Canada Law Journal.

VOL. XVII. OCTOBER 15, 1881. NO. 19.

DIARY FOR OCTOBER.

15. Sat...County Court Term for York ends.
16. Sun..18*th Sunday after Trinity.*
21. Battle of Trafalgar, 1805.
23. Sun..19*th Sunday after Trinity.* Lord Monck, Gov.-Gen., 1861.
24. Mon...Sir J. H. Craig, Gov.-Gen., 1807.
25. Tu...Supreme Court sittings. Battle of Balaclava, 1854.

TORONTO, OCT. 15, 1881.

As we go to press we receive A Manual of Practice of the High Court of Justice for Ontario, by Mr. G. O. Holmested, Registrar of the Chancery Division. A glance at it is sufficient to show that it is a work of a different character, and on a different plan to any as yet published, and from our recollection of the able manner in which the author a short time ago edited the more recent Chancery Orders, we have little doubt that the manual will be found of much value. We hope to give a more detailed notice of it in a future number.

So far as we are able to judge even Winnipeg appears to possess at the present moment as many lawyers as she requires. Many of them, however, have, as we are informed, been enticed away from the worship of their stern Mistress Themis, by the allurements of the god Plutus, and have found thereby a short road to wealth. But there can be little doubt that for many a year to come, those who are willing to scorn delights and live laborious days, and who will keep clear of speculation, will find it far easier to build up a practice there than in Ontario. Moreover, the fact that Manitoba retains the old practice under the Common Law Proceedure Act may perhaps be an inducement to emigrate thither to some of those who think that they have had enough variety in the way of practice during the past few years.

IT is our intention to notice any points of interest that may present themselves in current English enactments. The last batch of statutes, however, contained in the September number of the Law Reports, being the 44-45 Vict. c. 1-22, contains nothing that seems to demand attention. The acts are chiefly of an administrative character, and amongst them are "The protection of person and property (Ireland) Act, 1881," and "The peace and preservation (Ireland) Act, 1881," of unhallowed memory. But as might be expected there is nothing in the nature of law reform, nor are there any acts of special interest to Canadians.

WE also introduce into this number, what we hope to make a permanent and useful feature of the CANADA LAW JOURNAL, viz.: an article on recent decisions, Canadian and English. Our purpose is to present to the profession regularly, in a consecutive and readable form, such a running review of the latest reported cases in our own and in the English courts as will enable our readers to keep track of contemporary decisions, even though they may not indulge in the expense of subscribing to the Law Reports. We have good hope, however, that even those who do take in the Law Reports will find our articles a considerable convenience and saving of labour. As we understand the matter, one of the most important functions

of a Law Journal is to supply the profession with such information as cannot be found in existing text-books, but which is needed in practice: and it is by prompt notices of current decisions, statutes and topics of interest that we hope to effect this object. No American decisions are noted in our present number. We shall, however, make use of the wealth of cases and comments contained in our most able contemporaries across the border, when we notice any current American decisions which appear of special interest.

THERE are two subjects which it is to be hoped will not be overlooked in deciding the courses of lectures to be delivered in the Law School, the revival of which, we trust, may now be considered merely a question of time. Of these one is the subject of General Jurisprudence, and the other that of Constitutional Law with special reference to the Dominion of Canada. There is the more need that the former of these two subjects should be embraced in the course in that no law school exists in the Universities in Toronto, similar to the law schools of Oxford, Cambridge or London Universities. The present activity of these latter Universities in this department is shown by the frequent admirable works published by their professors and lecturers, as for example Digby's History of the Law of Real property, Markby's Elements of Law, Anson on the principles of the Law of Contracts, and Prof. Erskine Holland's Elements of Jurisprudence. The method and clearness and consequent facility which such works as these, and as Austin's lectures, contribute to the study of the law is beyond question; while the intrinsic interest of the works of Sir Henry Maine and other writers on historical comparative jurisprudence is equally indisputable. On the other hand, the claims of constitutional law with special reference to our own constitution and that of the empire are obvious, while the now standard work of Mr. Alpheus Todd will immensely facilitate the treatment of this subject. It needs no argument to enforce the importance of Canadians possessing clear ideas of the constitutional lines on which is being built up, as we all trust, a great and prosperous commonwealth.

RIGHTS AND WRONGS OF THE PROFESSION.

We lately criticised the advertisement of the solicitor whose letter appears in another place in explanation of its publication. Mr. Rogers puts his *απολογια* in a manly, straightforward way, and we gladly insert his communication. By accepting our criticism as deserved and withdrawing the objectionable advertisement he disarms further comment thereon, and at the same time makes out a strong case for himself, and shows forcibly the position in which he and other country practitioners are placed in regard to the "impudent invaders" he speaks of. The outrageous injustice of the present state of things must strike any one. There is practically no protection afforded by the Law Society. There is, for a country practitioner, scarcely any reason why he should waste his time as an articled clerk or pay the entrance fees to the Society. Litigation *is not*, and the business of conveyancing, Surrogate Courts and Division Courts *is* what gives a living to our brethren in the country. As to the Benchers, they are, we believe, anxious, and honestly intend to do something, but it is really a very difficult thing to say what is best to be done. As to the point made against County judges in reference to Division Court and Surrogate business there is no excuse for them. Many of these have deliberately and without necessity (we are not now alluding to sec. 84 of the D. C. Act) opened the door to a swarm of wasps that are sting-

ing to death the rightful occupants (by right of purchase) of the professional nest. We would commend this subject to the Board of County Judges—let them see what they can do in the premises. We have arraigned the Benchers at the bar of the profession with good effect. We now call upon the County judges to do their part; let the local Bar also keep them in mind of what they owe to the public and the profession. We should be glad to hear further as to this part of the question. In the meantime we might recommend a perusal of the remarks in O'Brien's D. C. Manual, 1880, at pp. 28, 38, etc., in reference to Division Court "agents." We are glad to know that the practice there suggested is followed by some of the best of the local judges. The position of agents as to Surrogate business is also worthy of dis cussion.

A REVOLUTIONARY PROPOSAL.

One example of the energy with which the constructive power of man is working in the North-West is afforded by the rapidity with which the profession in Manitoba have erected barricades between themselves and the outer world. An Ontario lawyer who desires to seek fresh fields and pastures new in the Virgin Province finds that he has several formidable obstacles to pass before he is admitted to practice. First, in order to be eligible for call to the bar, he has to give six weeks' notice of his intention to present himself for examination in no trifling array of text-books, to wit, Leake on Contracts; Byles on Bills; Addison on Torts; Snell's Equity; Taylor on Evidence; and Williams on Real Property; to say nothing of the statute law applicable to Manitoba, and the practice and pleadings of the courts. Then, having survived this ordeal, he is required, should he desire admittance as an Attorney, to article himself for a year, and then apparently again to pass an examination in the same books with the exception of Taylor on Evidence, though whether he may present himself for the two examinations at one time, or whether he cannot present himself for the examination for certificate of Fitness until he has completed his year under articles, we are not advised. But in addition to this somewhat rough handling, he has to pay about two hundred and seventy dollars in fees.

Now no doubt the majority of the Benchers of the Manitoba Law Society, argue that if their barristers and attorneys desire to practice their profession in the older provinces they have to go through a similar process of initiation, and that one good turn deserves another. But, after all, is not this kind of thing a *reductio ad absurdum* of provincial rights. The whole object and justification of requiring the service for a certain period as articled clerks and the passing of certain examinations before admitting men to practice as lawyers is to protect the community from unauthorized and incompetent practitioners.

The interest of the community is to have as large a number of competent lawyers to pick from as possible. No doubt in the case of the Province of Quebec, where the civil law prevails and where the procedure follows a different model, it is but right in the interest of the public that any lawyer from the other provinces desiring to go and practice there should serve an initiatory term and pass preliminary examinations, and *vice versa*. But in the case of the other provinces, where the law and practice are similar, we would ask whether the diplomas and certificates granted in one province by the proper authorities, should not,—on a principle of inter-provincial comity,—be accepted as sufficient to qualify for practice in the Courts of the sister provinces; or at all events, should not solicitors and barristers of a certain number of years standing, be free to practise their profession in any province in the Dominion, excepting, for special reasons, the Province of Quebec?

We might have ventured to hope that Manitoba, in the generosity of youth, would have set the example in this respect, and that as she is the child of the confederated Dominion, so she would have led the way in the adoption of this truly "National Policy." At the same time it must be admitted that the adoption of the new practice modelled on the rules and orders framed in England under the Judicature Acts in some of the provinces and not in others will create fresh difficulty in the realization of this idea, and it is of course vain to hope that anything like a simultaneous adoption of the new practice in all the provinces can be looked for.

THE ACTS OF LAST SESSION.

DOMINION : 44 VICT.

Pursuant to the intention expressed in our number for September 1st, we purpose to give now a concise summary of such of the Treaties, Orders in Council, and Dominion enactments of last session contained in the volume of the Statutes of Canada for 1880–1881, as are of special importance to the practical lawyer. This we may add is a far less onerous undertaking than was the similar one with regard to the Provincial enactments.

The only document contained under the head of Treaties is a declaration between Great Britain and Russia, relative to the disposal of the estates of deceased seamen of the two nations. We need merely mention that under it the estate of any British seaman who shall die, either on board a Russian or Finnish ship, or within Russian territory, if not exceeding 350 silver roubles, shall be delivered to the nearest British Consul without undergoing any of the forms usually required by Russian or Finnish law on succession to property, and so, *mutatis mutandis*, with regard to the estate of any Russian or Finnish seaman dying on board a British ship or within British territory.

