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DIARY FOR DECEMBER.

1.	SUN..	*1st Sunday in Advent.*
2.	Mon..	Last day for notice of trial for County Court. Audit of School section account. Clerk of every Municipality except Counties to return number of resident ratepayers to Receiver General
5.	Thur..	Chancery re-hearing Term begins.
7.	Sat..	Michaelmas Term ends.
8.	SUN..	*2nd Sunday in Advent.*
10.	Tues..	Quarter Sessions and County Court sittings in each County.
14.	Sat..	Grammar and Common School assessments payable. Collectors roll to be returned unless time extended.
15.	SUN..	*3rd Sunday in Advent.*
16.	Mon..	Recorder's Court sits.
21.	Sat..	*St. Thomas.*
22.	SUN..	*4th Sunday in Advent.*
23.	Mon..	Nomination of Mayors in Towns, Aldermen, Reeves and Councillors, and Police Treas.
25.	Wed..	*Christmas Day.* Alterations in school sections take effect.
26.	Thur..	*St. Stephen.*
27.	Friday	*St. John Evangelist.*
28.	Sat..	*Innocents.*
29.	SUN..	*1st Sunday after Christmas.*
30.	Mon..	School returns to be made. Last day on which remaining half Grammar School Fund payable. End of Municipal year. Deputy Registrar in Chancery to make returns and pay over fees. City of Toronto Assizes.

THE

Upper Canada Law Journal.

DECEMBER, 1867.

THE MARRIAGE LAWS—No. IV.

In the interesting debates which preceded the passing of the Quebec Act, it was the opinion of the law officers of the Crown that the position of the Roman Catholic Church, as determined by that act, was a position of toleration only and not of establishment. Thurlow, the Attorney General, thought that thereby "the Roman Catholic religion was only tolerated, with provision for the continuance of that maintenance which the clergy had before from the whole population, but which by this act is restricted to such people only as choose to become or to remain Roman Catholics." And he remarked that nobody is thereunder compelled to be a Catholic. *Cavendish's Debates*, pp. 33, 34. Speaking with regard to the 5th section the Solicitor General Wedderborne says, "I can see by the article of this bill no more than a toleration. The toleration, such as it is, is subject to the King's supremacy, as declared and established by the act of the first of Queen Elizabeth." *Ib.* p. 54. This also appears to be the view subsequently taken by the highest Imperial authorities, and communicated to the Canadian Governors in the Royal Instructions. For instance, sect. 41 of the instructions sent to the Governor in 1818 is to this effect: "Whereas the establishment of proper regulations on matters of ecclesiastical concern is an object of very great importance, it will be your indispensable duty to take care that no arrangements in regard thereto be made, but such as may give full satisfaction to our new subjects in every point in which they have a right to any indulgence on that head, always remembering that it is a toleration of the free exercise of the religion of the Church of Rome only to which they are entitled, but not to the powers and privileges of it as an established church, that being a preference which belongs only to the Protestant Church of England."

With regard to the Bishop of that Church it is noticeable that for a long time he was called "the *superintendent* of the Romish Churches" (See Ord. L. C. 31 Geo. iii. c. 6). The title of "Bishop" first began to be commonly used about the year 1810, as appears from one of Sir James H. Craig's dispatches to the Colonial Minister, but not till 1813 was such title recognized by any official person in the government. In the debates we have already referred to, Lord North (the leader of the government) said, "With regard to the Bishop it is my opinion—an opinion founded in law—that if a Roman Catholic Bishop is professedly subject to the King's supremacy under the act of Queen Elizabeth, none of those powers can be exercised from which dangers are to be apprehended." (*Cavendish's Debates*, p. 222). It will be observed that by the articles of capitulation, the British commanders carefully abstain from giving any guarantee that the Episcopal office should be continued under English rule. And we do not find in all subsequent Imperial or Colonial legislation that there has been any institution or restitution of the Roman Catholic episcopal office in Canada. True, in some of the later statutes reference is made to the Roman Catholic Bishop, but this is out of mere courtesy, and the employment of the name "Bishop" can never be taken to import into our system a sanction to all or any of the episcopal functions pertaining to that office as legally constituted.

