIEF-JUSTICE HARRISON.

Upon the appointment of Robert Alexander Harrison, Q.C., as Chief Justice of Ontario in September, 1875, we took occasion to publish* a biographical sketch of

* Vol. 9, p. 31.

that much lamented gentleman. It is only three short years since he attained the summit of his ambition; there is therefore but little now to speak of except shortly to refer to his career on the Bench, and to deplore his loss. When he took his seat as Chief Justice of Queen's Bench there was a large amount of business in arrear. With his usual energy and amazing industry, and a capacity and apparent love for work never excelled, and hardly equalled in this country, and with that able and excellent Judge, the present Chief Justice of the Common Pleas by his side, he grappled with the task before him, and in an incredibly short space of time conquered it. From that time until his last illness, the business of the Court was in a most satisfactory condition, with nothing behindhand and everything in order. During the period between his appointment and his death, there were published no less than six and a half volumes of Reports, whilst in the three years preceding there had only appeared four and a half volumes. The amount of work this represents is enormous.

In addition to his ordinary judicial business, he was, shortly after his elevation to the Bench, appointed one of the arbitrators on the question of the boundary between the Province of Ontario and the North-West Territories. This was a most laborious undertaking, entailing a vast amount of research and careful consideration, but he rapidly mastered the subject, and its satisfactory adjustment was the speedy result.

As a counsel, so as a judge, Mr. Harrison won the confidence of the Bar, by his uniform good temper, patience, and untiring devotion to his duties. His research was great, and if he relied, as possibly he did, too much on cases for his law, there was a satisfaction in knowing that nothing that bore on the subject had been lost sight of. Although, to a great extent in the habit of looking at points before him for adjudication through the spectacles of "case law" his strong common sense and his inborn perception of the springs of thought and action of the masses, perfected by an enormous experience at the Bar, prevented him from falling into the mistakes to which a mere case lawyer is so subject.

Some of his best judgments were in municipal cases, a branch of the law with which he was confessedly more familiar than any man at the Bar. Probably the most important case which came before him was *Regina* v. *Wilkinson*. The Chief Justice there characterised, as it deserved, the "reckless and intemperate" attack by a public journal on one of the Judges of the Court in a judgment befitting the occupant of such an honourable position, and calculated to uphold the dignity and authority of a Court which had been assailed, not merely by the article complained, but by the language used in the face of the Court itself by the journalist in support of his previous attack. Whilst in this latter respect some thought that too great a latitude had been allowed the offender, and others regretted that in such an important matter the Court should have been divided, the judgment of the Chief Justice stands as a vigorous protest against the license of the press, when trenching upon the independence of the Bench, the palladium of the public liberty.

In the case of *Pringle* v. *The Corporation of Napanee*, Chief Justice Harrison did not fail to decide, in an exhaustive judgment, most carefully prepared, the noble doctrine that Christianity is a part of the recognised law of this Province, as it is also of the great Empire that encircles the globe, thereby laying a

stone in the fabric of our Dominion, without which the edifice must be a failure, and thus publicly stating the law to be in accordance with the belief that he privately held. In the peace of this belief passed away one who will ever be affectionately remembered by his brethren—a memory which will be an encouragement to all who desire to attain to eminence by honest industry and unswerving integrity.

RECENT JUDICIAL CHANGES.

The vacancy caused by the death of Chief Justice Harrison has caused a recasting of the *personel* of the two Common Law Courts.

The Chief Justice of the Common Pleas takes the position of Chief in the senior Court. Mr. Justice Wilson leaves the latter Court and takes the seat vacated by Chief Justice Hagarty, whilst Hon. Matthew Crooks Cameron becomes the Junior Puisne Judge of the Queen's Bench. We are glad to be able to say that these appointments have, one and all, been received by the profession and the public with unqualified approval.

Of the present learned Chief Justice of the Queen's Bench, it is not necessary to speak at any length. His position is practically the same as before, though it may be esteemed more honourable, as being in the senior Court, and that apart from any question as to the constitutionality of the legislation which deprived its presiding Judge of the appellation of Chief Justice of Ontario.

In February, 1856, Mr. Hagarty was sworn in as a Judge of the Court of Common Pleas, in the place of Mr. McLean, who was appointed to the Queen's Bench, when Mr. Draper left that Court to become Chief Justice of the Common Pleas, which seat was vacated by the resignation of Mr. Macaulay. In Hilary vacation, 1862, Mr. Hagarty was taken from the latter Court and transferred to the Queen's Bench, again taking the vacant seat of Mr. McLean, who was made Chief Justice of Upper Canada, in the room of Sir John B. Robinson, who was appointed President of the Court of Error and Appeal. On the first day of Michaelmas Term, 1868, Mr. Hagarty became Chief Justice of the Common Pleas, in the place of the present Chief Justice of the Supreme Court, who was then made Chief Justice of Ontario, in the room of Mr. Draper, appointed President of the Court of Error and Appeal. Originally placed on the Bench for his merits alone, without regard to politics, his brilliant talents and great learning are too well known to need comment on our part. whilst in private life no more kindly, hospitable gentleman of the old school has been the centre of an admiring circle of friends. Mr. Hagarty was born in Dublin, in 1816, and came to this country in 1824. He was admitted in Trinity Term, 1835, and called to the Bar in Michaelmas Term five years later. He was made a Bencher of the Law Society in the same Term, in the year 1855.

The new Chief Justice of the Common Pleas, Hon. Adam Wilson, who is about 64 years of age, came to this country from Scotland in 1830, and resided for a few years in the Township of Trafalgar, with an uncle in business there. In January, 1834, he was articled to the law in the office of Baldwin & Sullivan. He was there a diligent student, and being called to the Bar in Trinity Term, 1839, remained in the management of the office for Hon. Robert Baldwin, until he went into partnership with that eminent man in January, 1840. This partnership continued until 1849, when it was dissolved, Mr. Baldwin retiring from the practice of the profession. The next year Mr. Wilson formed a partnership with Dr. Larratt

W. Smith, and subsequently with Mr. Hector, which continued until 1856, when he retired from general practice and applied himself to Counsel business only. Mr. Wilson, though his clients were many, found time for public affairs and took a lively interest in the politics of the day, being allied with that party that was led by first partner and friend Mr. Baldwin. In 1859 and 1860, he sat as Mayor of the City of Toronto, having been elected by general vote. Not content with Municipal honours, he entered into the larger field of Canadian politics, and, in 1859, was elected as member for the North Riding of York in the Parliament of Old Canada. He represented that constituency until his appointment to the Bench in 1863. During part of this period, he held the office of Solicitor-General and Executive Councillor. Appointed in the first place to the Court of Queen's Bench, he only remained there a few months, when he went to the Common Pleas, changing places with Mr. Morrison. He afterwards went back to the Queen's Bench along with Mr. Richards, at the time when Mr. Hagarty became the Chief Justice of the Common Pleas. He has now, therefore, for the second time, taken his seat in the latter Court. Always regarded as a sound and able lawyer, painstaking and industrious to a degree, most fearless and conscientious in his discharge of his judicial duties, he is, in addition, distinguished for his never failing courtesy to the Bar and to the students, even under circumstances that are occasionally calculated to upset the equanimity even of the most patient Judge. All who appear before him may be sure of a patient hearing and undivided attention, and a certainty that their arguments, however trivial they may seem, will receive due and careful consideration. We trust he may live long to enjoy the position he has attained.

When we turn to the new Judge that has recently taken his seat in the Queen's Bench, we feel indeed that a blank has been created at the Bar which none can fill. How many will feel "lost" when they cannot secure the able, eloquent and courageous advocate, who made his client's cause his own, whose last thought was of failure, and whose cheery encouragement, if it did not actually win the case or acquit his client, made defeat less painful. Few public men have gained the respect alike of friend and foe to the same extent as Matthew Crooks Cameron. A Conservative in politics, he fought well for his party, but never condescended to take any mean or unfair advantage, for far above his loyalty to his party was his love for his country, and his love of right and justice. He has been in public life since 1861, first sitting for North Ontario in the Parliament of Old Canada. After Confederation he became one of the colleagues of Hon. J. S. Macdonald, in the first Legislative Assembly of Ontario, represented East Toronto from that time until the present. Whilst we grieve that such an able advocate is lost to the Bar, we congratulate the public that one of the truest of men has been found for the Bench. Always very popular at the Bar, and deservedly so from his great ability and his pleasant address and straightforward character, he was especially sought after at *Nisi Prius*, and he has had for many years past a larger practice in criminal cases than any of his brethren.

Mr. Cameron was born at the Town of Dundas, on the 2nd of October, 1822. At the age of twenty he commenced the study of the law in the office of Gamble and Boulton, and in February, 1849, he was called to the Bar on the same day as

his late partner, Dr. McMichael. He received his silk on the 27th of March, 1863, but declined to become a Bencher of the Law Society until the election was thrown open to the profession. Mr. Cameron was sworn in as a Judge of the Queen's Bench, on the 27th of November, 1878.

DIVISION COURT JURISDICTION.

Pressure has been brought to bear upon the Attorney-General in favour of an increase in the jurisdiction of Division Courts, and he has sent circulars to the Judges, and to many in the profession, and others, asking their opinion on various points. It can be stated without fear of contradiction, that the sentiment of the profession, so far as that is concerned, is unanimously and strongly against a change. A resolution adopted at Peterborourgh, by the Bar in that neighbourhood, and the answer of the Kingston Bar to the circular of the Attorney-General, which we make room for, are some of the evidences we might adduce in proof of this. The letter from the Kingston Bar sets forth a formidable indictment against some of the abuses of the Division Court system, and contains many powerful arguments against doing that which, in the opinion of all thoughtful men, must be most injurious to a procedure admirably adapted in its simplicity to the end originally intended by its founders. We venture to assert, also, that not half-a-dozen Judges, either of the Superior Courts or County Courts are in favour of a change.

Only two classes could possibly benefit by an increase, and these are either (1) the "poor debtors" or (2) Division Court officers. As to the first, it is too absurd to suppose that any one is agitating for a change in the expectation that he may get into debt and may be sued and, if so, would have to pay a trifle less in the way of costs.

As to the second class we have so much sympathy with that intelligent and sometimes badly paid body of men, Division Court clerks, that we regret to have to say anything which might be construed into a desire to militate against their supposed interests. There is, however, a view of the matter which may not have occurred to them. The value of these Courts is not that they cheapen law in the abstract, but that they are essentially Courts for the poor man. To increase their jurisdiction would mar their usefulness, spoil their character and destroy their equilibium. It would throw into them a number of important cases which would gorge the present simple machinery, and so largely increase the emoluments of some of the officers, as to cause an outcry against the whole body, which would seriously react to their disadvantage. It is only a short time since one of the most intelligent mercantile men in the country, and a prominent member of the Board of Trade, publicly expressed his opinion that there should be no legal process for collecting any debt under $100, and there are many who take the same view. Whilst we are not prepared to go this length, the final result of a movement which has its origin in anything but the general wish of the community may very possibly be to apply the lancet to the extent of doing away with all suits for debt under, say, $50.

The letter from the Kingston Bar would seem to suggest something like antagonism between professional men and Division Court officers. We hardly think that this is the case to any great extent, except perhaps in certain localities. On the whole, they get on reasonably well together, and we should be sorry to see hostility evoked between them. Professional men, however, cannot be expected

to stand idly looking on while the administration of the law in one of its branches is being tampered with to the public injury.

