DIARY FOR AUGUST.

2. SUN... *8th Sunday after Trinity.*

10. SUN... *9th Sunday after Trinity.* Battle of Montmorenci, 1759.

14. Tues... Last day for Co. Clerk to certify amount of County rates to Local Clerks.

17. SUN... *10th Sunday after Trinity.*

20. Wed.... Last day for setting down and giving notice of re-hearing in Chancery.

21. Thurs.. Long Vacation ends.

24. SUN... *11th Sunday after Trinity.*

26. Tues... Prince Albert born, 1819.

28. Thurs.. Re-hearing Term in Chancery begins.

31. SUN... *12th Sunday after Trinity.*

CONTENTS.

THE

Canada Law Journal.

Toronto, August, 1873.

A number of the County Judges met in Toronto last month to discuss matters of interest in respect to their official duties. Much information was elicited and many doubts removed as to points of difficulty arising in course of practice. We are compelled to delay our report of their proceedings until next issue.

The Court of Queen's Bench in England have held in *Re Clements*, 17 Sol. J. 651, that upon the examination of any person to be admitted as an attorney, the examiners have the right and the power to investigate the moral as well as the legal and intellectual qualifications of candidates. It was held that the enquiry "touching *the fitness* and capacity of any applicant for admission" found in the Stat. 6 & 7 Vict. c. 73, sec. 15, embraced both moral and intellectual fitness. This decision is of consequence here, inasmuch as the same language occurs in the Act relating to attorneys-at-law: C. S. U. C., cap. 35, sec. 10.

Every law student has read the pleasant observations of John William Smith on the Statute of Frauds: how the great Lord Nottingham used to say of it, that "every line was worth a subsidy;" how it might now be said with truth that every line has cost a subsidy, and that every line, and almost every word of it has been the subject of anxious discussion. Lately a book has been published called "The Bovill Patent," being a collection of the summings-up and judgments in the litigation under the patent of the 5th June, 1849, granted to the late G. H. Bovill, for improvements in

the manufacture of flour. It is stated in this work that not less than £4,000 a word has been spent in discussing the meaning of the sixteen words: "My invention relates only to sucking away the *plenum* of dusty air forced through the stones." Wherefore, it may be said, that this innocent inventor has achieved a more expensive result than the gray-headed fathers of the law who enjoy the glory of having framed the Statute of Frauds.

LAW OF ARREST.

Vice-Chancellor Strong, shortly before vacation in the case of *McPhaddon* v. *Bacon*, decided a matter which has apparently heretofore been undetermined in this Province, with reference to the law of arrest. The question came up before him as to the right of a resident in this country to arrest a citizen of the United States (who had come here for a temporary purpose) under the Con. Stat. U. C., cap. 24, secs. 5 and 8. From the affidavits it appeared that Bacon and Shier, two of the defendants, were executors; that a large sum had been found due by both to the estate, but that, as between the executors, Shier was primarily liable; that Shier had sold out his property and had gone to the States some years before, about the time the Master's report fixing his liability had been made, and had there become naturalized, and that Bacon had since paid the amount; that Bacon had thereupon commenced an action for such sum against Shier in the States, and that Shier had come to this Province on a visit, but for the purpose of getting evidence to be used in the United States suit. The application was made in the original suit against the executors, which the Vice-Chancellor thought might be done, and that one defendant could apply for a *ne exeat* or writ of arrest under such circumstances against another. The applicant for the writ, Bacon, swore that the defendant Shier was here merely for a temporary purpose, and that he believed he was about to return forthwith to the States, and would, unless arrested, quit Canada with intent to defraud Bacon of his claim against him. The learned judge referred to *Brett* v. *Smith*, 1 Prac. R. 309, as being the case nearest in point, but observed that in that case the main question had been left undecided,—Richards, J., at the close of his judgment (p. 318), observing: "As the question of arresting a defendant during a temporary sojourn in this Province, who states his residence to be out of this Province, by a person resident therein, for a debt contracted out of this Province, is one of considerable importance, and has not been before discussed, I should be glad to have it settled by the full court." He then held that no facts and circumstances appeared in the affidavits to shew that Shier was about to leave Canada with intent to defraud anybody—on the contrary, his intent in leaving was to return to his domicile, and that an arrest under such circumstances could not be supported under the statute.

HONOUR TO WHOM HONOUR IS DUE.

During a recent sittings of the English Exchequer Chamber, a little discussion occurred on a most delicate subject, involving no less than the determination of the question how the judges should be addressed by the bar. The *Solicitor's Journal* states what occurred as follows: "Mr. Holker, Q. C., who was arguing a case, in reply to one of the members of the Court, referred to the President for the day, who was Mr. Justice Blackburn, as 'my Lord.' That very learned judge immediately interrupted Mr. Holker, saying:—'You should not speak of me as "my Lord;" that is a title reserved for the three Chiefs. When you speak to one puisne judge of another, you should

say, not "as my Lord," but "as Mr. Justice so-and-so" observed; and it makes no difference that the puisne judge referred to happens to be presiding over the Court.'" The *Journal* goes on to observe that a presiding puisne judge has no right to be spoken *of*, as "my Lord," though by a comparatively recent usage he is, whether presiding or not, spoken *to* under that title. It was only during the last century that the judges began to be addressed as "your Lordship." In the year books their title is "Sir," and we notice that an English Vice-Chancellor is always referred to in the reports as "His Honour." Mr. Foss records the fact that the worthy Serjeant Hill persisted throughout his life in keeping to the old style, and that he was the last counsel who refused to adopt the new fashion. But Woolrych refers to another Serjeant of later date who was equally conservative. Serjeant Williams (the editor of Saunder's Reports) reserved the title of "my Lord" for the Chiefs only. One of the puisnes, it is said, would sometimes interrupt him in his argument. In those days it was peculiarly the Chief's prerogative to stop a counsel. But the Serjeant could not tolerate interference from any inferior quarter. "*Sir!*" he would say, "I will answer your observations after I have replied to *my Lord*." It is to be noted, however, that when judges are on circuit, they are all equally entitled to be styled "my Lord," for the reason, apparently, that then they are acting under a special Royal Commission. Dr. Johnson, in his "Journey to the Western Islands of Scotland," notes the practice, but assigns a different reason: "Lordship" he says, "was very liberally annexed by our ancestors to any station or character of dignity: they said, the Lord General, and Lord Ambassador; so we still say, my Lord, to the judge upon the circuit."

We incline to the opinion that none of our ancestors could surpass the liberality of Canadians in conferring titles of dignity on the judges. All the judges of the Superior Courts are indiscriminately "your Lordship," and the judges of the County Courts have fairly monopolized the less dignified style of "your Honour." So far as the bar is concerned, the style of address is fixed; any change, in the way of abating the high-sounding epithets, must come by suggestion from the Bench. We do not, however, propose to suggest any change. It may perhaps be as well in these democratic days to retain any usage which can at all assist in keeping alive a spirit of respect for the representatives of law and order.

LAW SOCIETY.

Easter Term—36 Victoria.

The following is the *resumé* of the proceedings of the Benchers during this Term, published by authority:—

Monday, 19th May.

The several gentlemen whose names are published in the usual lists were called to the Bar, received certificates of fitness, and were admitted as Students of the Laws.

The petitions of Messrs. Biggar, Vidal, Gordon, and Colville, were allowed.

The petition of Mr. C. J. Fuller, for call to the Bar under Act of Ontario Legislature, was presented.

Ordered that Mr. Fuller do pass the usual examination before next Term, upon payment of the usual fee of $100.

The Treasurer reported the result of the Intermediate Examinations.

Tuesday, 20th May.

The petition of Mr. W. C. Mahaffy was refused.

The abstract of balance sheet for the first quarter of 1873, was laid on the table.

Abstract of Balance Sheet for First Quarter of 1873.