Practically the right of the British Sovereign to nominate Bishops for the Roman Catholic Churches in Canada is ignored; these ecclesi-

astics receive the investiture of office from the hands of the Pope; it is his act which makes, not the royal approval, which follows as a matter of course. Then, having regard to the Quebec Act and the Statute of First Elizabeth, can a bishop, deriving jurisdiction from such a source, dispense with any part of the statute law of England introduced into Canada by our own constitutional act (C. S. U. C. c. 9)?

Bishops in England have the right to dispense with some parts of the statute law (*e.g.* the proclamation of marriage banns), because their dispensing power is conferred upon and confirmed to them by statute likewise: see 25 Hen. VIII. c. 21, by which all bishops are allowed to dispense as they were wont to do. But what, according to the opinion of constitutional lawyers who have examined this matter, is the legal status of the Roman Catholic Bishop in Canada? Jonathan Sewell, Attorney General, and afterwards Chief Justice, of Lower Canada, about the year 1810, in a state paper uses the following language: "Since the titular Roman Catholic Bishop of Quebec, according to the original creation of the See of Quebec, holds of and is dependent upon the See of Rome, and at this moment, as heretofore, derives his entire authority from the Pope, without any commission or power whatever from His Majesty, it is most clear that the Statute of Eliz., which is formally but unnecessarily recognized by the Stat. 14 Geo. III. c. 83, to be in force in Canada, has annihilated not only his power but his office, the 16th section having especially prohibited all exercise of the Pope's authority, and of every authority derived from him, not only in England, but in all the dominions which the Crown then possessed or might thereafter acquire." And he strengthens his opinion by a paragraph from the report of the Advocate General (Sir James Marriot) in 1773, upon the affairs of Canada, in which that eminent jurist observes that there is in Canada "no Bishop by law." The law officers of the Crown, consisting of Charles Robinson, Vicary Gibbs and Thomas Plumer, and being respectively His Majesty's Advocate, Attorney and Solicitor General, in reporting in 1811 upon the question as to the right of presentation to Roman Catholic livings in Lower Canada, make use of the following remarkable language: "If, however, this right be supposed to have originated from the Pope, we think the same consequence [*i. e.* that such right had devolved to His Majesty] would result from the extinction of the Papal authority in a British Province. For we are of opinion, that rights of this nature, from whichever source derived [*i. e.* whether from the Pope or the French King], must in law and of necessity be held to devolve in His Britannic Majesty as the legal successor to all rights of supremacy as well as of Sovereignty, when the Papal authority, together with the Episcopal office, became extinct at the conquest by the capitulation and treaty, and the statute, 1 Eliz. c. 1, sec. 16, as specially recognized in the Act for the government of Canada (14 Geo. III. c. 83)."

It remains further to be observed that the expression "*Ecclesiastical rights or dues*," perpetuated in our constitutional act, C. S. U. C. c. 9, s. 6, from the 5th sec. of the Quebec Act, applies simply to parochial dues and tithes, and cannot be construed to embrace any right or privilege of dispensation. In fact a quasi-legislative interpretation to this effect has been given to the words by the note appended to the 35th section of I. S. 31 Geo. III. c. 31, as it appears in the Con. Stat. Can. p. xvii. This is also abundantly evident from the tenor of the debates upon the passing of the Quebec Act, as reported in Hansard and by Cavendish. And the same view is expressly maintained by Lafontaine, C. J., in *Wilcox* v. *Wilcox*, 2 L. C. Jur. pp. 11, 21, &c, and by Mondelet, J., in *Stuart* v. *Bowman*, 2 L. C. R. 405.