Of the orders in Council the first to be noticed is that dated July 31st, 1880, under which from and after September 1st, 1880, all British possessions in North America, not already included within the Dominion of Canada, and all Islands adjacent to any such possessions, shall (with the exception of Newfoundland and its dependencies) become and be annexed to and form part of the Dominion of Canada; and become and be subject to the laws for the time being a force in the said Dominion, in so far as such laws may be applicable thereto. Next we may notice a Proclamation (p. xviii.) dated Nov. 13, 1880, whereby the 43 Vict. c. 7 (C), intituled "An Act for the final settlement of claims to Lands in Manitoba by occupancy under 33 Vict. c. 3," is made public and put in force, which Proclamation is contained in Vol. xiv. p. 713 of the Canada Gazette. Following this is a Proclamation setting off and forming four additional Registration Districts in the North West territories, to wit, the Turtle Mountain District, the Little Saskatchewan District, the Touchwood Hills District, and the Prince Albert District, (see Can. Gaz. Vol. xiv. p. 869). The only other document published under the heading of "Orders in Council, etc.", which need be noticed here is the General Rule made by the Judges of the Supreme Court in amendment of the existing rules, and dated March 16, 1881. The first alteration made (p. xx.) appears to be merely of a clerical nature, and strikes out the word "immediately" from rule 11, not seemingly changing the effect of the rule in any way. The next change made is in rule 14, and pursuant to it it is sufficient if notice of hearing be served fifteen days before the first day of the session at which the appeal is to be heard. Then rule 15 is altered so far as concerns the mailing of a copy of the notice of hearing to the attorney or solicitor who represented the respondent in the Court be-

low, in those cases where such attorney or solicitor has no booked agent or elected domicile at Ottawa. It is now made requisite that such copy should be mailed on the same day on which the notice is affixed in the office of the Registrar as provided in that rule, but the proviso that each copy must be mailed "in sufficient time to reach him in due course of mail before the time required for service" is done away with. Next, rule 23 is amended on the same principle as the amendment of rule 14 just noticed, and it is sufficient if factums are henceforth deposited with the Registrar fifteen days before the session at which the appeal is to be heard, instead of one month as required heretofore. Similarly rule 31 is altered, and it is now sufficient if the Registrar set down and inscribe appeals *fourteen* days before the session fixed for the hearing, instead of one month as heretofore, but the following provision is now added to the rule, viz: "but no appeal shall be so inscribed which shall not have been filed twenty clear days before said first day of said session without the leave of the Court or a judge." So again in rule 62 the period of one month is changed to fifteen days, and so a respondent, desiring to serve a notice of cross appeal under rule 61, is now only required to make it a fifteen days notice. And lastly, the period of two weeks in rule 63 is shortened to one week, and so an appellant, in case of a cross appeal by a respondent, is now only allowed one week after service of the notice of cross appeal required by rules 61, and 62, in which to deposit his printed Factum with the Registrar. So that in all these cases the periods in which acts are to be done under the rules of the Supreme court are shortened by one half.

Proceeding now to the Acts of Parliament the first which seems to require notice is entitled an Act respecting Naturalization and Aliens (Chap. 13). The final clause of this Act provides that after it comes into force no alien shall be naturalized within Canada, except under its provisions, and sec. 2 provides that the date of its coming into force shall be fixed by proclamation of the Governor. In his Parliamentary Government in the British Colonies, Mr. Todd, after a sketch, in his usual lucid manner, of the present state of the naturalization question in Canada, observes that—"while by sec. 91 of the B. N. A. Act, 1867, the Dominion Parliament is exclusively empowered to legislate upon "naturalization and aliens," it has been assumed that, by sec. 92 of this act—which empowers provincial legislatures to exclusively make laws concerning 'property and civil rights in the province'—these legislatures are competent to authorize aliens to hold and transmit real estate:" and in a foot-note he says that the Dominion Naturalization Acts, which apply to all the provinces, contain no provisions of this nature. The recent Act, now under consideration, appears the first exception to this rule, for under the heading "Status of Aliens in Canada," sec. 4 provides that aliens may hold and transmit property of any kind in the same manner as British subjects, but that this section is not to qualify for any office or any franchise, nor shall it affect dispositions made before its passing. The remainder of the Act concerns the subjects of declarations of alienage, expatriation, naturalization and resumption of British nationality, national status of married women and infant children, and contains also some sections on miscellaneous points. It does not, however, come within our scope to discuss it any further here, but it may be added that by sec. 38 aliens naturalized in any part of Canada before this act, are to be hereafter entitled to all the privileges by this act conferred on persons naturalized under this Act.

The next Act to notice is chap. 15, which enacts that the 43 Vict. c. 36 (C), being "An Act respecting the Administration of criminal Justice in the Territory in dispute between the governments of the Province of Ontario and of the Dominion of Canada,' shall continue in force "until the end of the

now next ensuing session of Parliament." Then follows an Act in amendment of the Dominion Lands Acts of 1879 and 1880 (42 Vict. chap. 31, and 43 Vict. c. 26), the provisions of which are of a purely administrative nature and require no further notice here; nor does there appear to be any Act to which we need call special attention until chap. 27 is reached. We may, however, mention that by chap. 25 the Laws relating to Government railways are amended and consolidated.

By chap. 27, sec. 14 of 40 Vict. c. 41, which repealed sec. 58 of the Insolvent Act of 1875, (38 Vict. c. 16), is itself repealed, and the said sec. 58 is revived: which section provided that if the dividend paid to the creditors by the estate of the insolvent is less than 33 per cent, the discharge of the insolvent may be suspended or refused altogether. But of course this Act only applies, as declared sec. 2, to proceedings under the insolvent acts where the estate of the insolvent has been vested in official assignees before the passing of the Act of last session, repealing the Acts respecting insolvency now in force in Canada, (43 Vict. c. 1). By this Act (chap. 27) also, sec. 15 of 40 Vict. c. 41 is repealed, so that a Judge is no longer required, before granting a discharge, to exact proof of the fulfilment of the condition in that section mentioned.

The next Act, chap. 28, is entitled an Act to amend the Law respecting Documentary Evidence in certain cases, and provides that "in addition to and not in derogation of any powers of proving documents given by any existing statute or existing at common law," *prima facie* evidence of proclamations, orders, regulations or appointments made by the Govenor-General may, in all legal proceedings over which the Parliament of Canada has control, be proved either (i) by a copy of the *Canada Gazette* containing a notice thereof, or (ii) but producing a copy thereof purporting to be printed by the Queen's Printer for Canada, or (iii) by producing a copy duly certified: and so, *mutatis mutandis*, with proclamations, etc., by the Lieutenant-Governers of Provinces. And wilful imposture in respect to these matters is made a felony, and punishable by imprisonment.

Lastly, chap. 29 provides for the continuance in force of "The better Prevention of Crime Act, 1878," (41 Vict. c. 17) until the end of the "now next ensuing session of Parliament:" while the remaining acts, public and private, it does not fall within the scheme of this review to notice.

RECENT DECISIONS.

The first case which it occurs to us to notice in no. 1 of vol. 29 of Grant's Reports, now before us, is a decision of Boyd, C. on a point of practice in connection with receivers, which, stated in a general way, appears to be as follows: Where, after a decree directing the appointment of a receiver, but before the actual appointment, any act is done which is complained of as improper, and an interference with the office of the receiver, the proper course is for the interested parties to the suit, who object, to apply in person for the appropriate relief, and not to move for an order that the receiver shall take proceedings to rectify what is done (*Fox* v. *Nipissing Ry. Co.*, p. 11). Closely following on this is the case of *Court* v. *Holland*, in which the learned Chancellor observes, citing *Murray* v. *O'Dea*, 1 B. & B. 117, that as between mortgagor and mortgagee, there is nothing to prevent the mortgagee taking possession at a fair and reasonable rent agreed upon between them; and in such a case this will ordinarily be the measure of liability, because the mortgagee is not in, technically, as mortgagee in possession, but as under the special agreement. A subsequent incumbrancer however is not bound by the transaction, but can insis upon such a rent as would be a proper occupa-

tion rent chargeable against a mortgagee in possession, for he has a perfect right to reduce the prior security by the amount of a fair occupation rent. The case of *Platt* v. *Blizzard*, at p. 46, was a suit for specific performance, and the Master reported that a good title to the lands was *first* shown in his office. Nevertheless, on further directions, Ferguson, V. C., ordered the costs to be paid by the defendant, because the facts showed that the litigation was really about a matter other than the question of title, as to which the plaintiff had succeeded and the defendant entirely failed : in this following the rule laid down in *Monro* v. *Taylor*, 8 Ha. 70, S. C., in app. 3 McN. & G. 725, that, in such cases, "in deciding who shall pay the costs of the suit, the court must inquire by whom and by what the litigation was occasioned." In *Young* v. *Huber* (p. 49) the V. C. followed *Peterkin* v. *Macfarlane*, 4 App. 25 (in which report, however, this point is not referred to), as a precedent for adding, on motion after decree, certain parties as defendants, for the purposes of an injunction. The last case we shall notice is *Lancey* v. *Johnston* (p. 67), which, as the learned V. C. observes in his judgment, is in many respects very peculiar. It was a motion for an injunction to restrain a lessee from pumping oil from an oil well on the lands leased. The only covenants contained in the lease on the part of the lessee, were to pay rent and pay taxes, and it was silent as to any right on his part to bore for oil. The lessee contended that his real contract was for a purchase in fee, and that he could prove a right, if necessary, to have the document reformed. The V. C., however, held that *prima facie* the lessee had not the right to bore for oil, and granted an injunction until the hearing of the cause.