We almost fancy we can trace in the inception of this movement the hands of some of those "agents" who are, as we think, unhappily allowed to dabble in matters of which they are profoundly ignorant, and for which they have undergone no apprenticeship. Uulike the heavily taxed lawyer, these persons pay no fees; and, as a general rule, and to the extent of their ability, bring discredit upon the administration of justice in the Courts where they are found. We shall not insult the Attorney-General by supposing that he would pay the slightest attention to pressure inaugurated by this class.

No—it would be well on every ground to let well alone. Those who are stimulating this movement would find, if they should be so unfortunate as to succeed, that they had acted in a suicidal manner. And, on the other hand, the Attorney-General will, we trust, see that the desire for a change comes from interested sources, to which he cannot safely or conscientiously give way. The country would possibly welcome a comprehensive, well-considered scheme for the fusion of law and equity, but the people are sick of this everlasting tinkering of statutes at the instance of men who are ignorant and careless of the mischief they may do.

This subject is of such a nature, and is so important to the due administration of justice, to say nothing of the interests of the profession, which of course is a minor consideration, as to challenge the notice of the Law Society. We have not heard of any action being taken in the matter, but certainly if Local Bar Associations take it up, *a fortiori*, the central body cannot, with any regard to the position to which they have been elected by their brethren, ignore it. We commend it to their immediate notice, to be dealt with as they may deem right in the premises.

At a meeting of the Local Law Society of Peterborough, an association to which almost all the members of the profession in that neighbourhood belong, the resolutions, of which a copy is given below, were unanimously passed, and a copy of them sent to the Attorney-General. These resolutions were in reply to the circular which the Attorney-General has sent to various members of the profession, asking them to answer the questions therein, relating to the proposed increase in the jurisdiction of the Division Courts :

"Moved by Mr. Dumble, seconded by Mr. Dennistoun, Q.C., and *resolved*.

In the opinion of the members of the legal profession of Peterborough, there should not be any increase in the jurisdiction of the Division Courts, for the following amongst other reasons :—

1. The machinery of the County Courts is better.

2. The officers of the County Court are, as a rule, men of higher training and capacity for the discharge of official business than those of the Division Courts.

3. The proceedings in the County Court are always on file or record at the Judge's Chambers, and are more accessible when required, and are more safely preserved than those of the Division Courts, which are kept at the several offices of the clerks.

4. Judgments can more expeditiously be obtained in County Courts—as on default or where defences for time are put in.

5. There is no remedy against land in the Division Court, and to transfer judgments to the County Court is no advantage over proceedings in that Court in the first instance, and in other particulars the remedies in the County Court are more effective.

6. The Sheriff is a better executive officer than the Bailiff, and is controlled by bett er machinery than the Bailiff.

7. The costs in the Division Court are in proportion to the amounts recovered, larger than in the County Court.

8. The increase of the jurisdiction of the Division Court would practically be merely a transfer of County Court cases to a Court of inferior machinery with many disadvantages, and no appreciable benefit. The increased jurisdiction necessitating more careful investigations would so lengthen the sittings of that Court as to impose increased expense on suitors, and thus assimilate that Court to the present County Court.

There should not be a counsel fee taxed against the losing party, as this would render the Court no longer the "Poor Man's Court;" moreover such a provision would increase litigation. This opinion is expressed in respect of the Court as it now stands.

We are of opinion that the mercantile community are not so satisfied with the Division Courts that they would like to see the jurisdiction increased. In cases of importance the client is compelled to employ a solicitor to urge the execution of the process of the Court, and in that event he would prefer getting the benefit of the machinery and services of the officers of the higher Court."

The following is the answer of the Kingston Bar to the circular of the Attorney-General:

"The members of the Kingston Bar, having met to consider the several points proposed in your circular respecting the Division Courts of this Province, would respectfully submit the following as their strong and unanimous opinion on the several questions submitted.

1. As to the expediency of an increase being made in their jurisdiction.

We most decidedly think that any increase in the jurisdiction of the said Courts would be inexpedient, and would advise, on the contrary, that their jurisdiction be reduced and limited to claims, both in contract and tort, not exceeding the sum of $40. Should this be done, and claims above $40 transferred to the County Court, we would suggest that an inferior scale of costs be framed for actions in that Court in which the amount recovered is below the sum of $100.

These views are forced upon us by considerations, some of which may be briefly stated.

Justice and truth are much less effectually secured by allowing suits to come to trial without any preliminary system of pleading, such as exists in all other Courts. By such a system of pleading, the real points in issue between the parties are evolved from the controversy; without it, the parties come to trial in the dark, are frequently surprised by unexpected matters of dispute or grounds of defence, or subpœna unnecessary witnesses at additional cost and inconvenience to prove facts never denied.

The power to examine the parties to a suit before trial and to obtain discovery of documents is in the highest degree advantageous, and has been wisely extended to the Courts of Common Law, where it gives the greatest satisfaction. No such power exists in the Division Court, nor could it be successfully introduced while parties conduct their own cases. The inquiry could not be confined within proper and legal limits by persons unacquainted with law, and would become disorderly, ill-tempered, and degrading to the dignity that should characterize the administration of justice.

The law administered by the several judges in the different Division Courts is frequently so uncertain, diverse, and fickle that it is impossible to decide one's rights or liabilities without actual suit, or to advise clients with any confidence on matters within its jurisdiction. The power of the judge to decide according to law, equity or good conscience has been held, in *Siddall* v. *Gibson et al.*, 17 Q. B., to enable him to dispose of cases within his jurisdiction according to his own ideas of law and good conscience, whether his ideas are right or wrong, and from such decision there is no appeal. This destroys the safeguard of law, and makes the judge an irresponsible arbiter, and a man's rights to depend on the habit of mind, state of temper, caprice or indigestion of the judge who may chance to try the case. The words of Chief Jus-

tice Robinson in *Doe dem. Anderson* v. *Todd*, 2 Q. B., are much in point. "That 'misera servitus' which is said to exist where 'jus est vagum' is so justly dreaded in these times that no one can consent to admit that there exists in any tribunal an arbitrary discretion." In trivial matters the principle might be tolerated, but in questions of any importance it is unwise and unjust.

The limit of $40 is suggested as a reasonable one, and because no judgment for a less amount is a charge on lands. Any judgment over that should be a matter of record, and the issues should appear by documeutary evidence. The expense, too, of proceeding to judgment directly in the County Court, under an inferior scale of fees, would not be much, if any, in excess of the indirect method of suit to judgment in the Division Court and removal by transcript to the County Court, as in nearly all contested cases in the Division Court of over $40, legal advice is taken and counsel is employed, whose charges are paid by the party employing him and are regulated by no tariff. It would be much fairer that the fees of lawyers employed should be subject to taxation with the costs of the cause and should fall upon the unsuccessful party. The fact that the opposite party will probably employ a lawyer, and be put to expense he will have himself to pay, frequently leads to groundless suits and obstructive defences. It seems but right that the unsuccessful party should pay all the costs incurred through his default, and that a suitor for a sum of $40 should be at liberty to entrust the couducting of his case to one skilled in the law, whose fees should form a part of the costs incident to the litigation. The penalty of costs, too, is the only check on speculative or vindictive suits. A direct suit in the County Court would prevent such difficulties as those in *Burgess* v. *Tully*, 24 C.P.

The absence from the Division Courts of these badges and insignia, thought important in the other Courts from their effect upon the popular mind, and the conducting of cases by laymen with an excess of zeal, but without knowledge, and often gentlemanly instincts, or by the litigants themselves, to whom even greater license is allowed, destroy the gravity and solemnity all important to the investigation of truth, and introduce instead a feeling of colloquial contention and disputation, a want of restraint and respect, the presence of a judge is not sufficient to preserve, and a recklessness of statement and assertion incident to a common altercation. It is notorious among those who practise in Division Courts that they have a bad pre-eminence for hard and unreliable swearing. A local paper styles them "sink holes of iniquity." Although the rule of law is relaxed which forbade a counsel being also a witness, the indecency of the thing still continues.

The excessive charges made by clerks and bailiffs, who virtually fix their own remuneration, has been pointed out so forcibly by the Inspector of these Courts, that it is only necessary to add that experience fully corroborates his statement. There is, however, but one effective check, and that is the employment of attorneys to conduct suits, and the taxation of all costs by them before the Clerk of the Court as in County and Superior Courts.

Perhaps the greatest and most general ground of complaint among suitors is the delay in getting money made under process of the Court, and the large proportion o cases sued in which nothing is ever realized. Persons who have much experience in the Courts frequently remark that they might as well forgive the debt as sue for it in the Division Court, and that the costs of those suits in which nothing is made are apt to exhaust the proceeds of suits in which the debt is recovered. As in Pharaoh's dream, the lean kine devour the fat kine. The percentage of unproductive suits is much greater than in any other Court, and is owing in a large measure to the absence of some one to watch the suit who would know the duties of the officers of the Court and hold them responsible for their performance. The same remark applies to the delay of bailiffs in making returns. A bailiff of one of these Courts seized goods and held them under seizure for six months, stating, whenever pressed by the plaintiff, that he could

not sell. The same goods were then seized for rent, and the bailiff, without notice to the plaintiff, withdrew, and in a few days under the sale for rent, more than enough to have satisfied the execution was realized. The Inspector's report shows that while in a certain Division Court claims to the amount of $28,000 were placed in suit, only $9,000 was paid into and out of Court. The records of the County Courts will show that in numerous instances suitors have held claims until the accrued interest would enable them to sue in those Courts.

Since the striking out of fictitious pleas, judgment may be obtained in the County Courts, when there is no defence, at least as speedily as in the Division Courts, and, owing to the more efficient machinery, usually with greater speed. A defendant was recently sued on the same day in the County Court and Division Court in the same city, and judgment was signed and execution issued in the County Court before he was even served in the Division Court.

The desire to furnish cheap law has already been pushed far enough, and, in the opinion of many, to the sacrifice of efficiency. The only dissatisfaction with the present administration of justice, if any exists, seems to be with the Division Courts. The strongest desire, however, is to grow a little more familiar with what we have. If the administration of justice is efficient, it ever has been, and ever must be, attended with expense. It would be as wise to have a cheap judiciary and cheap officers of Courts as to have the action itself framed and conducted by unpaid, and, as a consequence, unskilful hands.

2. To what extent would you advise the increase?

Answered above.

3. To what class of cases should it apply?

Answered above.

4. Besides an increase to the absolute jurisdiction, would it be expedient to give to parties an option to have cases of still larger amount (and whether or no without any limit) tried in the Division Courts where both parties concur?

This also is answered above, and we would merely add that the County Court affords at present all the facilities desired.

5. I should be glad if you would note what, from your experience, you regard as the probable advantages and inconveniences respectively of the increase proposed or recommended.

Answered above.

6. I desire also suggestions as to other amendments, which it would be necessary or proper to make as incident to the change: for example, as to additional security by officers, writ of arrest, &c.

As we are opposed to any change, we have not considered any incidental amendments.

7. Should there be an appeal in the new cases in which jurisdiction would be given?

Should there be any increase in jurisdiction, we are strongly of the opinion that there should be an appeal.

8. I find that some are for abolishing all jurisdiction to recover very small sums. Has your experience led you to form any opinion upon this point?