By the Capitulation, the Treaty, the Quebec Act, and our own Constitutional Act, there was and is the clear right to Roman Catholics in Ontario to contract marriage, as one of their sacraments, according to one usages of their church, but subject to the Queen's supremacy. In other words, their clergy had and have the power to celebrate marriage after due proclamation of banns, in the same manner as we have seen that ministers of the then dissenting churches had that privilege by virtue of special legislation interposed on their behalf, during the time that the Church of England was the State Church. But the onus is on the Roman Catholic Bishops to shew that they have any larger authority or more extensive rights, or that they occupy any more privileged position, than the officers of the other churches in this Province. If the marriage law of Eng-

land became our marriage law by the first legislative act of Upper Canada, was not the Roman Catholic Church subject thereto in common with the so-called dissenting churches, save where relief was given by the earlier legislation we have referred to? If under the Consolidated Statutes, and now that all connection between Church and State is abolished, the English marriage law, modified in some respects as we have seen, be our marriage law, is not the Roman Catholic Church on the same footing as all the other churches, and bound to invoke the aid of the Governor's license, where any dispensation of the statute law is contemplated?

Much more might be said as to these many questions we have dealt with, but it is time to draw to a close.

In view of what has been written it would seem that there are two matters in the marriage laws to which legislative attention may well be given:

I. To provide that any departure from the ceremonies prescribed by law in the celebration of marriage should be irregularities merely, not operating to the annulment of the marriage tie, but only exposing the officiating clergyman or officer to certain penalties.

II. To define the position of the Roman Catholic Church in this respect, and to place the adherents of that church in express terms upon an equality with the rest of the population.

We shall on a future occasion refer to a very interesting decision in Lower Canada, as to the validity of a marriage between a Christian and an Indian woman, a pagan, according to the rites or custom of the tribe to which she belonged.

LAW SOCIETY—MICHAELMAS TERM, 1867.

CALLS TO THE BAR.

Sixteen gentlemen presented themselves for examination for call this Term, out of whom ten only were declared duly qualified for this honorable distinction.

The following are their names:—J. Magee, London; B. Cronyn, London; J. W. Fletcher, Toronto; A. H. Meyers, Trenton; Henry Becher, London; W. H. Cutten, Guelph; J. E. Rose, Toronto; W Johnson, Hamilton.

Mr. Magee's papers were so good that he was not required to undergo any oral examination.

ADMISSIONS AS ATTORNEYS.

The following students received certificates for admission to practice as Attorneys and Solicitors:—Duncan Morrison, Toronto; Thos. S. Kennedy, Toronto; Henry Becher, London; W. E. Ruttan, Cobourg; A. H. Meyers, Trenton; S. B. Burdett, Belleville; J. E. Rose, Toronto; W. Johnson, Hamilton; R. L. Ashbaugh, Hamilton; M. O. McGregor, Elora; —. Pennock, Ottawa; J. S. Wilson, Toronto; H.P. O'Connor, Goderich; T. Woodyet, Brantford; R. S. Birch, Toronto.

The fact that the oral examination was dispensed with as to the first eight on this list, would seem to shew that gentlemen going up for examination of late have given more attention to their work, than formerly.

It may not, whilst speaking on this subject, be thought invidious, to particularise the examinations of Mr. Morrison and Mr. Kennedy, the two first on the list, which were both exceedingly good; and we are glad to see that Mr. Kennedy continues to be so successful in his examinations. He was, as we noticed with reference to the scholarship examinattons two years ago, the first, and is yet, we believe, the only student who, coming from the University class, and, therefore, so as to speak, two years behind the five years men, has obtained the only scholarships for which he was eligible, namely, those for the third and fourth years.

LAW SCHOOL EXAMINATIONS.

This excellent system of fostering industrious habits in students, and helping to bring rising young men to the surface, seems to work admirably. The result of the examinations for this year, is as follows:—

Third Year.