Passing now to the English Law Reports we have before us the September numbers of the Chancery Division (17 Ch. D. 615-720), and of the Queen's Bench Division (7 Q. B. D. 273-399). The first case in the former, *Dawkins* v. *Antrobus*, is interesting, as club-cases generally are. The report comprises both the case in the court below, and in the Court of Appeal. The case of *Labouchere* v. *Wharncliffe*, M. R. Nov. 28, 1879, came before the M. R., in the interim between the two hearings of *Dawkins* v. *Antrobus:* in which period also was published an able pamphlet on Club Cases, by a Mr. A. F. Leach (London, Harrison, 1879), which we have before us. At p. 45 this writer says that, the principles that may be deduced by all the cases then decided are as follows :— "A man who becomes a member of a club, binds himself by a written contract, which is to be found in the rules of the club. Those rules are the laws from and by which his rights and duties as a member are to be ascertained and governed. If these rules give (as all club rules do give) an unlimited power of expulsion to the committee or to the general body of the club, the exercise of that power is not a matter for the interference of the law courts ; provided that the power be exercised (1) in accordance with the letter and spirit of the rules ; (2) in a *bona fide* manner and not capriciously or oppressively ; and (3) in a fair and impartial manner in accordance with the ordinary principles of justice." There is nothing in the judgments of the Court of Appeal in *Dawkins* v. *Antrobus*, which seems to militate against Mr. Leach's deductions. All three Judges protest against the propriety of the courts undertaking to act as Courts of Appeal against the decisions of members of clubs. Some remarks of Brett, L. J., however, in support of his proposition that the courts can properly entertain the question whether anything has been done which is contrary to *natural justice*, although it is within the rules of the club, appear noteworthy. It may also be observed that in his judgment, James, L. J. expresses an opinion that, reading "club" for "trading partnership," every word of the judgment in *Inderwick* v. *Snell*, 2 Mac. & G, 216, is applicable to the case before him. As a recent Canadian case on a somewhat similar

subject, we may refer to *Marsh* v. *Huron College*, 27 Gr. 605.

In the next case, *Hendricks* v. *Montagu* (p. 638) it was held, on appeal, that a company not registered under the Imp. Companies Act 1862, can restrain the registration under that Act of a projected new company, which is intended to carry on the same business as the unregistered company and to bear a name so similar to that of the unregistered company as to be calculated to deceive the public. The case *of ex-parte Young, In re Kitchin*, p. 668, appears to be one of first impression so far as the English courts are concerned. The question was, whether in the absence of special agreement a judgment or an award against a principal debtor is binding on the surety, and is evidence against him in an action against him by the creditor? All three judges decided it was not; but that the surety is entitled to have the liability proved as against him in the same way as against the principal debtor. This is in accordance with the holding in the Courts of the United States on this very point, in *Douglass* v. *Howland*, 24 Wend. 35. It may be added that it is observed by counsel, arguendo, that the surety cannot be brought in by a third party notice under the Judicature Act, for the principal has no right of indemnity against him.

The next case, *Wheeler* v. *Le Marchant*, p. 675, is a decision on a point of practice and will be found among our Recent English Practice cases in this number. In *Evans* v. *Williamson*, p. 696, a testatrix, after devising all her real estate to A., gave all the "farming stock, goods, chattels and effects in and about" one of her farms forming part of her real estate, to B: and she gave the residue of her personal estate to other persons. The M. R. held that all crops growing on the farm at the testratrix's death passed to B., and expressed disproval of *Vaisey* v. *Reynolds*, 5 Russ. 16, where Sir John Leach held that the growing crops did not pass under the gift of the farming stock, as against the devisee of the land, because there was no gift of the residuary personal estate to the legatee of the farming stock.

Rees v. *George*, p. 701, was a decision on the subject of interest to be charged on sums advanced brought into hotchpot. Under the will of their father, children were to divide the residuary estate after the death of their mother, but to bring into hotchpot sums advanced in their lifetime by the testator. In distributing the residuary estate among the children after the death of the widow, the M. R. held the advanced children must bring their advances into hotchpot, with interest at 4 per cent. per annum up to the distribution of the estate; such interest to be computed from the death of the widow, and not from the dates of the respective advances or from the death of the testator.

Walter v. *Howe*, p. 708 is of special interest to the literary world, being as it is an authority for the proposition that to enable the proprietor of a newspaper to sue in respect of a piracy of any article therein, he must show not merely that the author of the article has been paid for his service, but that it has been composed on the terms that the copyright therein shall belong to such proprietor.

In *English Channel S. S. Co.* v. *Rolt*, p. 715, it was held by V. C. Malins that the term "capital not called up" in the articles of association of a company included shares which had not been issued.

Passing now to the September number of the Queen's Bench Division, the first case requiring notice appears to be *Saxby* v. *Gloucester Waggon Co.*, p. 305, which was a patent case of an interesting nature. It was admitted by the plaintiff's witnesses that every element of the patent was to be found in one or the other of two previous inventions, and that no new result was obtained by their combination now in question different from that obtained by the previous inventions, but it was contended that the combination of the two previous inventions affected by the plain-

tiff required such an exercise of skill and ingenuity as to constitute the subject of a valid patent. The Court, however, was satisfied, on the evidence, that any person of ordinary skill and knowledge of the subject, placing the two previous inventions side by side, could effect the combination of the two in a manner similar to the plaintiff's invention without making any further experiments or obtaining any further information. The Court, therefore, held that the plaintiff's invention was not of sufficient novelty to constitute the subject of a valid patent. The case of *Poyser* v. *Minors*, p. 329, contains some interesting law as to non-suits, and it was held that the rule committee of County Court Judges had power to make the rule that a non-suit shall be equivalent to a judgment for the defendant, as "regulating the practice of the Courts and forms of proceedings therein," such being the terms of their statutory power. Bramwell, L. J., however, dissented from Baggallay and Lush, L. J. J Some notice of this case will be found among our recent English practice cases.

The case of the *New Zealand and Australian Land Co.* v. *Watson*, p. 374, is on the subject of principal and agent, and concerning as it does, the business of exporting wheat for sale in England, appears worthy of special notice. The plaintiffs, who were landowners in New Zealand, used to consign their wheat to M. & T., merchants, amongst other places, at Glasgow, with instructions to sell the wheat in London. M. & T., as plaintiffs were aware, used to employ the defendants, who were corn-factors and brokers in London, for the purpose of selling there the wheat, but the plaintiffs were in no way parties to the particular contracts of sale, nor were their names disclosed upon them. M. & T. failed, and when they stopped payment were indebted to the defendants on other accounts, but not on the Glasgow account. The plaintiffs brought an action for the net balance of the proceeds of the cargoes of wheat in the hands of the defendants, after deducting the remittances made to M. & T. in respect thereof. The jury found at the trial that the plaintiffs did not, through their agents, employ the defendants to sell and account for the proceeds of the wheat; secondly, that the defendants knew, or had reason to believe, that M. & T. were acting in the sales as agents for a third person. The Court of Appeal, however, held (reversing the judgment of Field, J.) that the plaintiffs were not entitled to recover, as there was no privity of contract between them and the defendants, and the defendants did not stand in any fiduciary character towards the plaintiffs so as to entitle the latter to follow the proceeds of their property in the defendants' hands, and as whatever right the plaintiffs might have had as owners to claim the wheat before it had been sold, they had no right, after such sale, to the proceeds, without giving credit for the sum due to the defendants from M. & T. on their *general* account.

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

SEPTEMBER 17.

IN RE RYER AND PLOWS.

Memorandum of conviction—Appeal to Sessions—Return of conviction after verdict—Mandamus.

A conviction must be under seal. A conviction may be returned and proved at any time during the hearing of an appeal therefrom to the General Sessions, or, in the discretion of the Chairman, even during an adjournment for judgment. A minute of conviction signed by the Justice, but not sealed, was returned to the Sessions upon the entering of an appeal therefrom by the defendants. The jury found the defendant guilty of the offence of which he had been convicted, but on motion for judgment he objected that the conviction was not sealed. The Chairman reserved judgment until a day named, and during the adjournment the Justices returned and filed a conviction under seal. The Chairman then declined to receive it, or to give judgment, holding that there was no conviction upon which to found the appeal, which had been heard.

Held, that the prosecutor was not entitled to a mandamus to compel him to deliver judgment; for the reception of the conviction in evidence at that period was for the Chairman's discretion, which could not be reviewed.

George Bell, for the prosecutor.

W. H. P. Clement, contra.

REGINA v. GREAVES.

Road company—Tolls—Repairs—R. S. O. ch. 152.

Under "The General Road Companies Act," R. S. O. ch. 152, secs. 102, 104, 109, the first engineer appointed to examine a road, alleged to be out of repair, must act throughout the proceeding, unless another is appointed under sec 109; but under that section the Judge is the person to be satisfied that the first engineer is unable to make or complete the examination and his decision on that point cannot be reviewed.

The engineer appointed under the Act need possess no official certificate or degree.

The second engineer having been appointed in January to examine and report "as to the present condition of the road" made an examination and so certified, but was unable to report whether the repairs directed by the previous engineer had been performed, as it was covered with snow. In May following, without any further authority, he again examined and certified that it was in good repair, and the company began again to take tolls.

Held, that he was *functus officio* after the first examination, and that the tolls, therefore, were illegally imposed.

Ewart, for the prosecutor.

Pegley, contra.

SEPTEMBER 23.

IN RE PECK AND THE CORPORATION OF THE TOWN OF GALT.

Dedication of public square—Powers of municipality to close—By-law not in public interest—Municipal Act, ss. 467 and 509—Costs.

A municipal corporation laying out a square or park, on lands acquired by them untrammelled by any trust as to its disposal, may deal with it in any manner authorized by session 509 of the Municipal Act, R. S. O., ch. 174, at least where no private rights have been acquired in consequence of their action, but they cannot so deal with lands dedicated by the owner for a special purpose, which case is provided for by section 467. Whether the dedication arises only from the act of the owner, or by express grant, the municipality must accept it, if at all, for the purpose indicated.

The owner of land dedicated to the public a square by filing a plan upon which were the words, "Square to remain always free from erection or obstruction."

Held, that the municipality had no power to

close up part thereof, and dispose of it to trustees of a church.

The by-law for this purpose contained a provision that the trustees of the church should pay all expenses in connection with the by-law, and that it should not take effect till the municipality had been indemnified against loss by reason of passing it and of any proceedings to quash it.

Held, bad on its face, for it was plainly not passed in the public interest, but for the benefit of a particular class.

Held, also, that the applicant was not precluded from moving against the by-law by reason of his having expressed an opinion in its favour before its passage.

Costs were not asked for in the rule, though they were at the bar: *Held*, that as costs are in the discretion of the Court under the Judicature Act, this was no objection.