Our experience is that while Division Courts exist their jurisdiction in small sums should be undisturbed.

9. In case the subject of increasing the jurisdiction of the Division Courts is dealt with next session, I should be glad to consider any other amendments in the Division Court Act which it may be proper to introduce at the same time.

We are of the opinion that the parties to suits should be permitted to serve summonses, as in the other Courts, if they desire, and save the expense of service by an officer. We are also of opinion that the Judge should have power to make an order for payment, or in default commitment, upon the return of the first citation summons. We are further of the opinion that the plaintiff should have power to lay the venue in any Division Court in the County where the defendant resides or the cause of action arose, and the defendant be at liberty to move to change it on the ground of greater convenience.

10. The increase of jurisdiction may materially effect the emoluments of Sheriffs

and of some other officers. Is there any just arrangement which could be made by law to alleviate that objection?

As we do not approve of any increase, we have not considered this question.

11. It has been suggested that instead of so many fees to the Clerk, there would be great advantage in substituting one fee. I should like your opinion as to a change of this kind and as to what the fee should be.

A fixed sum of $1.25 should be paid the clerk on every case placed in suit, as his fee to judgment, subsequent fees as at present.

12. Would it be desirable, and in the interest of suitors, to permit a fee to be taxed to Solicitors, if employed, in the cases falling within any new jurisdiction, which may be given to the Division Courts; and what fees would you suggest?

If any increase should be made in the jurisdiction, most certainly a fee should be taxed of say $2, to be increased by the Judge to $10.

13. Would it be desirable, and in the interest of suitors, to allow any and what fees to Solicitors in any cases already within the jurisdiction of the Division Courts?

A fee of $2, to be increased by the Judge to $10, should be taxed.

14. Some have proposed, in view of an increased Division Court jurisdiction, to abolish the County Courts. Should this be done? or, on the other hand, should the jurisdiction be increased; and if so, to what amount? and, whether under any and what conditions?

The County Courts should not be abolished and their jurisdiction should be as at present, except as above.

15. I should be glad to know your opinion as to the expediency of limiting appeals from the judgments of the Superior Courts of Law or Equity; and in case you favour such limitation, what you would suggest as the proper limit.

We regard the present law as satisfactory.

Signed on behalf of the Bar,

James A. Henderson,
Chairman.

John L. Whiting,
Secretary.

Kingston, 8th November, 1878.

OSGOODE HALL AND TORONTO OF OLD.

The book before us * is an old friend in a new suit of clothes, furbished up with new pictures of old places and old faces renewed with new engravings—pictures which the "oldest inhabitant" would gloat and be garrulous over, and which his grand son would look at in awe, and wonder what we shall come to hereafter—faces that remind us of the early history of this Province, and the institution of our courts and schools of legal learning.

Some time since (August, 1874) we unearthed for the benefit of our readers a copy of a musty old volume of limited dimensions entitled *Curiæ Canadenses*, and found therein many things of much interest and provocative of no little merriment. Dr. Scadding's book is not, as that is, devoted exclusively to sketches of the Canadian Law Courts, but it nevertheless contains so much that every Canadian Law Student should know that we should pardon an examiner at a "preliminary" if he were to ask a few questions and (after the publication of these hints of ours) pluck without mercy any hapless juvenile, whose path of reading had not wandered in idle moments through its engrossing pages.

We long for the day when some competent brother will appear, to do for Osgoode Hall what Dr. Scadding has done for Toronto of Old—some one who has battled through the storms of his professional career and found safe anchorage in an honest competence and a snug library, whose memory is good and whose pencil has been active in taking notes. What a field there is certainly to recall

* Toronto of old: Collections and recollections illustrative of the Early Settlement and Social Life of the Capital of Ontario. By Henry Scadding, D. D., Canon of St. James, Toronto. Willing & Williamson, 1878.

the old worthies of the law in this Canada of ours, to recite their good deeds, to recount the incidents of their lives, to give form to their shadowy outlines and relate the thousand and one good things that have fallen from their lips. For, be it known to all, that if the English and Irish Bench have had their brilliant wits and profound lawyers so has the Bench of Upper Canada.

Some of them have gone to their long home. Alas! that too many of the polished pleasantries and razor-like sarcasms of a Draper have been lost for all time, whilst enough remain to make us the more regret those which have never passed into the traditions of Osgoode Hall. Even the memory of much that has fallen from the lips of ready wit of one of Ireland's many gifted and eloquent sons—one who still adorns our Bench—is rapidly fading away. Why were they not all spoken in a phonographic age, to be unwound for the benefit of those to come thereafter. This, by the by, reminds us of rather a good thing which happened to the learned judge we have "lastly hereinbefore referred to," which we trust he will pardon our publishing. Shortly before the last Parliamentary election, and previous also to an approaching Assize, he was speaking of the coming Circuit to one of the short-hand reporters who accompany the judges and do for them the work of ready writers, and asked the reporter in the innocence of his heart whom he "was going for this time." The man of the stenographic pencil, after looking over his shoulder, whispered cautiously: "I think, sir, I shall go for the Conservatives this time!" One can imagine the horror of the questioner at such an unexpected answer. It was rendered doubly terrible by his remembrance of the fact, that some quarter of a century before, he had been allied with that party which the reporter was now apparently joining, the latter having, it is said, recently been on the staff of a leading newspaper in the other camp, as well a supporter of its policy. However, as this unwitting judicial canvasser has not yet been put in the pillory by that journal for thus "approaching" one of his officials, we trust he has been forgiven, and that a character, conspicuous for unsullied impartiality, may not be blasted by a story which, though not "too good to be true," is "too good to be lost."

We had intended when we took up our pen, to have done something towards bringing before our readers some of the many things worth noticing, from our stand-point in, Dr. Scadding's *Toronto of Old*. It will perhaps be best to tell them that they should save a little on their consumption of midnight oil, and prolong their lives by shortening the hours of that laborious study which (we presume) is dragging many of them to an early grave, and, by means of this saving, purchase a copy of the book before us, and read for themselves all and much more than could here be told them.

We do trust, however, that some one will soon take up the work that we have shortly alluded to. We trust, moreover, that the much easier task of procuring the portraits of Hon. William Osgoode, first Chief Justice of Upper Canada, and others well known in and about the Lawyer's Hall, will be accomplished—a Hall which bears a name given at the suggestion of the greatest of Canada's sons, Sir John Beverley Robinson, who was also the generous donor of the six-acre field where now stands our Alma Mater. We shall take leave of it in the words of Plinius Secundus in *uses:*

"Farewell Toronto, of great glory,
Of valour, too, in modern story;
Farewell to Courts, to Lawyers' Hall,
The justice seats, both great and small;
Farewell attorneys, special pleaders,
Equity draftsmen and their readers.
Canadian laws and suits, to song
Of future bard henceforth belong."

SELECTIONS.

USE AND ABUSE OF LEGAL HOLIDAYS.

On Thursday last the Long Vacation came to an end, and from all quarters of the globe counsel and solicitors have returned, or are returning, to the metropolis. Next Saturday the Lord Chancellor will receive Her Majesty's Judges in the customary manner, the Courts of Law will reopen, and practitioners will be as busy as the depressed condition of commerce, manufactures, and agriculture will permit.

Before the lawyers settle down to business, there will be much shaking of hands, and many friendly inquiries. Foremost among the topics of interest will be how our friends have spent the Vacation, and how they have enjoyed themselves. Innumerable are the recreations by which barristers and solicitors seek to regain health and strength after the labours of a legal year; and, for the first few days, there are pleasant comparisons of happy Vacation days. "Have you had good sport on the moors and in the turnips?" for this year there have really been turnips. "Have you been to the Paris Exhibition?" The rival attractions of foreign travel, Alpine climbing, shooting, country visits, seaside sojourn, Doncaster and Newmarket races, are discussed with as much animation as is possible when the coming toil of ten months is in prospect. Since the primitive days when Parliament was prorogued and the Courts adjourned in order that the harvest of England might be gathered, the way to spend the Long Vacation has been a fruitful theme of debate.

Indeed this is a subject of more real importance than would at first sight appear; and just as the professional classes increase in this country, and the things that can be done multiply, so does the task of discovering how to spend a holiday become more worthy of attention. It is astonishing what a muddle some people make of their leisure time. Bit by bit as the cares of life, the love of money, devotion to business, and bodily infirmity creep on them, away goes even the desire of recreation. Multitudes of men, if lifted in a moment above the necessity of professional labour, would be miserable from the want of something to do, simply because they have made no effort either to retain the skill for manly exercises of which in their youth they were justly proud, or to acquire new modes of healthy recreation for body and mind. They cannot ride, or shoot, or play any game demanding physical exertion; they hate to travel, the country is to them inexpressibly dull, the seaside is vulgar and monotonous. So they reluctantly assent to a fortnight or three weeks' away from town to please their wives; and with that their Vacation begins and ends.

Now, of late years, persons of this class—and we speak not of Englishmen only—have hit upon an idea. They have got up conferences and congresses, and have sought to banish *ennui* by the pursuit of scientific, artistic, and philanthropical objects. This Vacation has been remarkable for meetings of this kind. There has been a Congress of Oriental ists at Florence; of German Naturalists at Cassel; an International Prison Congress at Stockholm; a Scandinavian Jurists Congress at Christiania; a Conference on International Law at Frankfort; a meeting of the Institut de Droit International at Paris; and a sitting of the Associated Chambers of Commerce at Sheffield. Last, but not least, there began on Wednesday at Cheltenham the annual meeting of the National Association for the Promotion of Social Science, not the least important section of which is the Society for Promoting the Amendment of the Law. The Codification of the Criminal Law, the Reform of Real Property Law, Summary Jurisdiction of Justices, Prison Discipline—these are among the subjects to which men who have their bread to earn devote themselves in their hour of leisure, from love

of their species and their art, and in the pursuit of recreation.

We do not desire to decry the voluntary labours of these holiday-makers. On the contrary, we have always recognised their zeal, and the valuable results flowing from their industry; nevertheless we may point to this modern method of using leisure as a phenomenon of modern life. The manual labourers of our time do not work much more than half as hard as their forefathers; the professional classes seem eager to surpass their predecessors in industry. Even these voluntary workers may boast themselves vastly superior in wisdom to the counsel who spend their Long Vacation in the Temple and Lincoln's Inn, either picking up the crumbs that fall from the rich man's table, or writing legal text-books.

The truth is that life is too short, and the mental and physical constitution of mankind too weak, to stand the pressure of uninterrupted professional labour. Those who fancy that they can devote themselves to law for twelve months in the year, should read Dr. Carpenter's "Mental Physiology" and Dr. Richardson on "Health," and should also regard the examples around them of the necessary effect of unremitting toil—"neque semper arcum tendit Apollo." If we had two existences in this life, and after thirty years of unbroken industry we were allowed thirty years of healthy leisure in which to enjoy the wealth we had earned, the reasonable course would be to give up youth and manhood to severe and protracted labour. But it is not so; and he is most wise who so tempers toil with relaxation as to preserve his mental and bodily vigour to old age.

This admirable result can only be achieved by preserving the physical energy, and cultivating the taste for those bodily exercises which become a man. Wealth and the highest honours of the profession are earned too dearly, if health is sacrificed in the pursuit. In all times members of the legal profession have been celebrated for their capacity for enjoying their hours of ease after a healthy and rational manner. They are noted for longevity beyond all other classes of industrial society, and they ought not now to be induced by the charms either of congresses or Long Vacation business to destroy the greatest of all blessings—"mens sana in corpore sano."—*Law Journal.*

JUDICIAL EMOLUMENTS.