Mr.	Charles Moss	received	277 Marks.
"	Garrow,	"	227 "

Maximum number of marks, 310. Number of marks necessary to entitle to a scholarship, 213. Scholarship given to Mr. Moss.

Second Year.

Mr.	G. R. Clarke,	received	278 Marks.
"	W. J. Green,	"	277 "
"	Wade,	"	248 "
"	McIntosh,	"	247 "
"	McDonell,	"	235 "

Maximum number of marks, 320. Number necessary to entitle to a scholarship, 213. The scholarship was given to Mr. Clarke, who defeated Mr. Green by one mark.

First Year.

Mr. Crerar, received..... 253 Marks.
" Keefer, " ..... 250 "

Maximum number of marks, 320. Number necessary to entitle to a scholarship, 213. The scholarship was given to Mr. Crerar, who defeated Mr. Keefer by three marks.

One other candidate competed in the third year, and two others in the first year; but they did not gain the minimum of marks.

No scholarship was given in the fourth year; none of the three candidates who presented themselves for examination having gained the necessary number of marks.

It will be seen from the above that Mr. Moss has only to obtain the scholarship for the fourth year, to have the satisfaction of knowing that he has been successful in obtaining every scholarship for which he has tried. If we belonged to a betting instead of a legal fraternity, we should back him to take the scholarship for the fourth year, as he has the first, second and third, though it is said that a University man intends to make him win it *well* a year hence.

Mr. Green for the second year again runs Mr. Clarke very close, being only one mark behind him; last year he was three marks behind. Let him not despair, and next year another relative gain of only two change their places.

SELECTIONS.

THE TRIBUNALS AND THE ADMINISTRATION OF JUSTICE IN THE EMPIRE OF FRANCE.

One can scarcely compare the courts in different countries without the hazard of making unjust or unfounded inferences. And still there is no one thing upon which the real character of free governments, more entirely depends. But there is very much in the mere organization of the courts or judicial tribuals of the French Empire, to indicate the energy and decision with which the government is administered. It is a perfect system of superiority and subordination, from the humblest police magistrate to the High Court of Cassation.

In a few days' visit to the Palace of Justice, although accompanied by a very intelligent advocate, who was entirely competent and very ready to explain all which came under review, one could scarcely expect to acquire very accurate information in regard to the detail of so complex a system as that of the judicial tribunals of a great empire, like that of the French. But some of the more important points of difference between our own and the jurisprudence of the French, and the comparison which each bears to that of England, may be briefly noted.

The procedure in France, as in most of the Continental countries, is according to the principles and practice of the Roman civil law. In the trial of civil actions of every grade no jury is allowed, the judge deciding everything according to his own sense of justice and propriety. And, as would naturally be expected, where everything depends upon the arbitrary discretion of the judge, testimony of almost every grade of conclusiveness, or the contrary, is received, and it often happens that the case is finally made to turn upon very slight circumstances, and is really decided upon evidence, in itself, of no great significance, and which, upon the more exact and refined rules of the English common law, would scarcely be considered competent. But this is a result not very different from that which often occurs in jury trials at common law, where causes are made to turn, quite as often, perhaps, upon the bias of the jury, religious or political, or the last words of able and eloquent counsel, or of the judge in summing up, as upon the testimony given in court, and in that way, perhaps, more complete justice is effected.

The French jury, in the criminal courts, consists of twelve, but unanimity is not required, the voice of a majority being sufficient in ordinary cases, there being some few exceptional instances, where the concurrence of two-thirds is required to give a verdict. We sat for a short time in the same court-room where the attempted or would-be assassin of the Czar, Berezowski, had been tried a few hours before. The same jury and the same judges still continued the session; the judges in their scarlet robes, and the minister of justice, in the person of the prosecuting attorney clad in the same garb, occupying a seat half-way between the bar and the bench. The presiding judge called upon the accused, sitting between two gens d'arme, to plead, who stood up and stated briefly their plea, and whether they had or desired counsel. The judge then administered a long oath to the jury, which seemed to embrace a kind of charge as to their duty, and, at the close, called upon each member of the panel, by name, who gave his assent by raising the right hand. The representative of the minister of justice then proceeded with the trial, first examining the accused, giving him the full benefit of his own story, if that can fairly be regarded as any benefit, which may we think, be considered as somewhat questionable.