C. A. Durand, for the applicant.

J. K. Kerr, Q. C., contra.

CHANCERY DIVISION.

Ferguson, J.] [September 12.

KEEFER v. MACKAY.

Will, construction of—Vested estate—Trustee for sale—Partition.

A will contained a devise, in trust for the support and maintenance of the testator's widow, during her life or widowhood, with a direction that she should have the full right to possess, occupy, and direct the management of the property; and at her death or second marriage, "my son Thomas, if he be then living, shall have and take Lot one, which I hereby devise to him." Thomas died before his mother.

Held, that he took a vested remainder in Lot one. The will further contained a devise of lots two, etc., to the testator's sons, Alexander, John, Charles and Thomas, their heirs and assigns, as tenants in common, and a direction that the same should take effect from and after the death or second marriage of the testator's widow. There was a proviso that if any child died without issue before coming into possession of his share the same should go to the survivors. An indenture was executed between the parties, conveying all the estate, etc., of those interested to Alexander, John, Charles and Thomas, after the execution of which Alexander and Charles died. An Act of Parliament was subsequently passed confirming this indenture and declaring that it should take effect from its date and not to be affected by subsequent deaths of the testator's children, and it confirmed the estate in John and Thomas as tenants in common subject to the life estate of their mother, and with the right of survivorship between them in case of one dying before the other, before the death or marriage of their mother. After this and in his mother's lifetime John died.

Held, that Thomas took a vested remainder in fee expectant upon the determination of his mother's life estate.

The residue of the estate was directed to be converted, and to be at the disposal of the widow for her life, while she remained unmarried, and thereafter to the children. This was subject to the above proviso as to coming into possession.

Held, that the children took vested interests in the fund, subject to be directed on the contingency mentioned.

The plaintiff being a trustee for sale was held not to be in a position to ask for partition.

S. H. Blake, Q. C., for plaintiff.

John Hoskin, Q. C., for infant defendants.

Maclennan, Q. C., *Rae* and *Black*, for other defendants.

Boyd, C.] [Sept. 29.

CAMPBELL v. CAMPBELL.

Pleading—Demurrer—Alimony—Fraudulent conveyance.

The plaintiff filed her bill for alimony, alleging that a conspiracy had been entered into between her husband and the other defendant to prevent her realizing any alimony that might be awarded her, and for that purpose the husband had fraudulently conveyed all his lands to his brother—the co-defendant, and praying to have the same declared fraudulent. The brother demurred for multifariousness, want of equity, and want of parties.

The Court [BOYD, C.,] over-ruled the demurrer on the first two grounds, but allowed that for want of parties; the plaintiff not having re-

covered judgment and execution could only sue in a representative capacity—that is, on behalf of herself and all other creditors. *Longeway* v. *Mitchell*, 17 Gr. 190; *Turner* v. *Smith*, 26 Gr. 198; *Colver* v. *Swagge*, *ib.* 395 and *Morphy* v. *Wilson*, 27 Gr. 1, considered and followed.

Meredith, for demurrer.

I.Campbell, contra.

Boyd, C.] [Sept. 29.

NEEDHAM v. NEEDHAM.

Practice—Ne exeat—Bail.

Where the plaintiff in an alimony suit obtains a writ of arrest, and the defendant gives bail; and a breach of the bond is committed, the plaintiff is entitled to have the amount for which the writ was marked paid into Court to be applied in payment of the alimony and costs: and *semble* that upon such payment the sureties are entitled to be discharged from their bond.

Where under a writ of arrest a caption takes place, the sheriff is entitled to a bond for double the amount marked upon the writ.

Meredith, for plaintiff.

Bayley, for the sureties.

Ferguson, J.) [Oct. 4.

GRIFFITH v. GRIFFITH.

Will—Construction of—Vested estate—Dying before age of 21.

The testator expressed a desire "to have retained for my children my property on Yonge-street, and for this purpose I desire that the proceeds of my life insurance be applied in the purchase for my daughters' benefit of the incumbrances of that property. Under any circumstances I desire that all my other lands be sold. * * I desire that the proceeds of my estate and rents of my Yonge St. property be applied * * in the support, maintenance, and education of my two daughters and in paying the incumbrances on the Yonge-street property. After paying the necessary charges, my wish is that the interest of my estate be applied by my trustees in the support of my children. Should one of my said two daughters die, or become a Roman Catholic, her share to go to the other, and should both die without issue, or become Roman Catholics, then my estate is to go to my sister L. and her heirs. * * I direct that my trustees shall divide the proceeds of my estate equally between my two daughters, allowing each during their minority, or until the marriage of one or other of them, a sum sufficient to maintain and educate them, and after they come of age an equal share of all proceeds to be secured and paid them free from all control of any husband or any other person." There were only these two daughters children of the testator, and both attained the age of 21 years without having become Roman Catholics.

Held, that the interests taken by the daughters were vested, though subject to be divested upon the happening of the events mentioned before twenty-one; and that at that time the shares vested absolutely in them; so that L. took nothing under the will at present.

TRAVIS v. BELL.

Fraudulent conveyance—Costs.

In a suit to set aside a conveyance on the ground of want of consideration, it being alleged that the grantor was bodily and mentally infirm, the evidence showed that the only difference between the grantor and grantee was that the former was an older man than the other. The grantee, however, had given about the full market value of the land conveyed, and to secure part of the purchase money had executed a morrgage thereon. In dismissing the bill the Court [FERGUSON, J.] directed the costs of the defendant to be deducted from the amount due under the mortgage, if the costs were not paid within a month, it being alleged that the plaintiff was worthless.

IN RE WELLAND CANAL ENLARGEMENT: FITCH v. MCRAE.

Valuation—Compensation to owner—Landlord and tenant—37 Vict., ch. 13.

The Government of Canada, having taken the land of the defendant's testator for the purposes of the Welland Canal, paid into Court, under the statute, a sum awarded by the

valuers, which was intended to cover all claims which the owner might have of any kind; and the owner was to be at liberty to remove buildings, &c.; and on payment of the money to convey free from dower and all other incumbrances including taxes. The plaintiff was lessee of the property so taken and claimed compensation for disturbance.

Held, that the plaintiff was entitled to be compensated out of the money paid into Court, and that his claim was one which the owners was liable, under stat. 37, Vict. ch. 13, sec. 1, to pay, and which he should have taken into consideration, and which the evidence showed had been taken into consideration in the settling the amount to be paid by the government on taking possession of the lands.

Proudfoot, J.] [Oct. 10.

SMITH v. BABCOCK.

Examination—Defendant out of jurisdiction—Practice.

The bill was filed in Lindsay.

The plaintiff resided at Port Hope, his counsel at Toronto. The defendant resided at Montreal, and his counsel at Belleville. The official referee made an order that the defendant should attend at Cornwall to be examined before the local master on the ground that Cornwall was the nearest place in the jurisdiction to the defendant's residence. On appeal,

PROUDFOOT, J., *held* that the case was distinguishable from those where the party to be examined resided within the jurisdiction: (*Gallagher* v. *Gairdner*, 2 Chy. Cham. 480.) Here the plaintiff to be examined resided out of the jurisdiction, and Con. Stat. Can., ch. 79) gave liberty to the party to summons him within it (see *Moffatt* v. *Prentice*, 9 C. L. J. 159. It became then a question at which place in Ontario under the circumstances of the case it was most expedient the examination should take place, he thought Toronto. Appeal allowed costs in the cause.

W. Cassels, for the appeal.

Fitzgerald, contra.

CHAMBERS.

Osler, J.] [Sept. 29.

KINLOCK v. MORTON.

Rule 324—Judgment—Execution—Rateable division.

Where it appears that defendant has made or is intending to make a fraudulent disposition of his property, or is so deallng with it as to embarrass the plaintiff in reaching it by execution, the Court will, on a motion under rule 324, upon a proper case being made, order judgment and immediate execution.

In the event of other executions being obtained against the debtor's property before the time at which the plaintiff would be entitled to issue execution as on a judgment in default of appearance, and the amount realized being insufficient to satisfy all parties, a rateable division should be made.

Ogden, for the motion.

Aylesworth, contra.

Mr. Dalton.] [Sept. 30.

HEAD v. BOWMAN.

Rule 91—Joinder of parties—Alternate relief.

Plaintiff sued defendant for flooding his land by means of a mill dam, after the determination of a license to do so. The Great Western Railway had turned the waters of the stream into another channel which was not made deep enough to carry off all the water if the defendant's dam were removed, so that by the act of the Railway Company the plaintiff could not obtain complete relief by succeeding against defendant.

Held, that the plaintiff should have liberty under rule 91 to add the Railway Company as defendants.

J. G. Robinson, for the motion.

Aylesworth, contra.

Osler, J.] [Oct. 1.

IN RE ONTARIO BANK v. HARSTON.

Division Courts Act, 1880,—Prohibition—Territorial division—Unorganized tract.

The Division Court's Act, 1880, does not apply to the Division Courts in Territorial Divi-

sions and Unorganized Tracts, and a prohibition was ordered to restrain a stipendiary magistrate from adjudicating upon a claim on a promissory note for $110.

Delamere, for the motion.

Holman, contra.

Proudfoot, J.] [Oct 3.

MCLAREN V. CALDWELL.

Costs paid into Court and payment out.

Where money was paid into Court by the defendant as security for costs on certain appeals in the suit, and as security for costs on an appeal from the decree and all the appeals were allowed.

An application to have the moneys so paid in, paid out to the defendant notwithstanding an appeal to the Supreme Court was granted following *Billington* v. *Provincial*, to be reported.

Barwick, for the motion.

Creelman, contra.

Proudfoot, J.] [Oct. 3.

RE CAMERON.

Money in Court—Payment out—Rule 424.

An order was made some years ago by the Referee for the payment out of court to certain infants as they came of age of their shares which had been duly ascertained.

One infant came of age a short time since, but the clerk in the accountant's office refused to issue a cheque without a judge's order under Rule 424.