Income.	$	c.	
Students' Notice Fees,...	110	00	
Certificate Fees.....	873	50	
Term Fees.....	64	00	
Attorneys' Exam. Fees..	600	00	
Students' Exam. Fees.. ..	450	00	
Call Fees.....	600	00	
Sale of Reports.....	399	60	
Government Allowance..	1500	00	
			$4597 10

Expenditure.	$	c.	
Salaries.....	2278	27	
Scholarships.....	120	00	
Call Fees returned.....	90	00	
Students' Fees returned.	80	00	
Reports.....	1886	99	
Hall.....	1318	43	
Library.....	414	82	
			$6188 51
Expenditure less Income.....			$1591 41

Outstanding Assets.	$	c.	
Cash.....	118	59	
Bank Deposits.....	17295	42	
Currency Debentures...	4000	00	
Special Deposit.....	10200	00	
			$31614 01

The Report of the Examining Committee was received and adopted.

The Examining Committee for next Term was appointed.

Ordered that the usual fees be paid to the Auditors and Examiner.

Ordered that the Steward, Mr. Molloy, be paid the sum of one hundred dollars as a gratuity, and that he be allowed the same rate as formerly for attendance on lectures.

The question of providing Text Books for the use of Students was referred to the Library Committee.

The letters from Messrs. Willing & Williamson, and from Mr. Haynes, on the subject of a supply of books for the Library, were referred to the Library Committee.

J. T. Anderson, Esq., Q.C., was unanimously elected a Bencher in the room of J. B. Lewis, Esq., resigned.

The Treasurer was unanimously elected the Representative of the Law Society in the Senate of the University of Toronto.

G. M. Evans, Esq., was appointed Examiner for next Term.

Ordered that Mr. Rordans be paid one hundred dollars as a contribution to the Law List, and twelve dollars for twelve copies.

Saturday, 24th May.

This being the day for the election of Treasurer, according to the provisions of the statute of Ontario, 34 Vict. cap. 15, and no quorum being present, the Hon. J. H. Cameron, the present Treasurer, continues Treasurer by law for the ensuing year.

Wednesday, 28th May.

The Treasurer and Messrs. Patterson, Richards, McKenzie, and Moss, were appointed a Special Committee to agree upon the final arrangements for cancellation of the covenant with the Government, and the surrender of part of the Osgoode Hall lands to the Crown.

The Report of the Library Committee was submitted. The clause as to loan of books to students was rejected, and the remainder adopted.

The petition of E. George Patterson was allowed.

The Finance, Library, Reporting, and Legal Education Committees were appointed.

The Committee on Rules to stand as at present constituted, until next meeting.

The Report of the Law School was received and adopted.

Friday, 6th June.

The Treasurer being absent from Toronto, D. B. Read, Esq., Q. C., was elected Chairman.

A special meeting of Convocation was ordered for the 25th instant.

The application of Mr. Wicksteed for return of fees, was ordered to stand over until the Treasurer's return.

J. Hillyard Cameron,
Treasurer.

Osgoode Hall,
25th June, 1873.

SELECTIONS.

*OUR CRIMINAL TREATMENT AND PRISON PUNISHMENTS.**

A considerable amount of time was devoted at the International Prison Congress in London, last year, to the question of Isolation until the end of long sentences, as in Belgium—a matter importance no doubt to the States which are now settling their principles of prison discipline. It is, however, almost needless for me to state that this question was disposed of in England upwards of twenty years since, after experiments carried out at Pentonville with a care and attention which could not be exceeded in any country. It will be noted that these experiments were not carried out by the prison officials only: they were conducted by experienced commissioners in conjunction with them; and I assert, without fear of contradiction, that the reports upon this subject were most exhaustive and most valuable. The result of these experiments led, as we all know, the Government to adopt the gradual modification of "Isolation" now carried out in the Public Works Prisons. The report of the Prison Discipline Committee, in 1850, based upon the most experienced evidence in the country, entirely supported the Government in this Act. There must be no mistake in our principles. We acknowledge the separate system to be the basis of all prison discipline, but in long sentences, such as those of penal servitude, it has been proved, both for the health of the criminal and for his proper training, that modifications are necessary as the sentence advances.

I submit that in the discussion at the Congress no arguments were adduced calculated to make us change our principles, and that Belgium was the only country having practical experience of "Isolation" for any very lengthened period of time, besides Philadelphia, was clearly shown. The feeling of the delegates themselves was evinced by the resolution recommending "Progressive Classification," which has been made a reality with us; and by its adoption we have found that not only the criminal is better prepared for his release, but that the public are more disposed to give him employment.

In order to carry out a system of "Isolation" to the end with our penal servitude prisoners (which experience has taught us to reject), we shall have to expend half a million in prison buildings, and to sustain a very heavy annual loss in the value of "prisoners' labour." Independently of cost, I need scarcely add that we are not likely to reverse a policy, which, after many years' experience, has proved most eminently satisfactory, and has met with the support of the highest and most experienced authorities on the subject.

There was much discussion in the Congress with regard to "Corporal Punishment" and "Penal Labour," as carried out in this country. In both cases it was, I think, evident that there was some misapprehension of the subject on the part of the delegates who shared in it. It is, I submit, necessary that this matter should be fully explained on our part, for our assumed practice has since been made the subject of severe comment on the part of some of the delegates. It may be possibly considered that explanation is unnecessary: but I cannot agree in this opinion, because we must remember that they were eminent and earnest gentlemen, selected in different countries for their practical knowledge of prison discipline, and considerable weight will very probably attach to their statements.

With reference to "Corporal Punishment," the arguments for the abolition of the power to inflict it were evidently based upon the assumption that it could be indiscriminately exercised. The speakers did not appear to realize the safeguards against abuse which exist in this country, namely, that it cannot be inflicted without magisterial sentence, approved by medical authority: and that the case must be recorded for the information of the Government inspector, who has also access to every prisoner at his periodical visits. I am comfirmed in this impression by the fact that Mons. D'Alinge, the official delegate from Saxony (a gentleman of great experience and ability), in his memorandum on the "Penal Confinements in Saxony," dated 1872, informs

*This was a paper read at the National Associations, for the promotion of Social Science, by the Right Hon. Sir Walter Crofton, C.B.

us that corporal punishment with a rod, or thin stick, up to thirty strokes, and punishment on laths, under certain restrictions, can only be applied after mature consideration and deliberation of the functionaries. On referring to the definition of the word functionaries, they appear to be officials under the rank of governor.

It is right to add that M. D'Alinge states that in his own prison (Zuichar) this punishment had not been used for ten years.

But this is not the question; for in our own prisons I have known large establishments conducted for several years without having to resort to corporal punishment. The question is as to the retention of the power of infliction. Now M. D'Alinge is the gentleman who has protested in the *Times* very energetically but very courteously, against what he calls the barbarism of our punishments; I submit, therefore, that I am justified in assuming that he cannot be aware that corporal punishment is with us not dependent upon the deliberation of the prison functionaries, but is surrounded with highly responsible safeguards.

This meeting will agree with me, that the power is only used by the visiting justices in extreme cases, in which all other punishments, from experience, would fail, and for acts endangering the lives and limbs of their officers and fellow prisoners. Moreover, it should be known that the shower-bath, the collar, the strapping-chair, and other punishments of this class in use elsewhere, would not be tolerated in this country. Our ordinary punishments are restricted to privation of privileges, reduction of diet, and solitude for limited periods in light and dark cells. Irons are occasionally used, under the strictest regulations, in cases where it is imperative to prevent serious mischief by precaution.

A reference to the actual inflictions of corporal punishment in England will, I think, amply show that this punishment is only resorted to in the most exceptional cases. I observe that in Birmingham, with a prison population of 3742 in 1870, there was no corporal punishment. In Worcester, with 1742, there was no instance of its exercise, and in Gloucester there were only two instances in a prison population of 2086. In other gaols (excepting in cases in which great turbulence existed) the corporal punishments have been but few. I am very far from being an advocate of corporal punishment, but, after long experience, I believe the retention of the power, exercised only in very exceptional cases, is the means of preventing far worse evils.