There is in each arrondissement throughout the empire an Imperial tribunal to hear appeals from all the courts of first instance in that arrondissement. Paris, with some few of the adjoining districts, constitutes one arrondissement, and has its imperial court for hearing appeals from all the courts of first instance within that district or arondissement. We

listened to a brief argument in this court from an advocate of great zeal and energy, who spoke in a very high key, and after reading some ten minutes from a manuscript, closed by an impassioned appeal to the court, which seemed to be regarded by them as so much matter of course as to produce no interruption of conversation between the different members of the court, which had very much the appearance of making light of the graphic flourishes of the argument, but which we have no doubt had no such appearance to the speaker. The tribunal, consisting of nine judges, or about that number, had certainly very much in their looks to recommend them. They were more youthful and had more the appearance of brilliancy than any court we had seen since leaving America. One would naturally suppose, from their looks only, that they possessed full competence, both of learning and ability, for the satisfactory discharge of their important and responsible functions, and that both their offices and their salary were placed beyond peradventure by the tenure under which they were held and the stability of the administrative power.

The judges in France hold office during life, or until the age of seventy, in all the courts; and until seventy-five in the High Court of Cassation. The distinction may not be without reason, since by such a provision, and by removing the most experienced of the judges of the subordinate tribunals into that high tribunal, as vacancies occurred, there would be constantly found in the court of last resort, a considerable proportion of judges of largest experience and most matured wisdom, with presumptively an equal, if not greater amount of learning, than could be secured in any other mode. And by extending the term of holding office in that court to seventy-five, the services of those judges who retained full strength to an exceptional period could be continued in the court of appeal.

It is certainly not a little wonderful that so large a proportion of the American states should prefer to have the office of the judges, from the highest to the lowest, dependent upon popular elections, at short intervals, when the experience of England and France, and of all governments, where there is any pretence of consulting the popular will in administrative functions, has shown most unquestionably that the rights of suitors and of those accused of crime, are most wisely consulted in making the judges as nearly independent of all popular or administrative influence as is practicable. This is not a question which we propose to discuss here. But we cannot forbear to express our matured and settled conviction that the American people are acting under wrong impressions in the conclusion which seems everywhere to prevail, that judges are more reliable when dependent upon popular impulses, or, in other words, when not above being affected by the prevailing popular sentiment. There is no possible instrument more susceptible of easy and unjust perversion by bad men, or which bad men more often use for the accomplishment of their own base purposes than a suddenly excited and superficial popular impulse. And there is, of course, nothing through which a timid or time-serving judge would be more readily reached, or which would more naturally be resorted to for that purpose. The history of all judicial murders, and it is a dark page, and one by no means restricted to narrow limits—is marked at every step by the most awful extremes of popular frenzy. Neither Charles I. or Louis XVI. were among the most arbitrary or tyrannical of the English or French sovereigns. And there can be no fair question in the mind of any sound lawyer and loyal man that both these men were really the victims of rebellion and treason, and that those men who carried them to the scaffold would, in a change of relations, have been guilty of the very same offence which they affected to punish, in greater measure. That, indeed, was abundantly proved in the two governments. And still those acts had the most unquestionable sanction of present popular sentiment. And it is equally true that the monarch whom the English people in the short period of half a generation recalled to the throne with shouts of acclamation, was in no sense the equal, either in ability or virtue, of his unhappy father, who, by the verdict of the same popular sentiment, justly suffered the penalty of death for imputed crimes of which he is now, by the united voices of the nation, regarded as not guilty, and which his idolized son was, and is considered to be guilty, in intent certainly, if not, in all cases in act. But it is perhaps the most conclusive argument in favor of the independence of the judiciary and of its superiority over all popular and political influences, that these calamitous consequences of popular frenzy, to which we have just alluded, both in England and France, have been the primary and efficient cause of establishing their judicial tribunals upon the high vantage-ground of absolute and unquestionable independence. And it seems wonderful that so unequivocal a testimony of historical experience should not be more heeded by others.