If there be consolation in the reflection that others are still worse circumstanced than ourselves, the underpaid judiciary of Canada may find a crumb of comfort in the fact that in Vermont the salaries of the Supreme Court judges are placed at the figure of $2,500 per annum, and a bill is actually before the Legislature to reduce this magnificent emolument to $2,000. It is clear that the Vermonters believe in plain living as the best regimen for hard-worked men. Our contemporary, the *Albany Law Journal* pertinently remarks: "A salary of $2,500 is not usually regarded as extravagant for a competent judge of a court of last resort, even in those States where judicial talents is not rated high. The Supreme Court of Vermont has always enjoyed a good reputation for ability, but we much doubt if that reputation can be maintained at the figures proposed. Even the most disinterested judge could hardly afford to serve the State for remuneration so inadequate and so much below what he could make at the bar."

In connection with this topic, we may refer to the scale of remuneration in some other places. An official report which has just appeared in France, states that the salaries of the Court of Cassation, consisting of fifty-six members, are equal in the aggregate to $210,000. The salary of the first president is $6,000 per annum. The other three presidents each receive $5,000 a year. The forty-five councillors have $3,600 each, while the salaries of the six procureurs-généraux, and avocats-généraux vary from $3,600 to $6,000. The cost of the several courts of appeal is estimated at $1,207,260, which is divided amongst 26 first presidents, 92 other presidents, 617 councillors, 94 procureurs généraux, and avocats généraux, and 61 substitutes. The salary of the first presidents is usually $3,000, while the other presidents for the most part get only $1,500.

If we wish to go where judicial talent

seems to have been recompensed on the humblest scale we must take ourselves to Cyprus, the new acquisition of Great Britain. The salary of the judges who formerly constituted the Court at Larnaca, according to the *Times'* correspondent, was about £2 per month; but it is supposed that "a certain class of fees from suitors, not strictly defined by law, were found evocative of zeal." However this may be, the addition of an English assessor to the Court has caused the collapse of the tribunal. All irregular fees having ceased under the new *régime*, one of the members of the Court has resigned, and another has persistently absented himself on private business, and the authorities are puzzled to devise a means of supplying the vacancies. The *Solicitors' Journal* suggests, in case all other measures fail, that they should resume the system of judicial remuneration which for several hundred years contented the judges of another island within the British dominions. The judges of the Royal Court of Jersey, down to a recent date, were remunerated by a dinner at the opening of the *assize d'héritage*, which was paid for by the Queen's Receiver out of the revenues arising from the crown property in the island.—*Legal News.*

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED IN ADVANCE, BY ORDER OF THE LAW SOCIETY.

CHANCERY.

Chancellor.] [Nov. 11.

LEY v. WRIGHT.

Injunction—Execution creditor.

Held, following the ruling in *Wason* v. *Carpenter*, 13 Gr. 329, that a judgment creditor with a *fi. fa*, against lands in the hands of the Sheriff is entitled to an injunction against the execution debtor to restrain the felling of timber to such an extent as would impair the value of the security.

Chancellor.] [Nov. 11.

FOLEY v. FOLEY.

Amending bill at hearing—Practice.

By one paragraph of the plaintiff's bill, an ouster by the defendant was alleged at such a date, and continued possession since, as would, if true, have defeated the plaintiff's claim to relief, but this statement was not proved, and the Court being of opinion that the title of the plaintiff was clearly made out, directed the objectionable paragraph to be expunged, it being evident from the course the suit had taken that the defendant would not be taken at any disadvantage thereby.

Chancellor.] [Nov. 11.

GAYLOR v. MORRISON.

Infant—Fraudulent concealment—Fraudulent conveyance.

The defendant being the owner of land, six months before attaining majority applied to the plaintiff for a loan of money on the security thereof, concealing the fact of his infancy, and on the contrary asserting to the solicitor of the plaintiff that he was of full age, and the plaintiff in good faith made the advance, taking a mortgage on the land to secure its repayment. The money thus obtained the mortgagor applied to the purchase of other lands which, together with those already mortgaged to the plaintiff, he immediately, after attaining 21, conveyed, without consideration, to his mother:

Held, that the conveyance to the mother was fraudulent and void as against the plaintiff, who was declared entitled to be paid the full amount of principal and interest due on the mortgage, together with the costs of suit, or in default that the lands should be sold.

Chancellor.] [Nov. 11.

MACHAR v. VANDEWATER.

Principal and agent—Vendor and purchaser.

The rule is that the agent of an intending purchaser is bound to communicate to his principal any information coming to his knowledge that can affect his principal's determination as to proceeding with or abandoning the proposed purchase; but the same conduct is not required to be exercised by the agent in selling to such principal property of the same kind which, to the knowledge of the principal, belongs to the agent: Therefore where the plaintiff applied to the defendant to ascertain at what price he could obtain certain shares in an Insurance Company, and for which services the plaintiff offered to pay him a commission (though declined by the defendant), and in answer to the agent the Manager of the Company made such statements as shewed that the stock was utterly worthless, notwithstanding which the defendant allowed the purchase to be concluded without communicating the information then received; the Court ordered the agent to recoup the principal the amount of his pur-

chase money with interest, and pay the costs of the suit; although, in respect of 30 shares of the same stock sold by the agent as his own, the Court refused to grant any relief.

Chancellor.] [Nov. 18.

Fleury v. Pringle.

Fraudulent conveyance—Husband and wife.

A debtor, in insolvent circumstances, and his wife conveyed land subject, to a mortgage in which the wife had joined, to a *bona fide* purchaser, and took a note in favour of the wife for better than half of the purchase money, the balance being paid to the husband. This note was subsequently transferred by the wife to J. M. on the conveyance to her of the vendor's equity of redemption in other lands:

Held, that an execution creditor of the husband could follow the amount, so paid, into the lands purchased from J. M.

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

South Grenville Election.

Re-count of ballots by County Judge—Marked ballots—Identification of voter.

Held, that a marked ballot should not be struck out unless the mark by which the voter could be identified was made by him or with his privity or consent. Therefore, when the ballot was given to the voter in proper shape, properly marked by him, and handed to the Deputy Returning Officer who put it in the ballot box without tearing off the counterfoil upon which was a number by which the voter could have been identified, the vote was *held* good.

But where a Deputy Returning Officer put upon the ballots numbers corresponding to the numbers opposite the names of voters on the pointed list, and the voters used these, and returned them to the Deputy, *held* that they adopted his act and that the votes were bad, and should be struck off.

[Brockville, October, 1878.

Upon recounting the ballots allowed by the Deputy Returning Officer for the West Ward of the Town of Prescott, it was ascertained that a ballot had been counted for Mr. Wiser, from which the Deputy Returning Officer had omitted to tear the counterfoil, and the number appeared upon the latter.

French contended that the ballot-paper must be rejected.

Fraser, Q. C, contra, argued that the figure or number did not appear upon the ballot paper, but upon the counterfoil, and that at any rate the error or omission was the fault of the Deputy Returning Officer and not of the elector, and that the voter having donewhat the law required and no more, should not be deprived of his franchise

French, contra, contended that the figure upon the counterfoil was a "mark by which the voter could be identified," as a corresponding figure had been placed before the name of the voter upon the poll book.

The Monck Election Case, 12 C. L. J., 113, was cited.

McDonald, Junior County Judge. In my opinion the Deputy Returning Officer committed a grave error in omitting to tear off the counterfoil; although I am satisfied that it was an unintentional mistake.

I was at first inclined to think that there was something in Mr. Fraser's contention that the mark was not upon the ballot paper as it was on the counterfoil. But more mature consideration has satisfied me that the mark is to all intents and purposes upon the ballot paper. In my opinion, the intention of the law is that only those ballot papers are to be rejected upon which there is a writing or mark by which the voter could be identified, made by him or with his privity or consent. To hold otherwise, would be a great injustice to an elector. A Deputy Returning Officer, who wished to know how a particular elector voted, might easily do so by tearing off the counterfoil in a particular way or making some slight mark which would at the moment escape the attention of the voter and scrutineers, and yet, if Mr. French's contention was to prevail, the vote would have to be rejected. As contended by Mr. Fraser, this would give a Deputy Returning Officer practically the power to disfranchise a constituency. I cannot imagine that the Legislature intended to confer such powers or to make such a stringent enactment as Mr. French argues for. It is my duty to lean as far as I properly can in favour of the franchise, and therefore, even if I were in doubt, it would be my duty to confirm the decision of the Deputy Returning Officer and allow the vote; but I really have no doubt upon the point, and consequently allow the vote to Mr. Wiser.

In the first polling sub-division of the Township of Augusta, the Deputy Returning Officer placed upon each ballot paper as it was given

voter's name on the printed list, It was then given to the voter. and after he had entered his vote and returned it, the Deputy deposited it in the box. Although the Judge declined to take any evidence (holding he had no power to do so), it was admitted that this course of proceeding was kept up until a late hour of the day, when an elector declined to use a ballot paper upon which such a number was written. This appeared to have opened the eyes of the Deputy Returning Officer to his mistake, and he discontinued the practice.

French contended that the votes were bad.

Fraser, Q. C., contra.

McDONALD, Junior Judge, held that the votes were bad, inasmuch as the voter by using the ballot paper adopted the act of the Deputy Returning Officer, and voluntarily entered his vote upon a ballot paper upon which was a mark by which he could be identified. However, as the point was one of great importance, he signified his desire of obtaining the opinion of a Superior Court Judge at Toronto.

ENGLISH REPORTS.

DIGEST OF THE ENGLISH LAW REPORTS FOR MAY, JUNE, AND JULY, 1878.

(*Continued from page 303*)

2. The plaintiff and the defendant company were tenants of adjoining land under the same lessor, and the company's lease required it to maintain a fence around its land, for the benefit of the lessor and his other tenants. Twenty years ago, the predecessors of the company in title built a wire fence about the land, and the company repaired it from time to time; but in lapse of time the wires rusted, and pieces fell off into the grass on the plaintiff's land, and plaintiff's cow grazing there swallowed a piece from the effects of which she died. *Held*, that the company was liable for the value of the cow.—*Firth* v. *The Bowling Iron Company*, 3 C. P. D. 254.

See DEMURRER; RAILWAY, 1.

NUPTIAL SETTLEMENT.—See SETTLEMENT, 1, 2.

OFFICER.—See QUO WARRANTO.

ONUS PROBANDI.—See SLANDER.

OPTION TO PURCHASE. See INSURANCE.

ORIGINAL GIFT—See WILL, 3.

OSTENSIBLE PARTNER.—See PARTNERSHIP, 3.

PARTIES. — See HUSBAND AND WIFE, 2, 3; MORTGAGE, 2.

PARTNERSHIP.

1. By partnership articles between the plaintiff and the defendant, the defendant covenanted not to "engage in any trade or business except upon the account and for the benefit of the partnership." After the partnership had been dissolved, the plaintiff learned that the defendant had been, during the partnership, a partner in another business, and had realized profits from it; and he thereupon filed two bills, one for an account of defendant's profits in the other business, and another for a declaration that defendant's interest in the other business was assets of the partnership with himself. The first bill was dismissed without costs If the plaintiff had any case, it was a case for damages. The second bill was dismissed with costs.—*Dean* v. *McDowell*. *Same* v. *Same*, 8. Ch. D. 345.