Now, I pass to the subject of Penal Labour, which also appears to have been very imperfectly understood. It must have been the impression of those who spoke against it, that in England we advocate penal labour to the bitter end, and this was apparent from the observations made by M. Stevens, of Belgium, and some others. M. Stevens remarked, that if an indisposition to labour was implanted in prison, the prisoner, on release, would avoid labour: and this was his objection to penal labour. This observation was assuredly true, but it does not apply to our prison system. In England, we, above all things, desire by our system to implant a liking for industrial employments in the mind of the criminal before his release, and therefore we associate it in his thoughts as a privilege to be earned, and not as a punishment. The punishments we leave to be associated with penal labour, believing that the criminal's dislike to it may possibly prevent his returning to prison, but can in no way make him dislike the industrial employments to which he has attained by good conduct in prison, and which he should endeavour to follow on his release.

It will be seen that "Penal Labour" is thus utilized as a lever to industrial employment—it serves to deter, and thus proves exemplary to others—it serves to amend, because it is the stage of suffering held to be necessary by the highest authorities in all reformatory treatment.

I have always argued, and practical experience has convinced me that I am right, that with such a motive power judiciously utilized, even greater results from the industry of the prisoners may be expected to accrue than from an equal number employed from the beginning of their sentences in industrial occupations. Every experienced governor of a prison will realize the importance of obtaining the co-operation of the prisoner in his work, and the advantage of motive power. If my view be true, and my own experi-

hence as proved it to be so—we shall have made our punishment exemplary to others by penal labour—we shall have obtained the co-operation of the prisoner in his industrial work, and thereby given him a liking for it on his release; and we shall have improved the financial results of the gaol. We have some encouragement already in this direction, for the gaols reported as having the highest earnings use, I observe, the treadwheel and crank as "penal labour," as a motive power to industrial employments.

There were in the discussions in the Congress some errors with regard to these special forms of labour. The Government has not insisted upon their use, for the statute admits the use in addition, of shot drill, the capstan, stone breaking, or such other like description of hard bodily labour as may be appointed by the justices in sessions assembled, with the approval of the Secretary of State, as hard labour, 1st class, *i. e.*, "penal labour." It is true that in most of the gaols the justices have appointed the treadwheel and crank, for these machines were in many cases already in use; but it is quite wrong to assume, as many at the Congress assumed, that the labour need be necessarily unproductive; for in many cases the power is employed in sawing wood, breaking stones, grinding flour, and pumping water. The fact is, all the Committees which have examined into this subject had pointed out that mere "industrial work" was not the "hard labour" contemplated by Act 4 George IV. The late Sir Joshua Jebb stated very clearly to the Committees of 1850 and 1863 the intentions of this statute, citing authorities in support of his opinion. I cannot allow the re-committals just published in Mr. Kennaway's return to have any value, or I would call your attention to the fact that the lowest re-committals are, with one exception, found in gaols which use the treadwheel and crank as "penal labour," and make industrial employments a privilege.

I think I have said enough to show that although there may be exceptions, *aimless* penal labour (as supposed by some of the members of the Congress), is not the prison system of England, and never was the intention of the Government, which I maintain is clearly shown by its circulars to the magistracy with reference to the Prisons Act, 1865.

Very many years since an eminent man in conjunction with others drew up a plan of criminal treatment, which resulted in a statute. This plan was almost identical in principle with what I have termed the prison system of England. It was laid down by this statute that "hard labour" should be of a servile character, amounting to drudgery, either treading on a wheel, driving a capstan, &c., and that misconduct should be punished by whipping, &c.

The author of this proposal was John Howard, the Philanthropist, in conjunction with Blackstone and Eden, and the statute was 19 George III. 6, 74, the working of which Howard agreed to supervise. Concurrently with this penal provision, a minute classification was instituted; the earliest part of the sentence was made very penal, and the subsequent stages modified in severity—thus making ordinary industry a privilege. Gratuities were introduced, and much care taken with criminals after their liberation.

So much for some of the misapprehensions of the Congress.

It is, however, I think, a question for ourselves, and an important one, whether the want of uniformity in the hours of "penal labour," now permitted under the 34th clause, sch. 1, Prisons Act, 1865, is not a very serious evil. On reference to Mr. Kennaway's return, before alluded to, it will be noted that in some gaols prisoners are placed at hard labour, 1st class, or penal labour, for ten hours daily, and in others for six hours (the minimum period allowed by statute during the first three months), irrespective of conduct. It is possible under this clause for prisoners, however well conducted they may be, to be kept at "penal labour" for ten hours daily during a sentence of two years. Nothing could be worse than the exercise of such a power, so contrary to the principles of the statute, and to the expressed intentions of the Government; and such a possibility should no longer be allowed. The fact is, the permissive power in the statute in this respect is so great as to defeat its object, which was to promote uniformity. Judging from the practice in the majority of gaols, and taking that as indicative of the opinion of the majority of the justices, it would, I think, be better that the Secretary of State should fix six hours daily for "pe-

nal labour" during the first three months of every sentence of hard labour (the minimum period now required), with the proviso that industry and good conduct have been duly recorded in favour of the prisoner. Misconduct and idleness will thus entail on the criminal a longer period of "penal labour," which can be regulated and systematized by the justices. The industrious will have a strong and well-defined motive power to exertion placed before them, and a classification, which time will improve, and such as is now carried out in several gaols, will become the imperative result in all prisons. By these means, uniformity in carrying out sentences will be promoted, the treatment of shorter sentenced prisoners will be more nearly assimilated to those in the convict establishments, and the intentions of the Government be more clearly defined, and more satisfactorily developed.

I fear we cannot be sanguine as to the reformatory influences on criminals whose sentences do not exceed three months, for there is not sufficient time to bring them to bear. I believe, however, that by increasing the period of strict separation from fourteen days, which is now freely used under the 34th clause, sch. 1, to *one month* with a *very low diet for sentences of one month and under*, very beneficial results would accrue, morally and financially. It will be remembered by some present that, with others, I advocated this point during the passage of the Bill through Parliament; but it was considered advisable in the first instance to try the fourteen days. Granting that periods of three months' imprisonment cannot well be reformatory, it would certainly be desirable to pass at once from one month of sharp treatment, as advised, to periods exceeding three months, and when we consider the amazing number of re-convictions with short sentences to which the Liverpool magistrates have called special attention, we can realize the advantage of cumulative sentences which they advise.

Very little was said in the Congress about the treatment of criminals beyond the walls of the prison, but to us this subject has been all-important for many years. We were long since compelled to realize that prison discipline was but a part of this great question, although so interwoven with our external treatment of criminals, as in a great measure to be regulated by it. This is in part illustrated by our prison training, preparing criminals for employment on liberation, and by legislation in aid of discharged prisoners societies (25 & 26 Vict. c. 44), of which there are already upwards of thirty. There are many of us here who will remember that in our various discussions on prison discipline, and in our recommendations for the adoption of certain principles which were at last acceded to, we felt it to be our duty also to urge the adoption of police supervision, and of more stringent measures with regard to "habitual criminals." The Police Supervision Act, 1864, the Habitual Criminal Act, 1869, and the Prevention of Crime Act, 1871, show with what success a success which has been very amply confirmed by the statements of the Home Secretary in Parliament on the 20th of February last, in introducing amendments of great value in the details of the Prevention of Crime Act, 1871.

At the commencement of my paper I have strongly urged the necessity of exercising great caution in accepting new theories on this important subject, until they have been tested by thorough examination. In this recommendation I am only asking for the same measure which was (I think rightly), meted to myself. Notwithstanding I had practical results to adduce, I was, in advocating improvements in prison discipline, police supervision, &c., in some of the large towns in England, invariably subjected to a very severe examination. There are several here who will also recollect the long and searching examination to which I was subjected by the Law Amendment Society before it supported my views. The adoption by the Legislature of stringent measures for the "prevention of crime" gives to our information with regard to criminals a value not yet possessed by any other country.