There is one marked distinction between the jurisprudence of the English common and chancery law, and that of the Continental countries, based upon the Roman civil law, in regard to which there seems great ground for difference of opinion. In the English courts, and equally in the American, there is always supposed to be some precise technical rule by which the competency of each particular portion of the evidence is to be measured, and by which it must be rejected if found incompetent; and its effect in the case is supposed to become thereby entirely removed. We know that in practice this is not always possible to be done, and that causes will thus sometimes be determined upon the bias of mind unconsciously produced by the knowledge or the

belief of the existence of incompetent evidence. But in the Continental countries almost everything offered is received by the judge. And in the trial of matters of fact before the common-law courts in England and America, a somewhat similar rule prevails, on the assumption that the Court will be able to eliminate the portion of evidence which is competent, and only give effect to that in determining the case. And in the trial of cases in equity, a somewhat similar course of practice prevails, in allowing all fixed and immoveable exceptions to the competency of evidence to be reserved, and passed upon at the final hearing of the cause. But in France, we found on consultation with the most eminent members of the bar, there existed a very general impression that their courts were enabled to do more perfect justice, in the particular cause, by disregarding all mere technical exceptions to the evidence, and giving every species of proof just such weight as its impression might be in the mind of the judge. It is asserted there, that the judge is never obliged to say, as is sometimes done in England and America, that although he has not the slightest doubt of the entire soundness of the claim or defence, it can not be allowed, by reason of some formal defect.

There is another peculiarity in the administration of justice in France, which seems very singular to those who have not seen its practical operation. It grows out of having a separate department of justice in the cabinet, and a distinct minister of justice, who takes cognisance, not only of the administration of criminal law, but who, to a certain extent, assumes the supervision of the civil department of judicial administration, by having some subordinate agent or minister always present in all the higher courts to listen to the trials, and, whenever he deems it of sufficient importance, to give his own views to the court in regard to the proper determination of the cause. Upon our first entering the Court of Cassation, the minister of justice, standing within the enclosure appropriated to the judges, was reading from an extended manuscript a formal and elaborate commentary upon a cause, the argument of which had been closed the day before, or perhaps a few days before. It gave one, whose views of judicial administration were derived from courts constituted like the English or American, the idea of subjecting the courts too much to cabinet or governmental influence. It seemed very much like converting the court into a jury and requiring them to listen to the comments of a superior. We have no means of forming any judgment upon the effect of any such course of trial; but we should expect, that it would be likely to be of considerable weight in the determination of causes, if it were so managed as to beget respect, which would certainly be desirable and likely to occur in the administration of a government, so prudent and popular as that of the present Emperor of the French. An able and learned minister, in such a position, could scarcely fail to acquire great control over the decision of causes, and it would enable the ministry to exercise almost irresistible power in the determination of causes of international importance. We found the leading advocates of the French bar seemed to feel the importance of having causes of any considerable public interest, which came before the Court of Cassation, favorably introduced to the minister of justice, and, if convenient, by some advocate in the interest of the administration, or who was supposed to have its confidence. The working of this plan, which has existed for a very long period in some European countries, has not been specially objected to by suitors, or by anyone so far as we know; but we cannot but believe it will be a long time before the American people will be prepared to submit to the existence of any such supervisory control over the administration of justice.