PROUDFOOT, J., held that under Rule 494 and sub-sec. 2, sec. 11, O. J. A., the order already made by the Referee was sufficient.

Evans, for the applicant.

Mr. Dalton, Q.C.] [Oct. 10.

CRUSO V. BOND.

Mortgage—Foreclosure—Principal—Election.

Plaintiff, a mortgagee, filed a bill for foreclosure of the mortgaged premises, and for immediate payment and possession. Defendant tendered the amount due for principal, interest and costs, but plaintiff refused to take the principal and discharge the mortgage.

Held, that by filing his bill he had made his election to accept the debt, and that he should execute a re-conveyance upon receipt of principal, interest and costs.

Mr. Dalton.] [Oct.

LAWLESS V. RADFORD.

Security for costs.

Replevin for a steam-engine and hay-press The County Court Judge made an order that the sheriff should hold the articles subject to the order of plaintiff. The defendant now applied for an order under sec. 9 of R. S. O., cap. 53 to vary this, by directing possession to be given to him. The defendant also applied for security of costs, the plaintiff living out of jurisdiction, and the writ issued since the 21st Aug., did not shew residence of plaintiff. It appeared by an affidavit of the sheriff that he had not received the bond provided by sec. 11.

H. Symons, for motion.

A. Cassels, *contra*, objects as to motion for security, that the affidavit of plaintiff upon which the writ was obtained, shewed that plaintiff resided out of jurisdiction, and that the order could be obtained upon præcipe under R. 431, the *affidavit* being the proceeding by which the action is instituted. The seizure also is regular, as it is not absolutely necessary that a bond should be given.

MR. DALTON.—The defendant should have security for costs, and his motion is regular, the writ is the proceeding by which the suit was instituted, and not *the affidavit* and as the writ does not shew plaintiff's residence the defendant is justified in coming here. The seizure I must set aside altogether. It was an improper thing for the sheriff to seize until he had received the bond. Sec. 11 says expressly that a sheriff is not to seize until the bond is furnished, and no Judge's order can waive this. I will make an order to set aside the seizure, and directing the sheriff to re-deliver the goods *to defendant*, and will reserve question of costs of the application until the sheriff is before me. I do not know now whether we or the plaintiff should pay them.

Order to go for security for costs in usual form.

Proudfoot, J.] [Oct. 10.

DAYER v. ROBERTSON.

Time for appealing—O. J. A. Rule 427 (*c*).

Judgment on an application for security for costs was delivered on the 29th Sept., 1881. The order was issued on the 1st Oct. following.

The plaintiff appealed on Monday, October 10th, and the appeal came up.

Watson, for defendant (respondent), objected to the appeal being heard, on the ground that the terms of rule 427 (c) requiring the motion to be made within eight days from the making of the decision complained of (no further time having been obtained).

McPhillips, contra.

PROUDFOOT, J., dismissed the appeal without costs, without prejudice to plaintiff's right to make an application under Rule 462.

REPORTS.

RECENT ENGLISH PRACTICE CASES.

(Collected and prepared from the various Reports by A. H. F. LEFROY, ESQ.)

HARMON v. PARK.

Imp. Jud. Act, 1873. *s.* 19—*Ont. Jud. Act. s.* 13, 14, 15.

Municipal election petition—Court of Appeal.

An appeal lies to the Court of Appeal from an order of the Common Pleas Division upon an interlocutory matter arising out of a municipal election petition.

[C. of A., Dec. 15, 1880—19 W. R. 750. C. P. D.]

This was a case of a petition against the election of one Park as Councillor of one of the wards in the borough of Sunderland. The petitioner, a rival candidate, made the Mayor respondent with Park.

STEPHEN, J., at Chambers, made an order to dismiss the Mayor from the petition, on the ground that, not being a returning officer, he was improperly joined. The order was reversed by the C. P. Div., and the Mayor thereupon appealed.

Counsel for the petitioner objected that the Court had no jurisdiction to hear the appeal, for that by the Imp. Corrupt Practices (Municipal elections) Act, 1872, s. 15, Subs. 4 and 7, (cf. R. S. Ont., c. 174., sec. 199), the decision of the Superior Court is made final.

Counsel for respondent urged that these sections do not apply to questions of procedure or interlocutory matters, and referred to rule 64 of the General Rules made under the Act.

LORD SELBORNE, C., after adverting to the fact that the Judicature Act was passed after the Municipal Act of 1872 and transfers to the High Court all jurisdiction vested in the Common Pleas, including that vested under any special act, (cf. Ont. Jud. Act, Sec. 9., Subs. 2), went on to observe:—

"This matter was brought before a Judge at Chambers, not sitting as an election Judge or as a Judge of the C. P. Div.; this was done under rule 44, drawn up under the Municipal Elections Act, 1872, by which rule all interlocutory matters arising out of proceedings under the Act may be heard and disposed of by any Judge at Chambers; and, although this is a special jurisdiction, the matters are to be dealt with by the Judge in the same manner, and therefore subject to the same rules as to appeal or otherwise as matters arising out of ordinary actions; therefore, I cannot say that such matters are excepted from the provisions of section 19 of the Judicature Act, 1873, especially as the Corrupt Practices Act expressly provides what decisions are to be final."

BAGGALLAY, L. J., concurred.

BRETT, L. J., If this were an appeal from a decision of the C. P. Div. upon a petition, it is clear we could not hear it. If it were an appeal upon any matter arising in a petition after it had been properly instituted, or upon any matters which could only have been brought before an election Judge, as such I should have doubted. But the question is whether the petition is properly instituted, and thus may be heard by any Judge of the High Court under the order referred to, and as the decision of the Judge

* It is the purpose of the compiler of the above collection to give to the readers of this Journal a *complete* series of all the English practice cases which illustrate the present practice of our Superior Courts, reported subsequently to the annotated editions of the Ontario Judicature Act, that is to say since June, 1881.

of the High Court as such it s subject to appeal under sec. 19 of the Jud. Act, 1873.

[NOTE.—*The provisions of Imp. J. A.* 1873, *sec.* 19, *are comprised in terms virtually identical in Ont. J. A.. secs.* 13, 14, 15.]

POYSER v. MINORS.

Imp. O. 41, *r.* 6, *O.* 36, *r.* 18—*Ont. O.* 37, *r.* 6, (*No.* 330.) *O.* 31, *r.* 15, *No.* 268.

[C. of A., June 30.—19 W. R. 773.
L. R. 7 Q. B. D. 329. 50 L. J. R. 555.

The order the interpretation of which was in question in this case, was Imp. Co. Ct. Rules 1875, O. 16, r. 17; but this County Court rule is a copy of Imp. O. 41, r. 6, Jud. A. 1873, and it is to be noted that the judgments contain some lengthy observations on the said O. 41, r. 6, which is virtually identical with our Order 37, r. 6.

The following passage occurs in the judgment of BRAMWELL, L. J. :—

"This rule (O. 41, r. 6, J. A.) has always been a difficulty to me. It supposes a "judgment" of non-suit may be given. There really in strictness never was a "judgment" of non-suit. No plaintiff could be non-suited against his will. * * * * If he insisted on appearing, he could not be non-suit. The expression then, "judgment of non-suit" seems inaccurate. But setting aside this difficulty, which, were it necessary, I could show is not merely verbal, I have never been able to see when under the other rules a non-suit can happen. I need not discuss non-suits before trial. None are provided for by the rules. Now, what is to happen at the trial? By O. 36, r. 18." (Ont. O. 31, r. 15, No. 268) "if plaintiff appears and defendant does not, plaintiff may prove his claim. What is to happen if he does not is not said. I should have thought verdict and judgment for defendant if the case was before a jury, judgment for him if not. Was it contemplated that a Vice-Chancellor should non-suit? Suppose plaintiff insists on appearing? What is the use of a non-suit if it is a bar to a future action unless ordered to the contrary? And if it may be, and is, why could not the power be given to the judge or Court to say that any judgment of whatever kind should not be a bar if so ordered? * * Rule 18 seems the only one under which such a judgment (*i.e.*, of non-suit) can be given. * * It seems strange that such a judgment can be given only where the plaintiff appears and defendant does not. I cannot but doubt whether O. 41, r. 6, did not slip in *per incuriam* and whether it can be applied, now especially. However there it is, and it has been acted upon and probably would be supported if possible."

[NOTE.—*Imp. O.* 41, *r.* 46, *and O.* 37, *r.* 6, *are virtually identical; and Imp. O.* 36, *r.* 18, *and Ont. O.* 31, *r.* 15, *are identical.*]

BECKET v. ATTWOOD.

Appeal by one plaintiff—Co-plaintiff refusing to join in appeal.

One of two plaintiffs may appeal, although his co-plaintiff refuses to join in the appeal. The co-plaintiff should be made a respondent.

[C. of A., May 10—29 W. R. 786. 44 L.T. 660. 50 L.J.R. 637

In this matter one of the plaintiffs appealed. The other refused to join in the appeal, and was therefore made a respondent.

In support of the objection that the appeal was defective was cited *Drake* v. *Symes*, 9 W. R. 427, 3 De. G. F. & J. 491, and *Jopp* v. *Wood*, 2 De. G. J. &. S. 323, 13 W. R. Ch. Dig. 76.

In support of the appeal were cited *Colvin* v. *Hartwell*, 5 Cl. and Fin. 484; *Hanson* v. *Keating*, 4 Ha. 1, and 2 Seton on Decrees, 1605.

JAMES, L. J.—The objection must be overruled. If one plaintiff is dissatisfied with the judgment of the Court, he ought not to be prejudiced in his right to appeal, simply because his co-plaintiff does not wish to risk the consequences of further litigation. If the plaintiff who is made a respondent has any reason to doubt about the security of his costs, if successful, he should apply that the appellant may give security under O. 58 r. 15.

[NOTE.—*Our orders under the J. Act contain no order similar to Imp. O.* 58, *r.* 15, *but cf. R. S. O., c.* 38, *sec.* 26.]

IN RE BROOK: SYKES V. BROOK.