2. In 1861, partnership articles were entered into between the plaintiff and the defendant to carry on the business of ironmongers, for twenty-one years, at the R. premises, "or in such other place or places as the said parties hereto may agree upon." In 1863, the partners agreed that henceforth the business should include that of ironfounders; and they purchased foundry works at Q., where the foundry business was carried on until 1876, when the lease of the Q. premises ran out. The plaintiff declined to renew the lease, and wished to give up the foundry business. The defendant thought otherwise, and finally took a lease of the Q. premises in his own name, but, as he said, for the firm, and proposed to continue the foundry business there. Plaintiff moved for an injunction and for a dissolution of the partnership and for a receiver. *Held*, that the defendant had no authority to renew the lease, and the plaintiff was entitled to an injunction against carrying on the foundry business in the name and with the assets of the firm. Receiver refused. *Clements* v. *Norris*, 8 Ch. D. 129.

3. In 1875, the firm of H., C., & P. was dissolved, and notice was given by them that the business would be carried on by P. alone. P. undertook to pay H. a balance due him from the old firm. From that time, the business was carried on under the name of P., Son & Co. The bank account was in that name; and the son drew and accepted bills, negotiated loans, and sometimes ordered goods, in the name of the firm, and performed all these acts with authority. He never sold goods. On the outside of the premises the name P. alone ap-

peared. In 1877, the firm failed, and the creditors prepared a petition in bankruptcy against P., trading as P., Son & Co.; but it was finally decided to file the petition against P. and the son, as joint traders, and a resolution for liquidation by arrangement was registered. P. had no separate estate apart from his interest in the business; and H., being the only separate creditor, appealed from the order to register, and the registration was cancelled. A firm creditor then filed a petition in bankruptcy against P. and the son, as a firm, and they were adjudged bankrupt, with their consent. An application by H. to annul the adjudication was refused, and no appeal taken. H. then applied for a declaration that the assets of the business be declared separate estate of P. Both P. and the son testified that the son was not a partner, though he took the position of partner, and that it was the intention to make him one if the business turned out profitable; as, however, was not the case. The petitioning creditor and eight other creditors (there being eighty-two in all) testified that they always considered P. & Son as partners, and the petitioning creditor said the debtors had told him they were partners. P. told a creditor on one occasion that his son had married a lady of means, and on that ground asked for further credit, which was given him. *Held*, that there was a partnership, and the assets must be treated as joint estate.—*Ex parte Hayman. In re Pulsford*, 8 Ch. D. 11.

See Arbitration; Bank, 1.

Passenger.—See Railway, 1.

Patent.—See Trade-mark, 2.

Penalty.—See Judgment.

Pleading and Practice.—See Attorney and Client, 1, 2; Costs; Demurrer; Husband and Wife, 2, 3; Partnership, 1, 2; Quo Warranto; Solicitor.

Post-nuptial Settlement.—See Settlement, 1.

Power.—See Infant; Settlement, 2.

Practice.—See Pleading and Practice.

Principal and Agent.

In 1868, the plaintiff, registered owner of a steamship, consigned it to G. in Japan for sale. G., with the plaintiff's approval, employed the defendant to sell the vessel, and a minimum limit of $90,000 net cash was fixed as the price. The defendant tried to sell, but without success, and had some correspondence with G., in which he suggested that he would become the purchaser at the price fixed for cash, and himself run the risk of obtaining more on a re-sale, by means of giving credit; but no agreement was come to on the subject. March 12, 1860, he wrote that he would take the vessel himself at $90,000. March 17, he sold her to a Japanese prince for $160,000: $75,000 cash, and the balance credit. This sale was the result of negotiations extending over some time. The plaintiff received the $90,000 from the defendant through G., and the defendant finally received the $160,000 in full from the prince. The plaintiff did not know that the defendant was the purchaser, or of the resale, until June, 1869, when the transaction was ended, and he made no claim on defendant until 1873, although they met frequently. *Held*, that the defendant must account to the plaintiff for the profit made by the resale, and that the plaintiff had not forfeited his right to relief by his laches or by acquiescence.—*De Bussche* v. *Alt*, 8 Ch. D. 286.

See Bank, 2.

Principal and Surety.—See Surety.

Privileged Communication.—See Attorney and Client, 1, 2.

Privity of Contract.—See Principal and Agent.

Profits.—See Partnership.

Promissory Notes.—See Bills and Notes.

Proximate Cause.—See Negligence, 1.

Public Corporation.—See Corporation.

Quiet Enjoyment.—See Landlord and Tenant, 3.

Quo Warranto.

An officer of a board of health was illegally dismissed from his office. On application for *quo warranto* by him, it appeared that he could be legally dismissed by the authority complained of, and that, as matter of fact, he would be if reinstated; and the rule was refused.—*Ex parte Richards*, 3 Q. B. D. 368.

Railway.

1. Plaintiff, travelling on defendant's road, requested a servant of the road to take charge of and put into his compartment his hand-bag, while he went for some lunch. The servant promised to look after it, put it into the compartment, and turned the key, and, when plaintiff came back, said it was all right. On entering the compartment, plaintiff found the bag was missing. The jury found that the proper place for the bag was in the compartment; that the servant was acting as servant of the company, and within the scope of his employment; that there was no negligence on the part of anybody; and that the bag was stolen by some one unknown. *Held*, that the plaintiff could not recover. The company was not liable as a common carrier, not having complete control of the goods, nor as insurer.—*Bergheim* v. *The Great Eastern Railway Co.*, 3 C. P. D. 221.

2. 8 Vict. c. 20, enacts that "if any person travel . . . in any carriage" . . . of a railway company, without paying his fare, "and with intent to avoid payment," . . . such person shall forfeit 40s.; that the company may make regulations "for regulating the travelling upon . . . the railway," subject to the provisions of the Act; that it may make by-laws for the better enforcing of such regulations, provided, "such by-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provision of this or the special Act; . . . and any person offending against any such by-law shall forfeit . . . any sum not exceeding £5 . . . as a penalty." The respondent company, accordingly, made a by-law as follows: "Any person travelling . . . in a carriage . . . of a superior class to that for which his ticket was issued, is hereby subject to a penalty not exceeding 40s., and shall, in addition, be liable to pay his fare according to the class of carriage in which he is travelling, . . . unless he shows that he had no intention to defraud." Defendant was convicted in a penalty of 10s. under this by-law of riding in a first-class carriage with a second-class ticket, but without intending to defraud the company. *Held*, that the conviction could not stand; for, without deciding whether the by-law was to be construed as exempting from the penalty as well as from the double fare, in the absence of intent to defraud, if the by-law undertook to dispense with proof of intent to defraud, it was *ultra vires*, and void by said 8 Vict. c. 20.—*Bentham* v. *Hoyle*, 3 Q. B. D. 289.

3. A railway company, in undertaking to convey luggage to a station, thereby contracts to keep it safely for such a time after its arrival reasonably necessary to enable the passenger to get it and take it away.—*Patscheider* v. *The Great Western Railway Co.*, 3 Ex. D. 153.

Ratification.—See Settlement, 1.

Receiver.—See Arbitration.

Receipt.—See Waiver.

Relation.—See Insurance.

Remote Damages.—See Negligence, 1.

Residuary Legatee.—See Will, 1.

Resulting Trust.—See Settlement, 2.

Right of Way.—See Way.

Sale.

1. W. Blenkiron & Son, a well-known and responsible firm, did business under that style at 123 Wood Street. One A. Blenkarn ordered goods of the respondents by letter, dated "37 Wood Street." The letters were signed without any initial, and in a manner to look very much like "Blenkiron & Co." Respondents sent the goods to "Messrs. Blenkiron & Co., 37 Wood Street," supposing they were dealing with W. Blenkiron & Son. A. Blenkarn was subsequently convicted for falsely pretending, in obtaining these goods, that he was W. Blenkiron & Son. Meantime, the appellants had bought in good faith some of the goods of A. Blenkarn. The respondents brought trover for the goods. *Held*, that there was no contract of sale between the respondents and A. Blenkarn, and accordingly he could give, and the appellants could acquire, no title to them.—*Cundy* v. *Lindsay*, 3 App. Cas. 459; s. c. 1 Q. B. D. 348; 2 Q. B. D. 96; Am. Law Rev. 104, 702.

2. Plaintiff and one P. made a contract for a lot of lumber, to be purchased of P. by plaintiff, and shipped from time to time as it was ready. Subsequently, P. shipped a lot of six hundred tons on a ship chartered by him, by the order and for the account of the plaintiff. The bills of lading stated the goods to be shipped by P., to be delivered "to order or assigns" of P. Plaintiff insured the cargo. P. drew a bill of exchange on the plaintiff, and indorsed it to one C., with the bills of lading. C. discounted the bill at defendant's bank, handing the bank the bills of lading with it. Plaintiff declined to accept the bill without the bills of lading. Thereupon P. drew a second bill to the order of C. on the plaintiff, which was given the defendants in place of the first, "upon the terms of the delivery of the bills of lading to the plaintiff, upon payment of the second bill of exchange." The bills of lading and the bill of exchange reached the plaintiff the same day, the bills of lading "to be given up against payment of" the draft. Plaintiff refused to accept the bill of exchange, and returned it to defendant bank, stating he should pay it at maturity. The cargo was then entered at the custom-house in the name of the defendant. Afterwards, plaintiff offered to pay the bill on receiving the bills of lading, and to give a guarantee for the freight, which the defendant bank pretended to think itself liable for. This was refused, and defendant subsequently sold the cargo. The jury found that P., as well as plaintiff, intended the cargo should be the property of plaintiff on shipment, subject to a lien for the price. *Held*, that the property in the cargo had passed to plaintiff, and he could recover from defendant bank.—*Mirabita* v. *The Imperial Ottoman Bank*, 3 Ex. D. 164.

3. Property was sold at public auction under certain conditions. The auctioneer entered in his book the names of the seller and buyer, the description of the property and the price, but made no reference to the conditions. *Held*,

not to be a sufficient memorandum in writing to satisfy the Statute of Frauds.—*Rishton* v. *Whatmore*, 8 Ch. D. 467.

4. In 1873, G. borrowed £450 of H., giving a verbal promise to give a bill of sale when demanded. H. died in 1874, and her executors were told by G. that he had promised to give a bill of sale, and was ready to do so at any time. They did not demand it; and, in 1877, the executors, hearing that a writ had been served on G., asked for and received a bill of sale of all G.'s property, except book-debts. There was no recital as to when the advance was made, nor of a past promise. The document was duly registered the next day; and two weeks afterwards, being the 17th, G. was served with a debtor's summons. G. notified the executors, who took possession on the 19th, advertised and sold the property on the 23rd. Subsequently, G. was adjudged bankrupt. *Held*, that the bill of sale was not good against creditors.—*In re Gibson. Ex parte Bolland*, 8 Ch. D. 230.

Salvage.

1. In an action of salvage against a ship on behalf of the owners, masters, and crew of two steam-tugs, it appeared that one tug, while towing a vessel, saw the ship ashore and in distress, and went off her course to notify the other tug of the accident, and the other tug proceeded to the spot, and saved the ship. *Held*, that both tugs were entitled to salvage. —*The Sarah*, 3 P. D. 39.