It is impossible not to admire much which exists in the governmental administration in France. It is unquestionably an able and benign government, and one which gives great satisfaction to the people. It is wonderful how little of aristocratic effect or pretension meets the eye of the traveller in Paris, and most of that character which one does find here has more the appearance of a temporary importation than of being entirely indigenous.

There is, too, in the municipal administration of the large towns of the French Empire, a very surprising energy and zeal for improvement. The entire city, or town, of Paris, extending over many miles, is being pervaded by the opening of great thoroughfares with continuous lines of trees upon each side, and flanked by extended blocks of the most substantial and beautiful stone buildings, thus giving the entire city almost, the appearance of a newly built town, with an air of great cleanliness and neatness. This, doubtless, has some disadvantages in constantly removing the evidences of date. All this is done by the municipality of the district. The proprietors of the land and buildings are required either to build, in conformity with the plan furnished by the public authority, or else to sell at reasonable prices. If the proprietors, whether owners or lesees, elect not to build, and demand such prices, either for value or indemnity, as is deemed exorbitant, experts are selected, and all questions of indemnity or compensation are referred to them—and it is said that, practically, no cases of dissatisfaction occur. It seems to be the chief study of the French Government, in every department, to give satisfaction to the people affected by its acts, and in doing so, to consult the future as well as the present, and to act upon the assumption, that the subjects of the empire will be controlled by considerations of reason and propriety rather than by caprice.

There may be much in the genius of the people to favor the result, but it cannot fail

to strike all beholders alike, that in all departments of governmental administration, as well in the judicial as in the legislative tribunals, and equally in the multiplied ramifications of the executive bureaus, everywhere and at all times, the one great occasion for wonder and admiration is, how it should happen that every one, almost without exception, is made to feel so completely satisfied with all that befalls him, and equally with all which is inflicted upon him. It must be admitted that this is a great desideratum in government, and especially in the judicial administration. We have always regarded it as of scarcely less importance in the determination of causes, whether civil or criminal, that the parties immediately affected by them should feel their justice, and propriety, and necessity even, than that they should be absolutely so decided. We know very well that a desire to render a judgment acceptable is the parties to be affected by it, may be carried to such an extent as to become a vice or a weakness, and thereby most effectually defeat its object. But within reasonable limits, and when pursued by dignified and honorable means, the effort and desire to render governmental administration acceptable to those who are to be affected by it, is certainly to be commended.

I. F. R.

American Law Register.

THE LAW OF LIBEL.

By far the most important branch of the law of libel is that which relates to publications defamatory of indididuals. Blasphemous or obscene books are comparatively rare, and the harm they are likely to do is generally remote and diffused. But words or writing affecting men's reputations are necessarily of daily occurrence, and the injury inflicted by them is obviously in modern times one of the gravest of all injuries. Unfortunately, however, though the law as to libels of a public character is unsatisfactory, the law of defamation is incomparably more so: in fact there is perhaps no single branch of our law in so utterly indefensible a condition; it is theoretically absurd, and practically mischievous.

In every libel, as we have seen, three elements may have to be considered, the form of the publication, the character of the matter published, and the motive with which it is published. In dealing with libels injurious to the public only, such as blasphemy for instance, the law, with a correct instinct, looks mainly to substance and motive, and pays very little regard to form. And yet if there be any case in which it might be permissible to lay stress upon form, and distinguish broadly between words that perish and writings that endure, it is this case, for the liklihood of injury is materially affected by the form But defamation of individuals is very different. The character of the charges made, the degree of publicity given to them, the number of times they are repeated, may all affect both the moral guilt of the slanderer and the injury to the slandered. But men's lives are short, and their memories shorter, the causes of a prejudice are soon forgotten, though the prejudice survives, and if a man's reputation has suffered it makes no difference to him whether the attack which injured him is preserved in the back files of a newspaper or not. Yet, strangely and perversely, it is just when it has to deal with defamation of individuals that the law makes everything of form, and treats all questions of substance as quite subsidiary.