Imp. J. A., 1873, *s.* 56, 58—*Ont. J. A. s.* 47, 49. *Official referee—Objection to report—Notice—Administration action—Costs.*

When questions have been referred to an official referee for inquiry and report, and he has reported, objections may be made to the report on further consideration, but notice of the objections should be given; and it seems two clear da 'notice would be sufficient.

[Ch. D. May 13—19 W. R. 820.

In this case after the official referee had made his report, the plaintiff raised the objection to the report, that certain sums claimed by the defendant against the estate and allowed by the referee, ought not to be allowed. This point was raised on the pleadings, the accounts, and the reports.

No notice of this objection had been given.

Counsel for defendant raised the preliminary objection that it was too late to vary the report, and that for the purpose of variation, the report is equivalent to the verdict of a jury, and cited *Sullivan* v. *Rivington*, 28 W. R. 372.

FRY, J., however, after calling attention to the fact that Imp. J. Act, 1873, sec. 58 (Ont. J. Act, s. 49), draws a distinction between two classes of cases, and the latter part only speaks of a trial, gave judgment as follows:—

"It is clear that I cannot object to hear the plaintiff when he says that the report of the official referee is wrong, because sec. 56 of J. A. 1873 says the report of the referee may be adopted wholly or partially by the Court. Now, that report does not come before the Court except on further consideration, because on that occasion the question arises whether the report shall or shall not be adopted by the Court; yet, undoubtedly great inconvenience will arise if points on the report are to be argued without any intimation on the part of the person who makes that objection. Therefore, I shall order the case to stand over if the defendant desires it. I cannot lay down any general rule as to what length of time should be allowed for notice of objection. I think two clear days would be desirable."

A further question arose in this case on the subject of costs. The facts were these: Beneficiaries under a will brought an action against B., who was trustee and executor, asking for execution of the trusts, administration, relief in respect of alleged breaches of trust, appointment of a new trustee and a receiver. A receiver was appointed. When the action came on for trial, an order was made referring certain questions for inquiry and report to an official referee. Some of these questions were common administration inquiries, and the rest were directed to the alleged misconduct of the defendant. The referee reported in favour of the defendant on all points. On further consideration,—

FRY, J., held that the plaintiffs must pay the costs of the action up to and including the further consideration, except such costs as would necessarily have been incurred in obtaining a common administration judgment.

[NOTE.—*Imp. J. A.* 1873, *s.* 58, *is identical with Ont. J. A., s.* 49. *Imp. J. A.*, 1873, *s.* 56, *and Ont. J. A., s.* 47, *are to the same effect, but not identical since the latter gives powers to a Co. Ct. Judge, and to a single Judge of a Divisional Court, which do not appear to be given by the Imp. Act.*]

WHEELER V. LE MARCHANT.

Imp. O. 31, r. 11, 12—Ont. O. 27, r. 4, (No. 222) Discovery — Privilege — Surveyor — Information by a Solicitor ante litem motam.

Where a solicitor is consulted by a client in a matter as to which no dispute has arisen, and applies to a surveyor or other third party for information necessary that the solicitor may give legal advice to the client, the communications between the solicitor and third party are not privileged from discovery in legal proceedings subsequently commenced by or against the client.

[C. of A., April 6—44 L. T. 632, L. R. 17 Ch. D. 675.

In an affidavit as to documents, delivered pursuant to an order to produce, the defendants objected to the production of certain documents on the ground that they consisted of "confidential correspondence between ourselves and our former solicitors, B. R. & B., and our present solicitors, G. R. & Co., and our former estate agent and surveyor Mr. W., and his agent Mr. N. K., and our present estate agent and surveyor, Mr. E., and between such solicitors and agents."

The plaintiff thereupon took out a summons for production for inspection of these documents. This summons was adjourned into Court

and on April 2nd, BACON, V. C., dismissed the summons with costs: he declared the principle to be perfectly distinct and plain—

"A man is not to be so impeded in his transactions whether he is, or is likely to be engaged in litigation or not, as to be prevented from employing a solicitor, first for the purpose of obtaining his advice, and next to collect evidence, or from employing any agent, not being a solicitor, who is engaged for the like purpose. If the defendants take upon themselves to say that those were all confidential communications, what right have I to say that their confidence should be disclosed? The case of *Anderson* v. *Bank of British Columbia*, 15 L. T. N. S. 76; L. R. 6 Ch. D. 644 is totally different. One man there wrote to another, and asked him to send the full particulars of a transaction. That is an act done by which the rights of parties may be influenced. With regard to the cases of reports made by medical officers, such reports are protected from discovery because they are made with respect to the litigation going on. There is no doubt about the law. The general principles laid down by Lord Lyndhurst in the case of *Herring* v. *Clobery*, 1 Phil. 91 in my opinion, cover the whole ground of the right to production."

The plaintiff appealed, and by his notice of appeal stated that he applied for production of the documents, "except such, if any, of the same documents as consist of confidential communications between the defendants and their solicitors."

Counsel for the appellant contended that communications between the defendants and their solicitors and agents before the litigation began, and so far as they were not made for the purpose of defending the action were not privileged, and cited *Anderson* v. *Bank of British Columbia*, supra; *McCorquodale* v. *Bell*, L. R. 1 C. P. Div. 471; *Bustros* v. *White*, L. R. 1 Q. B. Div. 423.

Counsel for the defendants contended that it is immaterial whether any litigation is proceeding or in contemplation, and cited *Herring* v. *Clobery*, supra; *Cromack* v. *Heithcote*, 2 Br. & Bing. 4; *Manser* v. *Dix*, 25 L. T. O. S. 113; 1 K. & J. 451; *Mostyns* v. *West Mostyn Coal & Iron Co.* 34 L. T. N. S. 531; *Minet* v. *Morgan*, L. R. 8 Ch. App. 361; *Southwark & Vauxhal Waterworks Co.* v. *Quick*, L. R. 3. Q. B. D. 315; *Lawrence* v. *Campbell*, 4 Drew, 485; *Macfarlane* v. *Rolt*, L. R. 15 Eq. 580; *Walsham* v. *Stainton*, 9 L. T. N. S. 603; 2 H & M. 1; *Ross* v. *Gibbs*, L. R. 8 Eq. 522; *Cossey* v. *London. Brighton and S. Coast Ry. Co.*, L. R. 5 C. P. 146; *Friend* v. *London, Chatham & Dover Ry. Co.* L. R. 2 Ex. D. 437; *Wilson* v. *Northampton & Banbury Junction Ry. Co.* L. R. 14 Eq. 477.

The Court reversed the decision of Bacon, V. C., and ordered that the defendants must produce the correspondence, except such, if any, as the defendants should state by affidavit to have been prepared confidentially after the dispute had arisen between the plaintiff and defendants, and for the purpose of obtaining evidence and legal advice for the purpose of the action.

JESSEL, M. R., after observing that the Counsel for the respondents had fairly admitted that no decided case could be produced which carry the rule to the extent they wished, and that the principle as to protection from discovery was of a very limited character, and after illustrating this by examples, said:—

"The protection is of a very limited character. It is a protection in this country restricted to the obtaining the assistance of lawyers as regards the conduct of litigation or the rights to property. It has never gone beyond the obtaining legal advice and assistance, and all things reasonably necessary in the shape of communication to the legal advisers are protected from production or discovery, in order that legal advice may be obtained safely and sufficiently. Keeping that in view, what has been done is, that the actual communication to the solicitor by the client is of course protected, and it is equally protected whether that communication is made by the client in person to the solicitor in person, or is made by an agent on behalf of the client, who obtains the advice from the client for the solicitor. It would extend also to a clerk or subordinate of the solicitor who acted in his place or under his direction. Again, with the same view, the evidence obtained by the solicitor, or by his direction, or at his instance, even if obtained by the client, is protected after litigation has been commenced or threatened, or with a view to the defence or prosecution of such. So again, it does not matter whether the advice is obtained from the solicitor, as to a dealing which is not the subject of litigation.

What is protected is the communication necessary to obtain legal advice. It must be a communication made to the solicitor in that character and for that purpose. But what we are asked to protect here is this: the solicitor being consulted in a matter as to which no dispute has arisen, thinks he would like to know some further facts before giving his advice, and applies to a surveyor to tell him what the state of a given property is, or information of that character, and it is said that that ought to be protected because the information is desired or required by the solicitor in order to enable him the better to give legal advice. It appears to me that is not only extending the rule beyond what has been previously laid down, but beyond what necessity warrants."

BRETT, L. J., was of a like opinion. He also observed that *Mostyn* v. *West Mostyn Coal & Iron Co. supra* gives no colour at all to the proposition put forward for the approval of the Court by the respondents, and that *Wilson* v. *Northampton & Banbury Junction Ry. Co. supra* is wrong, unless there was inadvertence as to some of the documents there shut out from information.

COTTON, L. J., was also of like opinion, and observed that it "is not necessary in order to enable persons freely to communicate with their solicitors and obtain their legal advice, which is the foundation of the rule, that any privilege should be extended to communications such as these." He also points out that when it is said that communications between the "*representatives of the client*," and the solicitor are privileged, what is meant by the word "representative" is a "person employed as an agent on the part of the client *to obtain the legal advice of the solicitor*."

[NOTE.—*Imp. O.* 31, *r.* 11, 12, *and Ont. O.* 27, *r.* 4, *both relate to discovery and production, but are not identical.*]

DICKS v. YATES.

Imp. J. A., 1873, *s.* 49—*Ont. J. A.*, *sec.* 32.

Appeal—No order except that defendant shall pay costs.

In an action for infringement of alleged copyright in the title of a novel, the defendant, before trial, discontinued the use of the title. At the trial the Judge held that the plaintiff had established his claim to copyright, and that the defendant had invaded it, but he made no order except that the defendant should pay the costs of the action.

Held, that this was not an "order as to costs only" under sect. 49 of the J. A., 1873, and that the defendant could appeal against the order.

[C. of A., July 9.—44 L. T. 662.