Germany has introduced a supervision by the police, based upon the system now in force in the United Kingdom. A perusal of the instructions for carrying it out evince a care and consideration of the subject by the minister, which does him much honour and his government considerable credit. It is, I submit, a satisfactory testimony to our own pro-

cedure to find that these steps have been taken by so thoughtful and able a people. But it will be remembered that we have also a "register" of "habitual criminals," and that the "Prevention of Crime" Act has placed them under certain disabilities which bring them specially under the knowledge of the police, and give to our statistical information a value which it has not before possessed. It will be at once obvious that no fair comparison could be drawn between statistics collected in such a manner and those of other States which have not equal cognizance of their criminals, for the conditions are unequal. As a test of the merits of prison systems, the figures would be worse than useless, for they would be entirely misleading.

It will be remembered that for many years I demurred to a comparison between the statistics of the Convict Departments of England and Ireland. In the latter country there was registration, police supervision, and a systematic communication by means of photographs and returns between gaols periodically made. In England, at that time, the information was based upon re-convictions which in some haphazard manner were brought under notice. As between ourselves and other States which do not register and supervise their criminals, there would be the same great distinction in comparative statistics. A good sample of the errors of "Negative Statistics" is afforded by the fact that at one time it was given in evidence to a committee that the hulk system reformed 80 per cent. The apparent elements of reform being card playing, singing, dancing, and drinking.

I have repeatedly pointed out that even when the conditions are equal, a great fallacy may exist in assuming that a small per-centage of reconvictions on a prison population is necessarily an indication of a good prison system. A good prison system will ultimately clear the gaol of those prisoners most amenable to amendment, and will leave behind, as its more permanent occupants, the residuum, or those who may be considered as almost, if not altogether, irreclaimable. Under these circumstances the per-centage of such a prison population will be necessarily high, although the system will have acted most beneficially in reducing the total number in the gaol by operating on those who are open to reformatory influences.

These are matters which will require the attention of the International Statistical Prison Congress, to be held in Brussels during next September.

In conclusion, I beg to express my hope that I have succeeded in explaining points about which there appeared to be some ambiguity in the Congress, and also in shewing that although I hold a very strong opinion that we, so far as principles are concerned, are upon the right lines in our criminal treatment, we have still some work to do to develop these principles, which need not however be attended with difficulty, or be calculated to disturb our present control as magistrates.

THE O'KEEFE CASE AND THE LAW OF LIBEL.

The case of *O'Keefe* v. *Cullen* is not, perhaps, so important from a legal as from an ecclesiastical and social point of view; and, however interesting a discussion of its legal bearings might be, we are unfortunately not in possession of sufficient material to enable us to exhaust the subject. But it is not so difficult to extract from the reports which have been published the true nature of the action and the legal principles which it involves, the materials wanting to enable us to complete the examination being an abstract of the pleadings and a reliable report of the Chief Justice's summing up.

The cause of action arose out of two alleged libels published by Cardinal Cullen, the first a suspension and deprivation, and the second an interdict, and the whole question turns upon the relationship created between a man who becomes a Roman Catholic priest and his ecclesiastical superiors. Has a Roman Catholic Cardinal absolute power over a priest in matters pertaining to the Church, so that no form of suspension, deprivation, or interdict can be actionable as a libel? Chief Justice Whiteside, as we understand, ruled that whilst a priest owes due allegiance to his superiors, and indeed absolute obedience in matters ecclesiastical, he retains his rights as an individual, and if he be suspended in

terms which are libellous, he has a remedy the same in all respects as any other subject of Her Majesty.

The Cardinal by his pleadings traversed the publication, and pleaded the general issue. The Lord Chief Justice is reported to have directed the jury that it was for him to say whether the alleged libels were defamatory, thus leaving to the jury to find the bare fact of publication by the defendant—which, he told them, was proved partly by evidence and partly by admissions. The summing up of the learned Judge consequently amounts to this—that if in the opinion of the presiding judge an alleged libel is defamatory, the province of the jury is simply to find the fact of publication and to estimate the damages. This is obviously not the law, nor has it been the practice prevailing amongst the most eminent Judges before and after Mr. Fox's Libel Act. It has been well remarked by Starkie that that Act was declaratory, and when it provided that in the trial of indictments or criminal informations for libel, the jury should find not only the fact of the publication, but also whether the matter charged be or be not a libel, it must be taken as governing the procedure at civil trials. At page 203 of Folkard's edition of Starkie it is said, "whether the libel is the subject of a criminal prosecution, or civil action, it has been the constant practice in recent times for the Judge to define what is a libel, and then to leave it to the jury to say whether the publication in question falls within the definition. . . . It was the practice of Lord Denman in these cases, and also of Lord Abinger, to leave the question to the jury as to whether, under all the circumstances, the publication amounted to libel." The learned author then puts the only case in which the court is justified in withholding the case from the jury—namely, where it is perfectly plain that on the face of the record there is no libel. But most assuredly where, in the opinion of the court the matter complained of is libellous, the question is entirely one for the jury.

The familiar cases of *Parmiter* v. *Coupland*, and *Darley* v. *Ouseley* have decided that it is not misdirection on the part of a Judge to express his opinion as to the libellous nature of the publication in addition to leaving the proper questions to the jury—one of such questions being whether the alleged libellous matter is within the definition of a libel adopted by law. The learned Irish Chief Justice is reported to have said that it has been decided by the English Court of Queen's Bench that it was the duty of the Judge to tell the jury if the publication is actionable and the plaintiff entitled to a verdict. We do not know to what case the learned Judge refers, but it will be found, we think, in every case, where there has been judicial interference with the functions of a jury, that the ground of such interference has been that the matter complained of was not libellous. Such was the case of *Jenner* v. *A'Becket*, 25 L. T. Rep. N. S. 464, where the declaration was demurred to, and the court differed as to there being anything which could go to a jury. We cannot find in any of the cases, and we do not remember to have heard of, a jury being directed to find a verdict for a plaintiff in an action of libel. The only approach to such a position which we can conceive is where there is a justification, the libel being admitted, when under certain circumstances the Judge might direct that as a matter of law the evidence in support of the pleas would be no justification. But this could only occur under very unusual conditions.

The elaborate argument of Erskine in the *Dean of St. Asaph's* case, and the decision which followed, coupled with Fox's Libel Act, may be taken as showing convincingly the tendency of Parliament and the Profession to regard defamation as wholly a question to be disposed of by a jury. And as a matter of practice it is obviously far wiser to let the jury find one way or the other, so that if they find for the plaintiff the damages may be assessed, as in the case of *Laughton* v. *The Bishop of Sodor and Man*; and if the jury has gone wrong on a ground of law a verdict can be entered for the defendant without the ruinous expense and vexation of trying the whole matter over again. In this particular case it had already been attempted to get rid of the Cardinal's pleas by demurrer which the Chief Justice would have allowed. Being overborne by his colleagues in that matter he virtually rode over them and their judgment in directing the jury to find for the plaintiff, inasmuch as thereby he

treated the case as in effect undefended. This is a matter of so much importance, indeed of such vital consequences to every individual whose character is defamed, that the advisers of the Cardinal should not lose a moment in carrying the case into banco. We can anticipate nothing but a rule absolute for a new trial on the ground of misdirection.—*Law Times.*

FUNERAL ORATIONS.