2. The steamship S., in distress from a collision, signalled the steamship C., and transferred to her the passengers and some of the cargo. Attempts to tow the S. by the C. failed, and she was abandoned, and her crew were taken on board the C., and they, with the passengers and cargo saved, landed in port. In an action by the owners, master, and crew of the C., against the saved cargo of the S., life-salvage was claimed, and also salvage for services to the S., and in saving the cargo. The owners of the cargo cited in the owners of the S., who appeared. The owners of the cargo asked that such portion of the salvage awarded as was life-salvage the owners of the S. should be required to pay. Refused, on ground that no property of the owners of the S. was saved. —*The Cargo ex Sarpadon*, 3 P. D. 28.

See Shipping and Admiralty.

Separate Estate.—See Husband and Wife, 2.

Separate Use.—See Married Women, 1, 2.

Service of Process.—See Sheriff, 1, 2.

Set-off.—See Costs.

Settlement.

1. Defendant, when an infant, agreed to give seven houses to his intended wife, when he came of age. Fourteen years after the marriage, he executed a post-nuptial settlement, giving nine houses—among which were the aforesaid seven—to trustees, for the separate use to his wife for life, then to himself for life, with power of appointment in the wife as to the disposition after the death of the survivor, and, in default of appointment, in trust to the wife in fee. No reference was made to the above agreement, and it was recited that he had made no settlement in favour of his wife on occasion of his marriage. Afterwards, he agreed to sell three of the houses; and, in an action for specific performance, *held*, that there had been no ratification of the agreement as to the seven houses made when the defendant was an infant; that the post-nuptial settlement was voluntary, and there must be specified performance as to the three houses. *Honywood* v. *Honywood*, (20 Beav. 451) incorrectly reported, and not much to be relied upon, per Jessel, M. R.—*Trowell* v. *Shenton*, 8 Ch. D. 318.

2. In 1855, a marriage settlement was executed by D., to make provisions for his intended wife and the children of the marriage, by which land was given in trust to such uses, &c., as D. and his wife should appoint, and, in default of appointment, to D. for life; the remainder to the wife for life; remainder to the children as tenants in common in fee; remainder, in case of the death of all the children under twenty-one without issue, to the heirs and assigns of D. There was a proviso that the trustee or his successor should, after death of the survivor of D. and his wife, leaving a minor child, receive the rents and profits of such child's share, and, after paying for the child's maintenance, &c., invest the balance, and accumulate it for those who should become ultimately entitled to the share from which the same came. There was no power of sale. In 1860, D. and his wife mortgaged the land to E., and appointed it to him, subject to redemption; and E. covenanted to convey on payment of the debt and costs to such uses, &c., as the property was then subject to. There was a power of sale providing that the balance of proceeds of the sale, after deducting the debt and costs, should be paid over to "D., his heirs, executors, administrators, or assigns." In 1869, D. died intestate, leaving his wife and children surviving. In 1875, the mortgagee sold the premises under his power, and held the balance subject to the order of the Court. *Held*, that D.'s administratrix took the surplus as personal property. This was no resultant trust.—*Jones* v. *Davies*, 8 Ch. D. 205.

See Husband and Wife, 1; Married Women, 2.

DIGEST OF ENGLISH LAW REPORTS.

SHERIFF.

1. A sheriff, with a writ *fi. fa.*, took a keeper to the debtor's house, showed the writ, and said, if the amount was not paid, the keeper would remain in possession. The debtor paid at once. *Held*, that there had been a seizure, and the sheriff was entitled to poundage.—*Bissick* v. *The Bath Colliery Co. Ex parte Bissicks*, 3 Ex. D. 174; s. c. 2 Ex. D. 459; 12 Am. Law Rev. 508.

2. A sheriff, under a *fi. fa.* writ, made a seizure of goods, and was then paid the amount by defendant, without sale. *Held*, that there had been a "levy," and he was entitled to poundage. *Roe* v. *Hammond* (2 C. P. D. 300) overruled.—*Mortimore* v. *Cragg*, 3 C. P. D. 216.

SLANDER.

Where the Court has laid down that the occasion on which the words complained of were uttered was privileged, it is for the plaintiff to show affirmatively that the defendant acted maliciously, or from an improper motive, and not from a sense of his duty, and *bona fide*.—*Clark* v. *Molyneux*, 3 Q. B. D. 237.

SOLICITOR.

Where a plaintiff's solicitors of record in London employed his country solicitors to get evidence, and one member of the country firm did all the business alone, but had some affidavits sworn to before his partner, *held*, that these affidavits were inadmissible.—*Duke of Northumberland* v. *Todd*, 7 Ch. D. 777.

See ATTORNEY AND CLIENT, 1, 2.

SPECIFIC LEGACY.—See WILL, 5.

SPECIFIC PERFORMANCE.—See CONTRACT, 2.

STATUTE.—See RAILWAY, 2; TAXES.

STATUTE OF FRAUDS.—See FRAUDS, STATUTE OF.

SUB-AGENT.—See PRINCIPAL AND AGENT.

SURETY.

One E., an insurance agent, committed acts which his principal, an insurance company, was advised amounted to embezzlement, and the company ordered his arrest. Thereupon, some friends of E. had an interview with the company's manager, and proposed an arrangement by which the company should be secured and E. go free; but the manager refused to consider it. Later on the same day, the company was advised that E.'s acts did not amount to embezzlement, and the order for his arrest was thereupon countermanded. Two days after, E.'s friends, not knowing the order for arrest had been stopped, and not being informed of it by the company, made arrangement by which they became surety for E., by depositing a sum to be held as collateral security for the payment by E. of the amounts due the company from him. The sums not being paid, the company sued for this deposit against the sureties, and the latter brought a cross-action to annul the agreement. *Held*, that the agreement was not binding on the sureties, as having been made by them under the supposition that E. was liable to be arrested, to which supposition they were led by the company. *Semble*, also, that the agreement was bad, as savouring of compounding with felony; but the Court would interfere actively, and not stay its hand in such a case.—*Davies* v. *The London and Provincial Marine Ins. Co.*, 8 Ch. D. 469.

TAXES.

A taxing act must be construed strictly, *per* the Lord Chancellor (LORD CAIRNS).—*Cox* v. *Rabbits*, App. 3 Cas. 473.

TENANT IN COMMON.—See TRUST, 1.

THELLUSON ACT.—See WILL, 2.

TRADE-MARK.

1. In 1830, plaintiffs began making, at Angostura, Venezuela, a fluid which they called "Aromatic Bitters," and sold in England and other countries. In 1847, the name of the town of Angostura was changed to Ciudad Bolivar; but it continued to be called in England by the old name, and plaintiffs' stuff was generally known there as "Angostura Bitters." In 1870, defendant began making a different fluid at Ciudad Bolivar, from a process discovered by him at Upata. This he called "Aromatic Bitters;" but being enjoined in a suit by the plaintiff, by the English court at Trinidad, in 1874, from using that name, he adopted that of "Angostura Bitters." The bottles used by him were similar in size and shape to those of plaintiffs; and the words and descriptions on the wrapper were very similar, except that it was stated distinctly enough that the stuff was prepared by defendant, while plaintiffs had a like statement as to themselves. Defendant had his wrapper duly registered at Stationers' Hall. In 1875, plaintiffs removed to Port of Spain, Trinidad, and altered their wrapper by having printed thereon "Aromatic Bitters or Angostura Bitters," and notice of the removal. There was evidence that persons of skill had bought the defendant's bitters thinking they were those of plaintiffs. In an action to restrain the defendant from using the name "Angostura Bitters," and from imitating plaintiffs' wrapper so as to mislead the public, *held*, that the injunction should issue; but that if the defendant had discovered the plaintiffs' secret, and made the same stuff, he could not be enjoined.—*Siegert* v. *Findlater*, 7 Ch. D. 801.

2. The plaintiff got a patent for a kind of floor-cloth, in 1863, and continued the sole manufacturer thereof until the expiration of

the patent. He devised the name "Linoleum" for his article, and no one else had ever undertaken to use that name until after the expiration of the patent, when the defendants proposed to manufacture the article under that name. *Held*, that the plaintiff was not entitled to protection in the sole use of the name.—*Linoleum Manufacturing Co.* v. *Nairn*, 7 Ch. 834.

3. W. owned all the collieries in the parish of R., except one belonging to the "W. Coal Co." For some time prior to 1873, W. worked her collieries, using her own name and the designation "The R. Coal Works." In 1868, the defendants set up at R. as coal merchants, styling themselves "The R. Coal Company." Thereupon, in 1873, the plaintiff changed her style to "W.'s R. Collieries." In 1875, defendants bought out C. & Co., bankrupt retail coal-dealers at G., in Surrey, and continued their business there, advertising themselves "The R. Colliery Proprietors, . . . (Late C. & Co.) . . . Supply direct from the collieries." This was followed by a specification of kinds of coal mined at plaintiff's R. collieries. On their office they put "The R. Colliery Proprietors Coal Office." The plaintiff remonstrated, and the sign was changed to "The R. Coal Co., Colliery Proprietors. Coal Office." Subsequently, in 1876, defendants for the first time became proprietors of a colliery, by leasing not one in the parish of R., but within a district called the "R. District," all the coal from which was known in some places as "R. Coal." *Held*, that the defendants were not authorized to use the designation "The R. Colliery Proprietors," they having no colliery in the parish of R., or to use any form implying that they sold coal from that parish; and that it was unnecessary for the plaintiff to prove actual damage to entitle her to prevail.—*Braham* v. *Beachin*, 7 Ch. D. 848.

Trust.

1. A testatrix devised real estate to D., her solicitor, and M., a neighbour, whom she saw very little of, as tenants in common, absolutely and free from any trust. She had told her solicitor that she wished to leave her property for charitable purposes, and he had explained to her that she could not so dispose of her real estate. M. had no communication with the testatrix about the matter, and did not know until her death that the property had been given to him. D. explained to her, when she proposed to leave the property to D. and M. absolutely, that they could put the money in their own pockets if they chose; and she replied that she was aware of that, and intended to give it absolutely, and she had no doubt they would make a good use of it. Appended to the will was a statement signed by the testatrix stating that she had made the gift to enable D. and M. to assist certain institutions in which they knew she was interested, in case they saw fit, and not otherwise; but that she had imposed no secret trust upon them, nor had they given her any promise to apply the money in any way but for their personal benefit. *Held*, that there was no trust imposed either upon D. or M., and the devise was good.—*Rowbotham* v. *Dunnett*, 8 Ch. D. 430.

2. Bequest of £3,000 to trustees, to hold for the three minor daughters of testator's deceased daughter until the youngest survivor thereof attained twenty-one, and then to divide the principal and accumulation among the survivors. The trustees were directed to apply the whole or such part of the income, as the trustees should think fit, to the maintenance and education of the daughters while under twenty-one. The father of the legatees applied to have the whole of the income paid him for their education and maintenance, instead of a small portion thereof allowed him by the trustees. His income was only £200 a year; he had five children by a second marriage, and had contracted debts in maintaining the three daughters of his first wife at school. *Held*, that the court could control the discretion given the trustees; and it was ordered that the trustees pay the whole of the income to the father for the future, as well as what had already been withheld and accumulated.—*In re Hodges. Davey* v. *Ward* 7 Ch. D. 754.