The above head-note sufficiently shows the facts of this case. At the trial, Bacon, V. C., who held that the whole copyright of a work entitled "Splendid Misery" was vested in the plaintiff; that the title was part of it; and that that title being the property of plaintiff, had been adopted unintentionally by the defendant; said that it was unnecessary to grant an injunction, and merely ordered the defendant to pay the costs of the action.

On appeal, counsel for respondent argued there was no right of appeal under above section of the Act, and cited,—*Re Hoskin's trusts*, L. R. 5 Ch. App. 281; *Ashworth* v. *Outram* (No. 2), L. R. 5 Ch. D. 943; and endeavoured to distinguish *Wilt* v. *Corcoran*, L. R. 2 Ch. D. 69.

Counsel for appellant relied on *Wilt* v. *Corcoran*, and also cited *Harris* v. *Aaron*, L. R. 4 Ch. D. 749.

JESSEL, M. R., held the objection could not prevail, and said:—

"Are costs, so given, costs by law in the discretion of the Court, if the plaintiff has no title? It seems to me that is not so. No one has ever heard of such an order, nor did the V. C. make such an order. The V. C. decided that the plaintiff had a title, and thereupon he ordered the defendant to pay the costs. That is the decision which is really appealed against. It seems to me that it makes no difference whether there is an actual declaration in the order that the plaintiff was entitled, or whether it was a necessary inference from the form of the judgment ordering the defendant to pay costs. It comes to the same thing. It is a decision that the plaintiff was entitled to bring the action, and therefore this is not a mere appeal for costs. I wish not to be misunderstood. I think the Court has a discretion to deprive the defendant of his costs, though he succeeds in the action, and that it has a discretion to make him pay, perhaps, the greater part of the costs, as regards issues on which the

defendant fails, or in respect of misconduct by the defendant in the course of the action. But, in my opinion, a judgment like this, for the whole costs of the action, cannot be supported without an express or implied decision that the plaintiff was entitled to bring the action. Therefore I think the appeal should proceed."

JAMES, L. J.—"I am of the same opinion. I should add that there is an essential difference between the plaintiff and a defendant. A plaintiff may succeed in getting a decree, and he may have to pay all the costs of the action; but the defendant is dragged into court."

[NOTE.—*Imp. J. A.*, 1873, *sec.* 49, *and Ont. J. A.*, *sec.* 32, *are identical.*

RANSON v. PATTEN.

Imp. J. A., 1873, *sec.* 52, *O.* 50, *r.* 4—*Ont. J. A. sec.* 41. *O.* 44, *r.* 3 (No. 385).

Dismissal of action—Death of plaintiff—Appeal,—Revivor.

[C. of A., May 20—44 L. T. 688.

This action was tried before Bacon, V. C., when he gave judgment of the foreclosure claimed by the plaintiff, and dismissed the counter-claim with costs.

The defendant gave notice of appeal, and after it had been set down for hearing, died. His executrix obtained an order of course on petition at the Rolls under Imp. O. 50 r. 4, giving leave to continue proceedines.

Counsel for respondents raised the preliminary objection that the executrix ought to have applied to the Court of Appeal, under Imp. J. A., 1873, sec. 52.

JESSEL, M. R.—Under the practice of the Court of Chancery the suit was revived by bill of revivor in the original Court. This is a proceeding in the action. The only proceeding there is in the action is an appeal. The Court of Appeal has no original jurisdiction, as every appeal is now by way of rehearing. The plaintiff took a very convenient and proper course in obtaining an order at the Rolls.

[NOTE.—*Imp. J. A.*, 1873, *sec.* 49, *and Ont. J. A.*, *sec.* 32 *are identical. Imp. O.* 50 *r.* 4, *and Ont. O.* 44, *r.* 3, *(No.* 385*) are identical, except that under the former the order to add parties, though it may be obtained ex parte, cannot be obtained on procipe.*

WITHAM v. VANE.

Imp. O. 16—*Ont. O.* 12 (*No.* 89-114.)

Third parties—Costs.

Where third and fourth parties had been brought in—*Held*, that there is no jurisdiction to order the plaintiff to pay the costs of the third and fourth parties, and that as there was no disputed question o fact relating to them, but only a question of liability as between the plaintiffs and defendants, there should be no order as to the costs of the third or fourth parties.

C. of A., May 9.—44 L. T. 718.

This was an action on a covenant for payment of a certain sum or rent-charge contained in a deed of sale to the Duke of Cleveland, deceased. After the commencement of the action, the defendants, who were the representatives of the said Duke, brought in as third parties the Hutton Henry Company, who were assigns of part of the land subject to the rent-charge. The Company brought in as fourth parties, Messrs. Horn and Saunders, who under the deed of conveyance to the company had a term vested in them to secure the rent reserved in the said deed to the company, and the company also brought in as fourth parties Messrs. Davis and Greaveson, who by deed of even date with the deed to the company were under covenant to indemnify the company against the rent charge reserved in the original deed to the Duke of Cleveland.

In June, 1880, FRY, J., ordered the plaintiffs to pay the costs of the third and fourth parties, but made no order as to the other costs of the action, considering neither plaintiff nor defendant absolutely in the right.

The plaintiffs appealed, and the defendant gave the usual respondent's notice that the order might be further varied in their favour.

Counsel for the appellants urged that the Judge's order as to costs was irregular, in so far as it directs the plaintiffs to pay the costs of the third parties, and cited *Dawson* v. *Shepherd*, 42 L. T. N. S. 611; *Swansea Shipping Co.* v. *Duncan*, L. R. 1, Q. B. D. 644.

Counsel for the third parties said they did not ask for costs against the plaintiff, but that there was ample jurisdiction to make the defendants pay them, and cited *Dawson* v. *Shepherd*, 42 L. T. N. S. 611, and O. 16 r. 21 (Ont. O. 12 r. 23). They also urged there was no

jurisdiction to make a third party pay a fourth parties costs; and that it is only through judicial decisions that fourth parties are brought in at all, and there is no provision as to ordering their costs to be paid, and cited *Fowler* v. *Knoop* 36 L. T. N. S. 219; *Witham* v. *Vane*, 41 L. T. N. S. 729; *Walker* v. *Balfour*, 25 W. R. 511; Imp. J. A. 1873, sec. 24, subs. 3 (Ont. J. A. sec. 16, subs. 4).

Counsel for the fourth parties asked for their costs.

JAMES, L. J.—It appears to me in this case no costs ought to be given to the persons who have been brought in as third and fourth parties. There was a mere question of liability as to what was the construction of the covenant, and and it appears to me that those persons who have been brought in by notice might very well have left the question to be argued by the counsel who appeared for the Duke of Cleveland, and might have given any assistance which they liked. There was no disputed question of fact to be dealt with. I think that it was wrong in point of jurisdiction, for the Judge in the Court below to order the plaintiff to pay the costs of the third and fourth parties. That part of the order will, therefore, be discharged, and there will be no order as to the costs of the third and fourth parties. The action will be dismissed, and the plaintiff must pay the costs of the defendants in the Court below and on appeal. The defendants will have their costs in the ordinary mode.

BAGGALLAY and LUSH, L. JJ., concurred.

[NOTE.—*It is important to notice that under Ont. O.* 12 *r.* 23, *No.* 111, *the Court or Judge is empowered to give directions "as to the costs of the proceedings," where a person not a party to the action is served under the Rules of Order* 12, *and appears pursuant to the notice. Imp. O.* 16 *r.* 21, *is otherwise identical, but does not contain this clause as to costs, hence the decision in Yorkshire Waggon Co.* v. *Newport Coal Co.*, 5 *Q. B. D.* 268. *In the main the rules of Ont. O.* 12 *are identical with those of Imp. O.* 16.]

SPARROW v. HILL.

Costs, taxation of—Plaintiff succeeding upon one of several claims—Apportionment under special order Imp. O. 6, r. 30, 32, August 12, 1875 (costs)—Ont O. 50, r. 20, 22. (Nos. 447, 449).

February 22.—L. R., Q. B. D. 362.

In this case the plaintiff sued in respect of three heads of claim, as to two of which he failed, and as to the third recovered a small sum under the award of an arbitrator.

By the order of the Court judgment was entered for the plaintiff for the sum so found due, and the plaintiff was to recover against the defendants also "such costs as one of the Masters may find he has rightly incurred in recovering the above amount, to be taxed, and that the defendants recover against the plaintiff such costs as they have rightly incurred in defending themselves on those points on which they have succeeded, to be also taxed.

The Master, on taxation, allowed the plaintiff the general costs of the cause, disallowing only these items in his bill which applied exclusively to the parts of the claim upon which he had failed to succeed; and he allowed the defendants only certain of the costs which he had taxed off the plaintiff's bill.

The Court, however, held that the taxation must be reviewed, for the master ought to have allowed to each party the costs applicable to the portion of the claim upon which he or they respectively had succeeded, and apportioned the general costs of the cause.

It was also urged by the plaintiff's counsel that the requirements of rules 30 and 22 of Aug., 1875, (Ont. Nos. 547, 449) had not been complied with as the particular items objected to were not specifically stated in the "objections."

But the Court held that these rules apply only where particular items are objected to, not where the general principle of the taxation is challenged.

In the course of his judgment GROVE, J., said:—

"The Master has not apprehended the principle upon which the order was framed. The order evidently meant something ultra the ordinary course of taxation; it intended that each party should recover his costs so far as each item applied exclusively to matters upon which he had succeeded, and that the general costs applicable to all the matters should be appor-

tioned. Rules 30 and 32 of O. VI. R. S. O. (cosst) 1875, apply only where specific objections are made to particular items. Here the objection was not to specific items as such, but to the principle upon which the whole bill was taxed. *Knight* v. *Pursell*, 49 L. J. (ch.) 120, is a strong authority in favour of the view the Court is taking. * * * * Such portion of the defendants' costs should be allowed to them as were rightly incurred by them in defending themselves on the points on which they succeeded, not the general costs of the cause, but a proper apportionment on the principle I have stated.