The Americans seem to appreciate their great men far more than we do. Possibly this arises from the circumstance that they have no Westminster Abbey. We lose a great lawyer, or a great novelist; a letter is written to the *Times* suggesting that he should be buried in Westminster Abbey. He is so buried (or isn't according to conditions not affecting his reputation), and his works are then taken out from the library shelves and criticised with a gentlemanly spite frequently surpassing anything which appeared during his lifetime. English lawyers might lose their brightest ornament, and they would never think of assembling together and saying what they thought of him. The American lawyers have no sooner lost an eminent member of their profession than they convene a solemn assembly, and make funeral orations, and pass resolutions. Chief Justice Chase has thus been honoured, and the only part of the ceremony we don't quite understand is the passing of resolutions. A resolution is usually passed with a view of inducing somebody to do or not to do something. To say that a dead man was a great judge or a great statesman would seem sufficient without "resolving" that he was. It appears, however, that the records of the American Courts admit judicial epitaphs, for the last resolution passed in connection with the departed judge was this: "Resolved, that Joseph O. Glover, United States District Attorney, be appointed to present the foregoing resolutions to the United States Circuit Court for the Northern District of Illinois at its next meeting, with a request that they be spread upon *(sic)* its records." It is probably owing to our defective education that we don't appreciate the pathos of this. A judge who, one of the funeral orators tells us, will never be forgotten, and will go on living for ever in the memory of lawyers, hardly stood in need of having his virtues recorded in the books of a Circuit Court. However, we ought not to cavil, as we err considerably in the wrong direction. Therefore, we add only one remark. Funeral orations are not altogether the kind of speeches which lawyers are called upon to make, but for the benefit of those who may be so exercised, we quote the following from the speech of the Hon. Leonard Sweet:—"In personal appearance he was a marked man, and of strong frame, commanding voice, and almost overshadowing presence; and few men have equalled him in clearness, logic and force. During thirty years of public life, although standing most conspicuously before the country, and in a leadership which called forth the deepest malevolence, no man can remember the occasion upon which his integrity in pecuniary affairs was questioned." A man of "almost overshadowing presence," who stood "most conspicuously before the country"—and that country America—for thirty years, and was never charged with want of "integrity in his pecuniary affairs," certainly deserves to have his virtues recorded in the Circuit Court for the Northern District of Illinois.—*Law Times.*

SIGNATURE TO NEGOTIABLE INSTRUMENT OBTAINED BY FRAUD.

In the course of his judgment in *Foster* v. *McKinnon*, 38 L. J. Rep. N.S. C. P. 310, Mr. Justice Byles said: "We are not aware of any case in which the precise question now before us has arisen on bills of exchange or promissory notes, or been judicially discussed," and the learned judge then referred to a dictum of Chief Justice Parsons in a Massachusett's case, favourable to the view taken by the Court of Common Pleas in *Foster* v. *McKinnon*, as the sole authority having any real bearing on the point before the Court. It is not a little strange that in the year 1869 the question at issue in

the Common Pleas was *res integra*, and yet that within the four subsequent years the very point there decided has come up in no less than four different cases in the United States.

In *Foster* v. *McKinnon* the action was brought by an indorsee for value without notice of any fraud against an indorser. It appeared that one Callew, who was in fact the acceptor of the bill sued on, produced the bill to the defendant, and by representing to the defendant that the document was merely a guarantee for certain money required for the furtherance of a railway scheme, induced the defendant to put his signature after that of one Cooper, the first indorser. The defendant, who was a gentleman much advanced in life, never saw the face of the bill at all. In the absence of negligence the Court held that the defendant was not liable, and that he was entitled to a verdict on the plea traversing the indorsement. This decision has been followed in the cases of *Whitney* v. *Snider*, 2 Lans. 477, *Gibbs* v. *Lunabury*, in the Supreme Court of Michigan, 22 Mich. 479, and in *Chapman* v. *Rose*, in the Supreme Court for the second department of the State of New York. The Supreme Court of Iowa held a different rule in a case of *Douglas* v. *Matting*, 29 Iowa, 498; 4 Am. R. 238.

In *Chapman* v. *Rose*, the defendant, a farmer, was accosted in his barn by a "smart" person named Miller, who ostensibly came to do business about certain patent hay forks. The scheme was that the farmer Rose should give an order for forks, and also undertake an agency to sell them. With this object the farmer signed two documents, one supposed to be the order, and the other the contract for agency, and Miller left supposed counterparts with him. Some time afterwards Rose was sued by the plaintiff as indorsee for value of a promissory note, by which Rose had promised to pay Miller or bearer 270 dollars, and the defendant then discovered for the first time that he had not signed an order for hay forks but a promissory note. In giving judgment Mr. Justice Tappan said:—"The law merchant has been extended to all proper lengths for the protection of innocent holders for value of commercial paper not matured, but when the instrument is not commercial paper that protection ceases. The term 'commercial paper' may be held to include notes, bonds, and securities saleable in the market. In *Foster* v. *McKinnon*, 38 Law J. Rep. (N.S.) 310 (a recent case), the full bench of the English Common Pleas held that the defendant was not liable under circumstances similar to, but not so strongly in favour of the defendant as, the circumstances in this case; and Mr. Justice Byles remarks in the opinion that the party sought to be charged never saw the face of the bill (which had his indorsement); that its purport was fraudulently misdescribed; that when he signed one thing, he was told and believed he was signing an entirely different thing, 'and his mind never went with the act.' And he distinguishes it from that class of cases when the party, 'with knowledge,' writes his name across or upon a paper which is fraudulently used or diverted. Where the party sought to be charged by his signature shows that he never intended to put his name to any such instrument; that he was deceived as to its actual contents, and that he is not chargeable with laches, negligence, or misplaced confidence, which is negligence, he will not be held liable even to a *bona fide* holder before maturity. The reason is, that there is no contract where there is no assent, and it would be a perversion of terms to hold the instrument in question a contract, with all the facts stated. It had neither life, inception, nor validity."

At the time of the decision of *Foster* v. *McKinnon*, in spite of the very high authority of Chief Justice Bovill, and Justices Byles, Montagu Smith, and Brett, who composed the Court, there was some scepticism in the profession as to the soundness of the doctrine thereon determined. We think that the knowledge that in three cases out of four in State Supreme Courts in the United States that decision has been followed, ought to reconcile the dissentients to the ruling of the Court of Common Pleas. It must, we think, be admitted that the Courts of the United States are peculiarly strong in the law affecting negotiable instruments.—*The Law Journal.*

CANADA REPORTS.

ONTARIO.

NOTES OF RECENT DECISIONS.

PRACTICE COURT.

REG. v. FLANNIGAN.

Certiorari to Magistrate to return conviction—Procedendo—Delay.

[WILSON, J., Mich. Term, 1872, and Hil. Term, 1873.]

A certiorari issued on 12th April, 1872, on motion of defendant to a Police Magistrate to return a conviction for selling liquor without license. This writ was returned on 21st May, in Easter Term, with conviction and recognizance, and both defendants appeared to it by taking out rules. The prosecutor then obtained a rule nisi to quash the certiorari and for a procedendo to the Police Magistrate. But up to this time there had been no motion to quash the conviction.

It was urged by defendant that he had all the term within which to move against conviction, and that as the proceedings were removed into the Queen's Bench they must be finally dealt with there.

Held, 1. That the proper practice is that an appearance to the certiorari should be filed in the Crown office, and the case set down on the paper, so that either party might move for a *concilium*.

2. That the defendant was in default in not having moved to quash the conviction, or set down the case on the paper.

Semble, that an affirmance of the conviction by the prosecutor is necessary to obtain the costs, and further, as this was not done, the court declined to estreat the recognizance.

A procedendo was awarded, it being thought more advisable that the Police Magistrate should enforce the conviction than the Court above.

COOLEDGE v. BANK OF MONTREAL.

Time when execution may issue after revision of taxation, and generally.

[WILSON, J., Hilary Term, 1873.]

A party who has to pay costs on a final judgment on verdict, nonsuit, demurrer or otherwise in the ordinary course of a cause, is not entitled to any time to pay them, after proper proceedings had to entitle the other party to collect them, nor is any demand for payment before execution required. A party entitled to costs may proceed to collect the same by execution, immediately after revision, without waiting a "reasonable time" for payment.

SMITH v. CRONK.

Time for issuing execution for costs of day after taxation.

[WILSON, J., Hilary Term, 1873.]

Held, That a "reasonable time" need not be given in which to pay the costs of the day, &c., after taxation, but that the order, &c., may be made a rule of Court, &c., the day after taxation.

MACAULAY v. PHILLIPS.

Notice of trial—Given in name of partner of plaintiff's attorney—When required—Informal notice.

[WILSON, J., Hilary Term, 1873.]

A. and B. were in partnership as attorneys, A. being the attorney on record in this suit. Notice of trial was given in the name of B.

Held, that the notice was irregular only, and not a nullity.

A notice of trial is necessary to be given in a cause to be tried, however that cause may go down for trial, whether as a *remanet*, or put off from one assize to another by Judge's order, or taken down to trial by rule of Court, or Judge's order.

Semble, a notice of trial given in the partnership name would not be irregular, nor would a notice subscribed, "the plaintiff's attorney," without giving his name.