See Bank, 1.

Ultra Vires.—See Contract, 2; Railway, 2.

Vendor and Purchaser.—See Sale.

Voluntary Settlement.—See Settlement, 1.

Waiver.

The defendant executed a deed covenanting to pay the plaintiff £400 on demand with interest; and it was provided that the debt should run two years, if the interest should be "punctually" paid; and the defendant charged his leaseholds with the debt, and agreed to give a formal mortgage on them on demand. Six months' interest becoming due and not being paid, the plaintiff demanded the £400 and interest or a formal mortgage. The defendant paid the interest, and the plaintiff gave a receipt for it "without prejudice to the notice." He offered to accept an instalment of £100. *Held*, that neither receipt of the interest nor the unaccepted offer operated as a waiver of plaintiff's right to recover the whole at once.—*Keene* v. *Biscoe*, 8 Ch. D. 201.

WAY.

The defendant owned a house with a gateway under it, and a yard in the rear, partly covered. The road under the gateway and the yard were paved with stones, and there was no other approach to defendant's stables in the rear, where he kept his horses; allowing his vans, when not in use, to stand in the yard. Defendant leased the yard to the plaintiff, with power to erect a building suitable for his business of gas-engineer. Plaintiff was not "to obstruct the entrance and gateway, except by the use of the entrance for the purposes of ingress and egress." Plaintiff erected his building, to which, as to the stables, there was no approach except by the paved way. Plaintiff applied for an injunction to restrain the defendant from obstructing the way with his vans, and alleging damage to his business from such obstruction. *Held*, that under the lease he had a general right of way unobstructed.—*Cannon* v. *Villars*, 8 Ch. D. 415.

WILL.

1. A testator directed his executors "to pay my . . . debts out of the proceeds of my property." Then followed, "Whereas I am possessed of landed and chattel property, as stated in the annexed schedule, I direct my executors to sell" four pieces of landed property named "for its full value." A fifth piece was then devised to W. for life, remainder to F., ultimate remainder to T., and T. was made residuary legatee. Several legacies were given. The will was written on three sides of a sheet of paper; the signature and attestation were at the bottom of the third page. The fourth page contained a schedule of testator's landed property, and was headed "Schedule referred to within." It contained the four pieces ordered to be sold; and at the bottom of the schedule the statement that the fifth "is not included in the above schedule, it being willed by me to W.: my executors have no control over it." The schedule was signed by the testator and bore the same date as the will. The attesting witnesses to the will knew nothing about the schedule. *Held*, that the schedule formed no part of the will, and could not be referred to in construing the will; but that by the will proper all the real estate, except the specific devise to W. was to be turned into money, for the general purposes of the will, and that what remained went to T., the residuary legatee, and not to the heir-at-law.—*Singleton* v. *Tomlinson*, 3 App. Cas. 404.

2. H. died April 16, 1852, leaving a will, by which he devised real estate to trustees for his wife, during her life or widowhood, and, upon her second marriage, for certain trusts named during her life, and then to G. M. absolutely. He then gave personal property in trust to pay the income to the wife until her second marriage; and upon that event "all the bequests" in her favour were to cease, and she was to receive £500 a year during her life, to be paid from the rents of the real, and any deficiency to be made up from the income of the personal, estate; and the trustees were to accumulate the balance until her death, and then pay it over in certain legacies specified. As to the residue of the whole personal property and the income thereof, and the rents from the real property accumulated at the wife's death, he gave it to T. M. absolutely. The wife married in 1854, and her annuity was paid until the present time, and the surplus accumulated. On a case made for instructions as to the disposition of the accumulation, *held*, that under Thelluson's Act, there was no valid disposition of the surplus rents and income from April 16, 1873, until the death of the wife, and T. M. was not entitled to it as residuary legatee.—*Weatherell* v. *Thornburgh*, 8 Ch. D. 101.

3. A testator devised the residue of his property to his wife for life, and at her death, absolutely to such of the children of his late sisters as should survive his wife, and being males should attain twenty-one, or being females should attain that age or marry. "But, in case any of such children shall be dead at my decease leaving issue, then I direct that such issue shall take . . . the share of their deceased parent." *Held*, that the issue of a niece of the testator who died before the date of the will could take nothing.—*West* v. *Orr*, 8 Ch. D. 60.

4. A testator bequeathed to trustees "the sum of £3,000, to be applied by them in supporting or founding free or ragged schools for gutter-children, or for the poorest of the poor;" and added in a codicil, that "such school or schools should be situated in the parish of B. . . . for the resident poor of said parish." For some years prior to the testator's death, there had been such a school maintained by him in a hired room in B. *Held*, that the gift was in the alternative, and that a bequest for "supporting" such a school could be made without violation of the Mortmain Act, which forbids a testamentary gift to be "laid out or disposed of in the purchase of any lands, tenements, or hereditaments" for a charity.—*In re Hedgman. Morley* v. *Croxon*, 8 Ch. D. 156.

5. A testator died possessed of, *inter alia*, £2,900 Egyptian nine-per-cent. bonds, shares in two corporations, an interest in a copyright, a leasehold house where he lived, and a leasehold house held for a term determinable on the

death of one H., and a policy for £3,000 on H.'s life. By his will he gave some pecuniary legacies, made specific bequests of his plate, books, and apparel, of £2,400 of the Egyptian bonds, and of all the other property above specified. The residue he gave to his nephew A., mentioning expressly therein his carriage and furniture. After the date of his will, the testator married, and thereupon made a codicil to his will, giving his wife the income for life in all his property, postponing "the payment of all legacies, and the distribution of all estates vested in me, or over which I have any power of disposal or appointment, in Egyptian bonds, called Khedive bonds. E., the legatee of the leasehold, depending on the death of H., and on the policy on H.'s life, was to receive "all the bonuses and additions thereto," and "pay the future payments in respect thereof." By the provisions of the policy, the holder could take the bonuses either to increase the sum insured, or in part payment of the premiums. *Held* (Bagallay, L. J., diss.), that the residue must be converted, and the income paid the widow during her life; that the Khedive bonds formed part of the residue, the specific legacies of the Egyptian nine-per-cent. bonds having been adeemed when the bonds were sold; that the furniture formed part of the residue; that the bonuses must be added to the capital insured; and the premiums must be raised by mortgaging the policy.—*Macdonald* v. *Irvine*, 8 Ch. D. 101.

See Annuity, 1; Bequest; Married Women, 1; Trust, 1, 2.

Words.

"*Levy.*"—See Sheriff, 2.

"*Or other inevitable Accident.*"—See Landlord and Tenant, 1.

"*Poorest,*" "*Poor Kindred.*"—See Bequest.

"*Supporting or Founding.*"—See Will, 4.

—*American Law Review.*

LAW STUDENTS' DEPARTMENT.

EXAMINATION PAPERS.

The following are some of the questions on the Pass Papers set at the General Examination for call to the Bar in England preceding Trinity Term, 1878, as published (with answers) in the *Bar Examination Journal:*

Examination for Call.

Real and Personal Property.

1. State the difference between corporeal and incorporeal hereditaments, and between easements and appurtenances, giving instances?

2. Define the different kinds of estates in land with regard to their quantity, stating which do and which do not arise by operation of law.

3. State the provisions of the Statute of Frauds respecting contracts for the sale and purchase of interests in land. A. verbally agrees to sell land to B., and receives a deposit on account of the purchase-money; he subsequently refuses to complete the sale; can B., who has not got possession, enforce the contract?

4. A., B. and C. are beneficial joint tenants in fee of land. A. desires to have one-third of the land in severalty; how shall he attain his object?

5. Sketch an assignment of a leasehold house on a sale by the original lessee, and his mortgage by demise, the debt being paid off out of the purchase-money, mentioning the proper covenants.

6. What difference is there in the effect of a feoffment without consideration to A. and his heirs, and a feoffment without consideration unto and to the use of A. and his heirs?

7. What power has a woman over real or personal property settled to her separate use without power of anticipation—(1) while married; (2) during widowhood?

8. Is it easier to dispose of a married woman's reversionary interests in personalty when they belong to her for her separate use, or when they belong to her absolutely? By what means in either case are they disposable? Does it signify, at what time, or by what instrument they were created?

9. A father having personal property belonging to him absolutely, and having a general power of testamentary appointment over other personalty, and having a power of testamentary appointment amongst his issue over other personal property, by his will bequeaths, and by virtue of his power appoints all the properties unto and among all his children equally. One child dies in his lifetime, leaving issue at his death. How does the will operate?

10. Define the different kinds of estates tail, and the words by which they may be

created in deeds and wills respectively. How may such estates in freeholds and copyholds be barred?

Common Law.

1. What is the law with respect to covenants in restraint of trade? Give the effect of two or three decided cases on this subject.

2. When can a person not mentioned in a written contract sue upon it?

3. Give instances of contracts where the promise of each party is the consideration for the promise of the other.

4. Are there any and what material difference between contracts under seal and contracts not under seal? Are there any and what cases in which a contract must be under seal in order to be valid?

5. Under what circumstances can a fact be proved by affidavit upon the trial of an action?

6. Under what circumstances can a plaintiff be compelled to give security for the costs of the action? How is he compelled to give such security?

7. State what you know respecting the proceedings in an action for the recovery of land. Who ought to be made defendants?

8. When can a married woman sue in her own name, and when ought her husband to be joined as a co-plaintiff?

9. Under what circumstances and upon what trials is a dying declaration evidence?

10. Is a person ever and when not amenable to the law of England for a crime committed on the high seas?

11. Before whst Courts and Judges are indictable offences tried? How is an indictment removed into the Queen's Bench Division, and, when so removed, when and before whom is the indictment tried?

Equity.

1. A post-nuptial settlement is executed which does not carry into effect the intentions of the settlor. In what case will a Court of Equity after the settlor's death—

(*a*) Rectify it;

(*b*) Set it aside.

2. In what respect does the interest of a married woman, in her separate estate, differ from every other absolute interest known to the English law?

(*To be continued.*)

REVIEWS.

Elements of International Law. By Henry Wheaton, LL.D., &c. English Edition. Edited with notes and an appendix of Statutes and Treaties, bringing the work down to the present time. By A. C. Boyd, Esq., LL.B., (Camb.) Barrister, &c. London: Stevens & Sons, 119 Chancery Lane, Law Publishers, 1878. Toronto: R. Carswell.

Mr. Wheaton published his first edition in 1836, dating his preface at Berlin, where he was Minister of the United States at the Court of Prussia. Another edition was published in 1846, and afterwards two French editions; other editions were published in France and the United States, and in 1857, the sixth was published at Boston by Mr. W. B. Lawrence; another appeared in 1863, and a Chinese edition in 1864. Mr. R. H. Dana, in 1866, published his edition, which was the best of that time. It was soon out of print and so remained until Mr. Boyd came to the rescue.

Though the text of the author has been preserved the book is in many respects a new one; and when one considers the rapid strides that have been made in the subjects treated of, it is manifest that a treatise to be of any use must be in effect a new one. The present editor brings the work down to the present time by giving in his notes which are numerous, the most important diplomatic transactions of recent date, the leading decisions of English, American, and Continental Courts, and the opinions of the most eminent publicists that have appeared since the author's first edition. A glance at the book will show how fully and exhaustively this has been done.