A judgment to same effect was given by LINDLEY, J., who observed that the master seemed to have taxed the plaintiff's and the defendant's bills upon different principles, whereas the order uses the same words as regards both bills, and both bills should have been taxed from beginning to end upon the same principle:—"The bills must be referred back to be re-taxed according to the rule adopted in *Knight* v. *Pursell*, not as to the proportions, but according to the general principle there laid down; the costs of the summons and of this motion to be allowed to the defendants."

Dugdale.—Costs are seldom, if ever, allowed where there has been a mistake of the master.

LINDLEY, J.—That rule is no longer applicable since the Judicature Act, 1873.

Order accordingly.

[NOTE.—*Imp. O. 6, r. 30, 32, Aug. 1875 (costs), are identical with Ont. O. 50, r. 20, 22, Nos. 447, 449.*]

FOWLER v. FOWLER.

Solicitor's Lien—Subpœna duces tecum—Inspection.

May 17—50 L. J. R. 686.

In this case a solicitor had been served with a *Subpœna duces tecum* to attend as a witness on behalf of the plaintiff, and to produce a certain marriage settlement which he had prepared, and which it was necessary to inspect.

When called he stated in the witness box that he had been employed by the plaintiff to prepare the settlement in 1873, but objected to produce it, as he had not been paid his costs for preparing it.

Counsel for plaintiff urged that the witness could not set up his solicitor's lien against the plaintiff, and cited *Locket* v. *Cary*, 10 Jur. N. S. 144; *Hope* v. *Liddell*, 7 De. Gex, Mand. G. 331.

KAY, J., referred to *In re Gregson*, 26 Bea. 87; *In re Cameron's Coalbrook Ry. Co.*, 23 Bea. 1, and held that the witness was bound to produce the settlement for the plaintiff's inspection.

CORRESPONDENCE.

Licensed and Unlicensed Practitioners.

To the Editor of the CANADA LAW JOURNAL:—

DEAR SIR,—My attention has been called to some editorial remarks in your journal of the 15th inst., and which severely criticise an advertisement of mine appearing in a country newspaper.

I may say that the said obnoxious advertisement has only appeared three times, so it has not yet had time I hope to do a great deal of harm. I have taken it out and it will hereafter simply read: "F——R——Law Offices W——and B——."

There being two other lawyers besides myself in each of the towns in which I practice, I can easily guess the "four sources" from whence you derived your information.

As you have editorially criticised me in your journal, and as your journal is the popular organ of the profession in this Province, I hope you will allow me through the same medium the privilege of saying a word or two in self defence.

I admit that the publishing the said advertisement was and is strictly considered a breach of professional "ethics" as conventionally allowed, especially when viewed from a city practitioners standpoint, but a country solicitor will be able on reflection easily to understand the position.

CORRESPONDENCE.

I have written several letters to your valuable journal as also for the *Mail* under the signature of "A Wingham Solicitor"—setting forth at large the great injury we receive in the country from "unlicensed conveyancers." A perusal amongst others of a long letter of mine appearing in your journal last January (*ante* p. 50), will fully explain this.

Let me say that I am practising in a county which is the stronghold of a legion of "conveyancers." These men do nearly all the conveyancing, nearly all the Division Court business, nearly all the Surrogate Court business, nearly all the notarial business, and even conduct nearly all the sales under mortgage in their vicinity.

I can send you if you wish full particulars of a dozen sales so conducted by unlicensed conveyancers in this neighbourhood, they styling themselves of course "vendor's agents," and not "vendor's solicitors."

These men give advice, collect debts, and act generally as attorneys (the only difference being that they don't pay any fees), having in a great many instances the words "law office" painted on their windows and otherwise advertised. These "pettifoggers" not only do the law business themselves, but "run down" and deprecate professional men in their vicinity, telling their customers not to go to solicitors—they will rob them—charge them exorbitantly, &c.—whilst they (good, honest men !) will do the work as well, and almost for nothing.

I am trying to get a little business out of the hands of these men, and say that I have a right to it *all*, and that they have no right whatever—that as long as I take out my certificate I have the right to do the *whole* of the law business, and not share with them. As it is, they have so lowered prices that to do any work at all one has to do it at their figures, if not below them.

When I say that my advertisement was purposely so worded as to let the farmers know that rather than that these unlicensed men should do the law business of my neighbourhood, I would do it for little or nothing, I think that no solicitor practising in the country, and considering the end I had in view, will be harsh in his criticism.

I again repeat that in the strict eye of discipline it was a breach of ethics.

But, then, why does not the Law Society protect lawyers practising in the country towns and villages ?

When you take away from a country solicitor his conveyancing, his surrogate business, his sales under mortgage, his notarial business and nearly all his Division Court business, what is there left to him ?

And, allow me to say, since County Judges have put so ultra-liberal a construction on the word "agent" in the Division Court Acts—unlicensed men do the bulk of the Division Court work in the country districts, and several instances have I known in which counsel fees were taxed to those unlicensed men, when the Judge so taxing the fee personally knew that the "*agent*" was neither attorney or counsel. If wondering city practitioners should ask how those men not being licensed come to be able to take the business from men who are licensed, the answer simply is :—These men are all men of great local influence and connection—(*apropos* I may say, that both our members, *Farrow*, *M.P.*, and *Gibson*, *M.P.P.*, are "conveyancers," the one in Bluevale and the other in Wroxeter);—and are, with very few exceptions, *magistrates*, nearly all are *notaries*, and they are all *commissioners for taking affidavits*; a great many are private bankers and money lenders.

They resided in the county long before solicitors came into it—they have grown up with the country, and have the confidence of the old settlers—they in fact got the business before any lawyers came here, and they mean to hang on to it and keep it in spite of the Law Society, or, as Mr. Scott (a "prominent" conveyancer here, who keeps several clerks writing for him) told me when I came here, "We have a vested interest in the conveyancing !"

Then these men hold themselves out to be, and are popularly considered to be, "lawyers," and they would do work for nothing rather than that a certificated lawyer should get it to do ; they misrepresent solicitors practising in their vicinity; they use all the influence they can bring to bear to hurt their business, and frighten the ignorant farmer from going to a lawyer. And these men will do the work till they are stopped by legislative enactment, and they openly say so.

In conclusion, I would like distinctly to say through the medium of your journal, that my advertisement was not intended to help me in taking work out of the hands of *my fellow*

county practitioners, as you seem to suppose; but my only and sole aim was to try and get the business, or a part of it, *from these unlicensed men who have no right to any of it.*

I am sure that every lawyer practising in my neighbourhood will admit that no one has struggled harder for the rights of the profession in the premises than I have done.

Suffice it to say that this obnoxious advertisement, which only appeared three times, will never appear again; and though not believing that in every case "the end justifies the means," yet I think I have, under the particular circumstances above explained, some ground for trusting that you will in your issue containing this letter slightly modify your very severe criticism.

Apologizing for taking up so much space in your valuable journal,

I am, &c.,

FRED. ROGERS,

Wingham and Brussels.

September 28, 1881.

LATEST ADDITIONS TO OSGOODE HALL LIBRARY.

MERCHANT SHIPPING: A compendium of the Law of Merchant Shipping; with an appendix containing all the Statutes, Orders in Council and Forms of Practical Utility, by F. P. Maude, and C. E. Pollock, Esquires, of the Inner Temple, Barristers-at-law. Fourth edition, by the Hon. Baron Pollock, one of the Judges of Her Majesty's High Court of Justice, and Gainsford Bruce, of the Middle Temple, Esq Two volumes: Henry Sweet, London, 1881.

SURETIES AND GUARANTORS: A treatise on the Rights, Remedies and Liabilities of Sureties and Guarantors, and the Application of the Principles of Suretyship to persons other than Sureties, and to Property liable as surety for the payment of money, by Edwin Baylies, Counsellor-at-law: Baker, Voorhis & Co., New York, 1881.

FLOTSAM & JETSAM.

AN Illinois citizen, brought his daughter's young man before a justice for violently ejecting him from his own parlour one Sunday evening. After hearing the other side, the justice said: "It appears that this young fellow was courting the plaintiff's gal, in plaintiff's parlour; that plaintiff intruded, and was put out by defendant. Courting is a public necessity, and must not be interrupted. Therefore, the law of Illinois will hold that a parent has no legal right in a room where courting is afoot. Defendant is discharged, and plaintiff must pay costs.—*Virginia Law Journal*

THE Supreme Court of California, in a recent case, Fratt *v.* Whittier, rendered a decision upon the much-mooted question of fixtures, holding that chandeliers were permanent parts of a building. The decision seems to have been based upon the intention of the parties, as gathered from the written and oral testimony. The conclusion of the court in this case seems to be at variance with that of the N. Y. Cour of Appeals, in McKeage *v.* Hanover Fire Insurance Co., where chandeliers attached to gas pipes running through the house, were held not to be fixtures so as to pass with the realty.

ENGLISH JUDGES.—Recent deaths of judges suggest some reflections upon the thorough change which a few years have produced upon the bench. Within twelve years every judge on the common-law side has died, retired, or been promoted. To take the Queen's Bench, Lord Chief Justice Cockburn and Justices Shee and Quain have died; Justice Blackburn has become Lord Blackburn, Justice Lush has become a lord justice. Sir John Mellor has retired, and Sir James Hannen has gone to the Divorce Court; in the Exchequer, the Chief Baron, Barons Channell, Piggot, and Cleasby, have died; Baron Bramwell has become a lord justice; in the Common Pleas, Chief Justice Erle retired, and Chief Justice Bovill died, and Justices Willes, Keating, Honyman, and Archibald died; Justice Brett has become a lord justice, Justice Byles has retired, and Justice Montague Smith has been promoted to the Privy Council.

On the equity side, death and retirement have produced the like effect. Lord Chelmsford, Lord Chancellor, Lords Justices Turner, Knight-Bruce, Rolt, Giffard, James, and Thesiger died; Lord Romilly died; Vice Chancellors Stuart, Kindersley, and Malin retired; and Vice Chancellor Wickens died. *Law Times.*