TULLY v. CHAMBERLAIN.

Arbitration—Prejudiced Arbitrator—Revoking submission.

[MORRISON, J., Easter Term, 1873.]

The arbitrator appointed by one of the parties having refused to act, he appointed a new arbitrator, who formerly acted as his attorney, but not in this suit.

Held, That the submission must be revoked.

COMMON LAW CHAMBERS.

REG. v. YEOMANS.

Setting aside conviction—Variance between it and warrant of commitment.

[MORRISON, J., Feb. 7, 1873.]

On a motion to set aside a conviction and warrant of commitment on the grounds: (1) That the conviction was not in the Magistrate's office, but in that of the Clerk of the Peace; (2) that the conviction did not contain a clause of distress; and (3) that the conviction only warranted the imprisonment without hard labour, whereas, the prisoner had been committed *with* hard labour.

Held, That the prisoner must be discharged, but on the last ground only.

Reg. v. Firman.

32-33 Vict. c. 31, sec. 71, C.—Appeal from Quarter Sessions.

[Galt, J., Feb. 10th, 1873.]

The above statute, preventing applications touching the decision of a Judge at Quarter Sessions in appeal, not only refers to where an adjudication has taken place therein, but even to where the appeal has gone off on a preliminary objection to the right of entering it.

Worthington v. Boulton.

Amending writ of summons—Resealing.

[Mr. Dalton and Morrison, J., Feb. 20th, 1873.]

A writ of summons may, after its issue, be amended by substituting a new plaintiff, without an order, and on such amendment there is no necessity for resealing, nor need it appear on the copy served that such amendment has been made.

Reg. ex rel. Hannah v. Paul.

Quo Warranto—Disclaimer after issue of writ—35 Vict. c. 36, O.

[Mr. Dalton, Feb. 27th, 1873.]

Held, That the effect of filing the disclaimer *after* the issue of the writ is much the same as doing so *before* its issue notwithstanding the above Act, and so operates as a resignation and puts an end to the suit, and defendant avoids the reference to the County Judge and the penalties under the Act.

Hunter v. Grand Trunk R. W. Co.

Certiorari from Division Court—Variance between declaration and claim in Division Court.

[Mr. Dalton, Feb. 28th, 1873.]

Claim in a Division Court for $40, for "detention of plaintiff by defendants, on a journey from Toronto to Detroit and back (journey occurring between 28th Nov., when he started from Toronto, and 3rd December, when he got back)." Removed by *certiorari* into the Queen's Bench, where declaration was on contract for $500 for delaying the plaintiff in his journey, in not starting the train at the time named. An application to set aside the declaration was refused, the two claims being held sufficiently similar considering the want of technicality in Division Court pleadings.

ENGLISH REPORTS.

CHANCERY.

Taylor v. Taylor.

Partnership—Fiduciary relation—Deceased partner—Bill for an account—Parties—Statute of limitations.

The right of a surviving partner to the partnership assets is absolute. There is no fiduciary relation between him and the representatives of his deceased partner; but he is liable to account for the partnership assets, and, in taking such account, the Statute of Limitations is applicable.

In the absence of fraud or collusion, or some other circumstances creating a privity between the parties, the only person who can file a bill against a surviving partner for an account of the partnership assets is the legal personal representative of his deceased partner.

Knox v. Gye *commented upon*

[March 7, 1873, 28 L.T., N.S., 180.

The bill in this suit was filed by a son against his father's surviving partners for an account of the partnership assets. The facts were shortly these:

William Taylor carried on the business of a mustard, cocoa, and chocolate manufacturer in London, in partnership with his brothers Henry and John, from 1832 till July 1842, when he died intestate, leaving his widow and his only son, the plaintiff, H. G. M. Taylor, surviving him. In Jan. 1843 letters of administration were granted to the widow, and in 1844 she married a Mr. Syers, but both before and after her marriage with Mr. Syers she acted (as the plaintiff alleged) in the affairs of the administration entirely under the advice of the surviving partners. At the time when the letters of administration were granted to her she swore that her deceased husband's estate was under 6000*l.* in value, but, being told by the partners that she was mistaken as to the amount, she was resworn, and reduced the value to 3000*l.* On this last occasion she deposed specifically, "that she had since the 1st June then last past, for the first time ascertained that upon the accounts being inspected and balanced, which they were as she believed, on or about the said 1st June, the firm wherein her deceased husband was a partner, was not in solvent circumstances or able to pay 20s. in the pound, either at the time of his death or of taking out the letters of administration; and consequently that his estate would not benefit from such firm." She then verified an account of the personal estate at 285*l.* Another account was deposited at the office purporting to be a stock account of the partnership, taken as of the 5th Sept. 1842, but only balanced on the 1st June 1844, in con-

sequence of the difficulty of arriving at the correct balance of a debt of 9765*l.* 11*s.* 1*d.*, owing by the firm to Mr. Syers. No other account of the partnership was ever rendered to Mrs. Syers.

The bill alleged that the firm was never indebted to Mr. Syers in the above amount, which was greatly in excess of the truth, if indeed the firm owed him anything at the death of William Taylor. The bill then stated a great number of facts connected with the business, and, *inter alia*, that the brothers had, since the decease of William Taylor, retained in their hands and employed a balance belonging to his estate, in the business (which they continued to carry on as "Taylor Brothers"), and had made large profits thereby.

The plaintiff attained his majority in September 1862, and he then applied to his uncles for an account of the partnership assets, and on their refusal to render one, he requested his mother (as the legal personal representative of William Taylor) and Mr. Syers to take proceedings to enforce them to do so. Mr. and Mrs. Syers, however, being advised that such proceedings would prove ineffectual, refused to comply with the plaintiff's request.

The plaintiff thereupon filed this bill in 1866, against his uncles and Mr. and Mrs. Syers, praying a decree for an account of all the dealings and transactions of the partnership of 'Taylor Brothers,' from the 23rd July 1841, and of the share and interest therein of his father; an account of the profits made by the brothers from the business since that date; for a receiver; and for a declaration that he was also entitled to two-thirds of the moneys to be recovered in the suit, and Mr. and Mrs. Syers to one-third.

The *Solicitor-General* (Sir George Jessel, Q. C.), *Dickinson*, Q.C., and *Westlake*, for the plaintiff, contended that the result of the evidence showed that the item of 9765*l.* 11*s.* 1*d.* was altogether fictitious. The partnership, instead of being, as the widow was informed, insolvent at the time of her husband's death, was in reality solvent. She was misled by the misrepresentations made to her by the surviving partners, who by their conduct had placed themselves in a fiduciary relation to her and the plaintiff. They were bound, therefore, as if they were trustees, to account to her, and, as she would not take proceedings against them, the plaintiff was entitled to sue them in her stead, and compel them to account. Further, the Statute of Limitations was, in the view of the case taken by the plaintiff, no bar to the relief sought by the plaintiff in the suit.

[During the arguments the *Solicitor-General* commented in terms of dissatisfaction on the decision in the case of *Knox* v. *Gye* (L. Rep. 5 E. & I. App. 656), as reported, which he submitted ought not to be considered as an authority in the present case]

Amphlett, Q.C., *Osborne Morgan*, Q.C., *Lindley*, Q. C., *A. G. Marten*, *A. A'Beckett*, *Terrell Moseley*, and *R. T. Reid*, (of the Common Law Bar), for the defendants, were not called upon.