At the present time when one great war has just closed, or rather probably the first act has been played; when we seem to have been relegated to the time of Attila, or Alaric, or Mahomet, and when the blood of non-combatants has flowed in torrents; when nation seems rising up against nation, and men's hearts are failing them for fear; when the area of probable future entanglements and possibly of still more fearful conflicts

seems rapidly extending; when as in some countries at least, there is even greater dread of internal and communistic violence than of foreign wars; when might is still right—it seems a vain thing to write learned books as to how one nation ought to comport itself to another when difficulties, misunderstandings, and quarrels, arise between them. But that man deserves well, not only of his country, but of all mankind who helps as well as he can to make more definite, and to spread the knowledge of those laws which, in their more sober moments, nations like individuals know to be for the common welfare of all.

The subject is an interesting one at any time, and especially so now, and this being the last, but by no means the least, addition to the literature of the law of nations it is especially welcome, containing as it does, the English and American Statute law of naturalization, extradition, and foreign enlistment; the English Naval Prize Act, the Treaty of Washington, and extracts from the most important treaties relating to the Black Sea, the Dardanelles and Bosphorus, and Turkish affairs.

Mr. Boyd has done his work very well indeed. He gives the text of Wheaton in full, Mr. Dana's numbering of the sections being preserved. The index, often very carelessly done in books of this nature, is better than usual.

The same publishers have also recently published a new edition of Kent's Commentary on International Law, by D. Abdy. A new edition of Halleck's International Law, by Sir Sherston Baker, has also appeared. There is therefore no want of light on this subject so far as the making of many books is concerned.

"The October number of *Blackwood*," has also something to say on the subject of international relations in an article which suggests a cross between the Battle of Dorking and the Coming Race. The writer speaks in the past tense of a still future time when England shall be at ogger heads with Bœotia on the Happygoland question, and when any army can be destroyed by any other army, and *vice versa* "on sight," by some explosive compound. At this stage of the quarrel an ingenious philanthropist suggested that instead of fighting it out in the usual blood-thirsty fashion each nation should select a hundred and five champions, and should "put up" with a neutral power the stakes following, to wit, fifty millions sterling by Bœotia and a portion of territory by England; the whole to go to the nation whose champions should be successful. The suggestion being accepted, the writer concludes by describing the selection of the champions. We shall see what came of it next month; but in the meantime we can admire the conception, and only hope that it may not happen to the two hundred and ten champions as it did to the Kilkenny cats, in which case the writer in "Old Ebony" would probably feel justified in laying down as a proposition of international law that the neutral power should pocket the stakes.

CORRESPONDENCE.

To the Editor of Canada Law Journal.

Sir,—The case of *Shannon* vs. *The Gore District Insurance Company*, 2 Appeal Reports, 396, will strike many members of the profession as of doubtful authority, compared with the able reasoning and sound conclusions of the late Chief Justice, whose arguments on the *merits* are not referred to, or even touched upon by the Court of Appeal.

Any ordinary observer knows that much real estate has changed hands, for less than the actual value, in the past few years, and from all that appears by these judgments in Appeal, this was one of those parcels, and the estimate put on it by the plaintiff more likely to be the correct one.

If this judgment in Appeal means anything, it says to the plaintiff, "You purchased this property at a low figure, and put a fictitious value on it to effect large insurances, for the purpose of defrauding the companies." A supposition not warranted by the evidence reported.

I hope the case has been taken to the Supreme Court. It is a matter of regret that we have not also the benefit of a written judgment by the Justice of Appeal, who concurred.

HAMILTON.

BOOKS RECEIVED.

SNELL'S Principles of Equity. Fourth Edition, by Archibald Brown. London : Stevens & Haynes.

NOVA SCOTIA REPORTS. Russell & Chesley. Law ; Vol I. and parts of Vol II. Equity : part of Vol. I.

THE REVISED SCHOOL LAW. By J. George Hodgins, LL. D. Copp, Clark & Co., Toronto.

PRECEDENTS OF PLEADINGS UNDER THE JUDICATURE ACTS. By Cunningham & Mattinson. London. Stevens & Haynes.

JONES ON PRESCRIPTIONS. A Practical Treatise on the Real Property Limitation Act. Carswell & Co., 28 Adeaide Street, Toronto.

Law Society of Upper Canada.

OSGOODE HALL,

TRINITY TERM, 42ND VICTORIÆ.

During this Term, the following gentlemen were called to the Bar; namely :—

HENRY PIGOTT SHEPPARD.
ISAAC CAMPBELL.
A. BRISTOL AYLSWORTH.
RICHARD DULMAGE.
HARRY THATCHER BECK.
MATTHEW WILSON.
WILLIAM HENRY FERGUSON.
WILLIAM E. HIGGINS.
JAMES CARRUTHERS HEGLER.
FREDERICK WILLIAM PATTERSON.
EUGENE LEWIS CHAMBERLAIN.
MAXFIELD SHEPPARD.
NEIL A. RAY.

And the following gentlemen were admitted as Students of the Law and Articled Clerks, namely :—

Graduates.

WILLIAM RIDDELL.
DAVID PHILIP CLAPP.
ADAM JOHNSTON.
GEORGE GORDON MILLS.
GEORGE WILLIAM BEYNON.
JOHN HENRY MAYNE CAMPBELL.
CHARLES MILLAR.
THOMAS ALFRED O'ROURKE.
EDWARD ROBERT CHAMBERLAIN PROCTOR.
CONRAD BITZER.
JOHN RUSSELL.
JOHN WILLIAM RUSSELL.

Matriculants.

W. J. TAYLOR.
HARRY THORPE CANNIFF.
THOMAS PARKER.
A. DOUGLAS PONTON.
ALBERT EDWARD DIXON.

And as an Articled Clerk—

EUDO SAUNDERS.

Junior Class.

J. L. MURPHY.
A. G. CLARKE.
W. B. DICKSON.
W. G. WALLACE.
T. K. PORTEOUS.
D. H. TENNENT.
M. S. MCCRANEY
J. TELFORD.
C. H. CLEMENTI.
W. HAWKE.
J. B. PATTERSON.
J. W. HANNA.
C. H. CLINE.
G. W. DANKS.
C. A. HESSON.
R. E. HARDING.
C. HENDERSON.
J. CAMPBELL.
J. G. CHEYNE.
F. E. BERTRAND.
T MOFFAT.
S O. RICHARDS.

Articled Clerks.

A F. GODFREY and
HUGH MCMILLAN, as of Easter Term.

PRIMARY EXAMINATIONS FOR STUDENTS-AT-LAW AND ARTICLED CLERKS.

A Graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such Degrees, shall be entitled to admission upon giving six weeks' 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.

All other candidates for admission as students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects:—

CLASSICS.

Xenophon, Anabasis, B. I.; Homer, Iliad, B. I.; Cicero, for the Manilian Law; Ovid, Fasti, B. I., vv. 1-300; Virgil, Æneid, B. II., vv. 1-317; Translations from English into Latin; Paper on Latin Grammar.

MATHEMATICS.

Arithmetic; Algebra, to the end of Quadratic Equations; Euclid, Bb. I., II., III.

ENGLISH.

A paper on English Grammar; Composition; an examination upon "The Lady of the Lake," with special reference to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

English History, from Queen Anne to George III., inclusive. Roman History, from the commencement of the second Punic war to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography: Greece, Italy, and Asia Minor. Modern Geography: North America and Europe.

Optional Subjects instead of Greek:

FRENCH.

A Paper on Grammar. Translation of Simple Sentences into French Prose. Corneille, Horace, Acts I. and II.

Or GERMAN.

A Paper on Grammar. Musaeus, Stumme Liebe. Schiller, Lied von der Glocke.

Candidates for Admission as Articled Clerks (except Graduates of Universities and Students at-Law), are required to pass a satisfactory Examination in the following subjects:—

Ovid, Fasti, B. I., vv. 1-300; or,
Virgil, Æneid, B. II., vv. 1-317.
Arithmetic.
Euclid, Bb. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography — North America and Europe.
Elements of Book-keeping.

A student of any University in this Province who shall present a certificate of having passed within four years of his application, an examination in the subjects above prescribed, shall be entitled to admission as a student-at-law or articled clerk (as the case may be), upon giving the prescribed notice and paying the prescribed fee.

All examinations of students-at-law or articled clerks shall be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

After Hilary Term, 1879, the Matriculation Examination will be as follows:—

SUBJECTS OF EXAMINATION.

Junior Matriculation.

CLASSICS.

1879 { Xenophon, Anabasis, B. II.
Homer, Iliad, B. VI.

1879 { Cæsar, Bellum Britannicum.
Cicero, Pro Archia.
Virgil, Eclog. I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1880 { Xenophon, Anabasis. B. II.
Homer, Iliad, B. IV.

1880 { Cicero, in Catilinam, II., III., and IV.
Virgil, Eclog., I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1881 { Xenophon, Anabasis, B. V.
Homer, Iliad, B. IV.

1881 { Cicero, in Catilinam, II., III., and IV.
Ovid, Fasti, B. I., vv. 1-300.
Virgil, Æneid, B. I., vv. 1-304.

Translation from English into Latin Prose.

Paper on Latin Grammar, on which special stress will be laid.

MATHEMATICS.

Arithmetic; Algebra, to the end of Quadratic Equations; Euclid, Bb. I., II., III.

English.

A paper on English Grammar.
Composition.

Critical analysis of a selected poem :—

1879.—Paradise Lost, Bb. I. and II.

1880.—Elegy in a Country Churchyard and The Traveller.

1881.—Lady of the Lake, with special reference to Cantos V. and VI.

History and Geography.

English History from William III. to George III., inclusive. Roman History, from the commencement of the Second Punic War to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography: Greece, Italy, and Asia Minor. Modern Geography: North America and Europe.

Optional Subjects.

French.

A Paper on Grammar.

Translation from English into French Prose—

1878 and 1880 } Souvestre, Un philosophe sous les toits.

1879 and 1881 } Emile de Bonnechose, Lazare Hoche.

German.

A Paper on Grammar.

Musaeus, Stumme Liebe.

1878 and 1880 } Schiller, Die Bürgschaft, der Taucher.

1879 and 1881 } Schiller { Der Gang nach dem Eisenhammer. Die Kraniche des Ibycus.

INTERMEDIATE EXAMINATIONS.

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. C. caps. 42 and 44, and Amending Acts.

The Subjects and Books for the Second Intermediate Examination shall 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, and Ontario Act 38 Vic, c. 16, Statutes of Canada, 29 Vic. c. 28, Administration of Justice Acts 1873 and 1874.

FINAL EXAMINATIONS.

For Call.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Smith on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Stephen on Pleading, Lewis's Equity Pleading, Dart on Vendors and Purchasers, Best on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

For Call, with Honours.

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, Hawkins on Wills, Von Savigny's Private International Law (Guthrie's Edition), Maine's Ancient Law.

For Certificate of Fitness.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Smith 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.

SCHOLARSHIPS.

1st Year. — Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Hayne's Outline of Equity, C. S. U. C. c. 12, C. S. U. C. c. 42, and Amending Acts.

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, Taylor's Equity Jurisprudence, Fisher on Mortgages, Vol. I. and chaps. 10, 11, and 12 of Vol. II.

4th Year.—Smith's Real and Personal Property, Harris's Criminal Law, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis's Equity Pleadings Equity Pleading and Practice in this Province,

INDEX.