The Lord Justice.—This case so far as I have heard it, is one of those which, though sometimes met with in this court, might well make people think that the Court of Chancery can do as much harm by ruining honest men as good by preventing and alleviating fraud. If the law governing this case is such as I suggested it to be in the course of the argument, it would be waste of time to go through the mass of facts, occurring some thirty or forty years ago, with which this case is loaded: and it would, moreover, be extremely hard on the other suitors to do so. In the first place, I entertain a very strong opinion that such a bill as this in the present suit is not maintainable by a person in the position of the plaintiff. I do not think it can be supposed for a moment to be correct that any one who thinks himself interested in the estate of a deceased partner can file a bill like this merely on the allegation that the legal personal representative appointed to represent the estate will not sue in respect of it. If one person could do it, ten or any other number might; and the result would be most disastrous to the defendants, who would have to meet some case or other which they might not by any possibility be able to answer. There may be, no doubt, cases in which, from the course of the dealings between the parties, otherwise strangers to each other, a privity has been created which might be sufficient to uphold a bill in some respects similar, perhaps, to this one. There may be cases in which the executors of a deceased partner would not be the proper parties to deal with the partnership assets of the testator. But that would be the result of special ingredients in the case, and would arise from the particular character of the transactions immediately in question. Here the plaintiff and the defendants are strangers to each other. Unless there is fraud or collusion or some other circumstance creating a privity between the parties, a plaintiff in the situation of the one now before the court has no valid ground on which to file a bill against the surviving partners. The ordinary course of proceeding is to institute a suit for the administration of

the estate of the deceased partner, and then if a proper case has been made out, a receiver would be appointed to get in the assets. But to allow it to be supposed that where the legal personal representative of the deceased partner has been advised that there is no case for her to go on with, another person—a mere stranger—can file a bill in her stead, is a doctrine so monstrous, and would lead to consequences so incalculable, that it is not too much to say it might even end in doing away with the Court of Chancery itself. Then, as to the application of the Statute of Limitations, the transactions here in question occurred so long ago as 1842. A person who was a partner in the business died in that year. The partnership consisted of three brothers, who commenced their business in a small or humble way. After the death of the one brother the others represented to his legal personal representative that there was not a farthing coming to her from the business; nay, more, that she might be liable to contribute in consequence of a very large deficiency, the result of losses in the working of the concern. The bill in this suit does not contain a single allegation that there was any untruth in those representations, or any fraud on the part of the surviving partners. The case of *Knox* v. *Gye* (*sup.*) decides that there is no fiduciary relation between a surviving partner and the representatives of his deceased partner; there are legal obligations between them equally binding on both. There is, in fact, a mere liability to render an account. In the present case the deceased partner died on the 23rd July 1842, and letters of administration were granted to his widow on the 24th Jan. 1843. That being so, the right to sue for an account, as from the death of the partner, then accrued to his widow. If any mistake has been made in the accounts the right to have them opened then accrued therefore to the administratrix more than thirty years ago. But she never questioned them, and the Statute of Limitations applies just as much between surviving partners and the representatives of their deceased partners as between any other persons. The Solicitor-General, in opening the present case, expressed some dissatisfaction with the report of the case of *Knox* v. *Gye*, but I have perused the report carefully since this case commenced, and I have never read a judgment with which I more entirely concur than that of Lord Westbury, not forgetting either his lordship's lecture on the use of metaphorical terms, or the peculiar views on the subject once taken by the Court of Exchequer. The law is that the right of a surviving partner to the partnership assets is absolute. The right of the legal personal representatives of the deceased partner is to an account merely of the partnership assets, and to the taking of that, as to the taking of any other account, the Statute of Limitations applies. I see nothing in this case to take it out of the ordinary rules. The bill in the suit contains no statement of any fraud or deceit on the part of the defendants. It is filed by a plaintiff who ought not to have filed it, who is in fact the wrong party; and it is so filed after an interval of time far in excess of the prescribed period. Under these circumstances the bill must be dismissed with costs. In conclusion, I cannot refrain from adding that I sincerely hope the authority of *Knox* v. *Gye*, and the principles of law thereby established will prevent the recurrence of any other suit at all resembling the present.

REVIEWS.

The Investigation of Titles to Estates in Fee Simple. By Thos. Wardlaw Taylor, M.A., Master in Chancery, &c. Second Edition. Toronto: Willing & Williamson. 1873.

The first edition of this little work, known to the profession as "Taylor on Titles," was received most favourably, and very soon ran out of print. A second edition was immediately called for, and comes to us much improved and enlarged, and with evidence of careful revision and increased learning and experience on the part of its most capable and painstaking author.

The thought of writing this book would seem to have been first suggested by the passing of the Act for Quieting Titles to Real Estate in 1865, at least it appeared shortly after the working of that Act had become somewhat familiar, and its provisions occupied a prominent position in the discussion of the subjects treated of. It must not, however, be supposed that the author was limited in his research and labours by the scope of that Act, as a perusal of the table of contents clearly shews.

The preface to the second edition states that a careful revision has been made in connection with the recent changes in the law affecting titles to real estate, such as the legislation relating to crown debts, wills, conveyances by married women, &c., &c. We

can well believe, also, that "the experience gained by the author while acting as referee under the Act for Quieting Titles has also enabled him to make a number of practical suggestions, and to add many important, but unreported decisions and rulings on cases arising under that Act, which it is exceedingly desirable the profession should be acquainted with, and over one hundred new decisions have been added to those commented on in the former edition.

Mr. Taylor adheres to the arrangement of contents then observed, nor could he have done better within the limits he has prescribed to himself; but our readers are so familiar with the book that it would be simply a waste of time to refer to it at length—indeed it is almost unnecessary for the publishers to do more than announce that a second edition is printed to cause a large and rapid sale of one of the handiest and most useful little books ever offered to the profession in this country.

It does not pretend to "supersede or even rival the more extended treatises of English writers," but it does in fact give safe, accurate, and, for most practical purposes, complete information upon the various subjects embraced in it. It is now an essential part of the library of every lawyer in Ontario, and it will probably also command a large sale in the English speaking Provinces of the Dominion.

The book is a credit to the publishers in all that pertains to their department, and it would be difficult to distinguish the mechanical part of it from a law book published by any first-class English publishing house.

The Law of Criminal Conspiracies and Agreements. By R. S. Wright, of the Inner Temple, Barrister-at-Law, Fellow of Oriel College, Oxford. London: Butterworths, 7 Fleet St., 1873. Price, 4s. sterling.

This is a new book on an old subject. The author has not deemed it necessary, in making his bow to the public, to say why he has written on the law of Criminal Conspiracies. We have, however, a right to assume that his aim is to instruct in the branch of the law which he has chosen, and to do so to more advantage than any of his predecessors. If we are to judge of his purpose by the phrase taken from Lord Bacon's Elements, and published on the title page of the book, it is "to reconcile contrarieties."

The work opens with a general history of the law of Criminal Combinations. This the author divides into three periods, of which the first ends with the sixteenth century, and the second with the eighteenth century. He shows that during the first of these periods no conspiracy, confederation or combination was criminal except the crime of conspiracy as defined by the Ordinance of Conspirators, 33 Ed. I, as consisting in confederacy or alliance for the false and malicious promotion of indictments and pleas, or for embracing or maintenance of various kinds. He shows that during the second period the strides made were considerable, till it was finally settled by the Star Chamber in 1611 in Poulterer's case, that although the crime of conspiracy, properly so called, was not complete, unless in a case of conspiracy for maintenance, some suit had been actually maintained, or in case of conspiracy for false and malicious indictment, one party, the party against whom the conspiracy was directed, had been actually indicted and acquitted. Yet *the agreement* for such a conspiracy was indictable as a substantive offence, since there was a criminal intent manifested by an *act* done in furtherance of it, viz., the agreement. He then shows that by an easy transition the agreement or confederacy itself came to be regarded as the offence itself, although the traces of the original distinction between a completed conspiracy and the mere agreement to commit it, long continued to be found. He then shows that during the third period, from 1800 to 1872, the most prominent characteristic of the law of conspiracy is its extended application to combinations of workmen. He refers to the 39 Geo. III, cap. 81; 39 and 40 Geo. III, cap. 106, and the 5 Geo. IV, cap. 95, the latter of which continued in force till 1871. He also adverts to the 22 Vict., cap. 34, on the course of the review. He points to the fact that in the discussions which took place under these statutes, the question was raised, and became the subject of doubt, whether in any and in what cases, combinations for purposes dealt with by the acts, or for other analogous purposes, are criminal at common law. He concludes this portion of the work by saying that "the effect

of the discussions and decisions is too doubtful to be stated here, but is attempted to be ascertained below." Then follows a long note of considerable historic interest, but not of much practical value.

The next division of the work appears with a dissertation "as to the kinds or purposes of criminal combinations." These he sub-divides as follows:

1. Combinations to criminal conspiracy, properly so called, within the meaning of the ancient ordinances of conspirators.
2. Other combinations expressly prohibited by Statutes now in force.
3. The rule of the seventeenth century that combination for any crime is punishable.
4. The question of a wider rule.
5. Combinations against government.
6. Combinations to prevent or defeat justice.
7. Combinations against public morals and decency.
8. Combinations to defraud.
9. Combinations to injure people otherwise than by fraud.
10. Combinations relating to trade and labor.
11. Lord Denman's antithesis.

In each class he examines chronologically the different cases that come under the class. This he has done with much succinctness and ability. The gradual expansion of the law with the growth of society is ably illustrated. He deals roughly with Lord Denman's antithesis, viz., "Conspiracy consists in the combination for accomplishing an unlawful end or a lawful end by unlawful means." He says that it was invented by Lord Denman to express the very opposite of that for which it is sometimes cited, and points out that in 1839, when Lord Denman's own phrase was attempted to be used before him as containing a definition of what combinations are criminal, he said, "I do not think the antithesis was very correct." And again in 1844, when the attempt was repeated, he explained the meaning of the phrase as being a limitation and not a definition, by the observation, "the words '*at least*' should accompany that." He points to other cases where the alleged definition when applied to the touchstone of experience utterly failed to act as a definition, and concludes this interesting chapter with the cutting remark that "an expression cannot be the definition of a conspiracy, the defining part of which is itself so devoid of definiteness for the purpose for which a definition is required."

The next division of the work treats of the act of combination. The author begins this section by stating that "every crime consists of a state of intentionality —some form of intention or of carelessness—and an overt act or omission to perform a duty." He then proceeds to the discussion of what "over act will suffice." In this he takes a very wide range, quoting not only cases decided in England, but referring to the laws of Scotland, France, Belgium, North Germany, Bavaria, Austria, Holland, Italy, British India, United States, and Canada.

His reference to the law of Canada (taken by the way, from the dictum of a Lower Canada Judge) is not very happy. It is as follows: "By the common law, as it is interpreted in Canada, according to a recent Canadian work, Clarke's Criminal Law, 1872, p. 401, 'a conspiracy is an agreement by two or more to do or cause to be done an act prohibited by penal law, or to prevent the doing of an act ordained under legal sanction, by any means whatever; or to do or cause to be done an act, whether lawful or not, by means prohibited by penal law,' *Reg.* v. *Roy.* 11 L. C.J. 93, per Drummond, J. This definition of Mr. Justice Drummond is certainly open to the objection that it wants definiteness. But those who know Mr. Justice Drummond will not be surprised to learn that he has not succeeded where Lord Denman failed, that is to say, in giving a definition of Criminal Conspiracy, sufficiently comprehensive, and yet sufficiently accurate to embrace all cases, and none but such cases as in law create the criminal offence.

The author concludes his work by a statement that the uses in common law of the doctrine of the criminality of agreement are of the following kinds and subject to the following limitations.

1. Its principal function is that of a general auxiliary to law, creating particular crimes.

2. In some cases it may be proper to treat the agreement for a minor offence, as so altering its quality and mischief, as to make it a fit object for punishment as a crime.

3. There are some mischievous conditions of things, such as an unlawful assembly, which ought to be punished as crimes, and which cannot be brought about except by the concurrence of more persons than one.

4. There may be cases in which acts done by several persons in agreement ought to be punished, although the same acts ought not to be punished if done without agreement.

5. In an imperfect system of criminal law, the doctrine of criminal agreements for acts not criminal, may be of great practical value for the punishment of persons for acts which are not, but which ought to be, made punishable, irrespective of agreement, and especially for some kinds of fraud; but this use of the doctrine involves an important delegation of a legislative power in a matter in which the exercise of such a power ought to be carefully guarded, since the legislature admits its own inability to devise the principles on which legislation ought to proceed.

The author of this little work exhibits much originality, and boldness, though in some places there is an obscurity which may partly be accounted for by the very nature of the subject. His effort to discover the principles which underlie the law of Criminal Conspiracy, as supposed to be understood and as really administered in England, is deserving of much praise. But, unfortunately, the exigencies of society at times are such, or supposed to be such, as to demand departure from previously recognized principles. These "new departures" are not more frequent in the branch of law treated of by Mr. Wright, than in other branches of criminal law. Judges, too often, when acting under the serious belief that they are expounding the law, are really making new laws. Hence the growth of one particular branch of law into many ramifications. The root several centuries since may have been small and easy of discernment, but like the mustard tree in the gospel, its branches are now so mighty that the fowls of the air dwell therein. It is not, therefore, to be wondered at that a gentleman who has endeavoured from the root to trace the branches, should, after the lapse of several centuries, to some extent find himself "*in nubibus.*"

In a second edition we shall hope to see an Index which is wanting in this.

Blackwood's Magazine—Leonard Scott Publishing Company—140 Fulton Street, New York.

We presume that every being must be fed with that food which best suits its organization. Some, indeed, seem to thrive on poison, so at least we might suppose, from the quantity they consume—some weak creatures, on the other hand, become daily more so by a plentiful supply of pap—others again seem to have the digestion of ostriches, and thrive on steel filings. These things are well in their way, but for our part we prefer something that partakes of the excellencies of each.

Our legal reader who has now enjoyed four weeks of his summer vacation, and may therefore be supposed to be gradually recovering from the comatic state of utter exhaustion, superinduced by his violent exertions on behalf of ungrateful clients, will perhaps perceive that we speak of food, not material but mental.

Blackwood is neither poison, pap, nor steel filings, but, providing food for the craving and relaxation for the weary, gilds its intellectual pills in such a manner as not to frighten those who have but a spark of intellect left which can be fanned into a brighter blaze.

The July issue now before us, is a "specimen number." All we miss, and we thank our stars that it is so, is the usual political article which generally concludes each part. The novel reader has as much as is good for him in the eighth book of "The Parisians." The intelligent observer and charming writer who produces the series of articles on French Home Life, gives us a review of marriage as made and understood in the typical nation of the great Keltic family. Spain now struggling to throw off the deep sleep of ages, is spoken of in an article describing the celebrated Guerilla Chief and Curé, Santa Cruz. We applaud especially, however, the attempt of a writer in an article headed "Newfoundland" to enlighten the minds of his countrymen on Colonial subjects. We fondly hope that before the close of another century, the crass ignorance of Englishmen as to matters transpiring beyond the length of their noses, when that organ is pointing in a westerly direction, will disappear. The other articles are, "The Four Ages;" "The Rate of Discount," and "Alexander Dumas."

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Easter Term, 36th Victoria.

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

No. 1257. Charles Victor Warmoll.
R. H. Caddy.
Hugh Matheson.
Harry Vincent.
James Reeve.
Michael Brennan.
Samuel Platt.
William Macdiarmid.
Robert Baldwin Carman.
C. R. W. Biggar.
George A. Mackenzie.

No. 1268. James Stafford Kirkpatrick.

Admitted and Called.

No. 1269. Henry J. Morgan.

And the following gentlemen received Certificates of fitness:

Charles R. W. Biggar.
J. B. McArthur.
Hugh Matheson.
Alexander Dunbar.
George A. Mackenzie.
Michael Brennan.
James Stafford Kirkpatrick.
D. G. Macdonell.
R. H. Dennistoun.
John McMillan.
C. Bogart.

And on Tuesday, the 20th May, the following gentlemen were admitted into the Society as Students of the Laws:

University Class.

Hamilton Cassels.
John W. Burnham.

Junior Class.

Rolland A. Macdonald.
Donald M. Christie.
G. Wallace Bain.
W. John Mulholland.
J. Clarke Eccles.
A. McD. Knight.
Franklin J. Brown.
Æthelwolf Scatcherd.
Hugh Stewart.
William Lawrence.
M. G. Cameron.

Articled Clerk.

Alfred Wright.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. HILLYARD CAMERON,
Treasurer.