The first broad rule of law on the subject is one founded entirely upon form. A defamatory publication (and anything tending to injure the reputation of another may be said to be defamatory) is in general both an indictable offence and an actionable wrong. But if the same matter be published by word of mouth it is in no case a criminal offence, nor is it, except in a few instances, to be mentioned shortly, any ground for a civil action.

The rule that written libels are indictable and oral slanders are not, is universal, yet it is utterly unreasonable. The ground on which libels are treated as offences against the State, is, in the words of Blackstone, because "every libel has a tendency to the breach of the peace, by provoking the person libelled to break it." But in the present day, at least, a libel published in a tangible form is exactly the kind of defamation which is not likely to lead, and in fact does not lead to breaches of the peace, for there are other and better remedies open. An attack in a book, or phamphlet, or newspaper, may be met with the same weapons. It is the whispered slander which never takes a tangible form, and therefore can never be contradicted, that really leads to horsewhippings.

The remaining branch of the rule, which says that oral slander shall not be actionable is, and always has been, subject to certain exceptions, founded either upon the substance of the slander, or the consequences arising from it. The exceptions which make defamatory words actionable on the ground of their substance, are, to adopt the order of Bacon's Abridgment, "words which import the charge of a crime" (and this includes anything which would subject a man to penal consequences); "words which are disgraceful to a person in an office;" and words which are disgraceful to a person of a profession or trade," by imputing to him incapacity or impropriety in the way of his business. The other exception is founded upon consequences, and provides that a person slandered may maintain an action for the slander if he has suffered any special damage in consequence of it. This last exception might seem at first sight to remove the hardship of the general rule it qualifies, by giving an action to any one really injured by a slander; but, as we shall see, it has unfortunately been rendered comparatively useless by the narrow view taken of the meaning of special damage.

The Law of Libel.

The exceptions founded on the substance of the slander—imputation of crime, disease, official or professional misconduct—are even more arbitrary than the general rule itself. The difficulty, at first sight, is to imagine on what possible ground these particular slanders were chosen and all others omitted. But it appears to us that in our old books traces may be found which shew that the earlier judges had a tolerably reasonable principle more or less distinctly present in their minds when they decided the cases from which the above rules are drawn, that they regarded such cases as that of a contagious disorder as only examples of a wider law, and never meant *expressio unius* to be *exclusio alterius*. Anyone who goes through the cases collected in such a book as Rolle's Abridgement will, we think, have no doubt that the older judges considered defamation to be actionable, if it either in fact did, or in the natural course of things must, injure the person defamed, by affecting him in purse or person, or by excluding him from intercourse on equal terms with his fellows. And they held written libels to be always actionable, because in those days writing was so rare an accomplishment, so much weight and importance was attached to anything written, that written defamation could hardly help affecting a man's reputation very seriously. But an English lawyer instinctively *hæret in cortice*; and thus the detailed rules became stereotyped as part of the law, while all idea of any broader principle was forgotten. So entirely has all reason been lost sight of that in the present day to charge a man with having a contagious disease is actionable, because it is *likely* to exclude him from society; yet if you show that other slanderous words have *in fact* excluded him from society, this does not make them actionable, for the law takes no note of such damage.

But its utter want of principle is not the worst defect of the law on this subject. Its practical working is infinitely worse. A moment's reflection will be sufficient to shew anybody that the class of slanders which people practically have to dread most, which inflict the greatest amount of pain, which occur most frequently, and which are most likely to lead to breaches of the peace and other evils abhorred by the law, are those which charge not transgressions of the criminal law, but of the social code, the code of honour—imputations of untruthfulness, cowardice, treachery, unchastity, and the like. And yet for such slanders the law provides no redress whatever, for they are not within the list of words actionable *per se*, nor are they likely to lead to such consequences as the law contemplates under the term special damage. A very few examples will be sufficient to illustrate the working of the present law. It is actionable to say of a man that he has the measles; it is not so to say he is a liar. It is actionable to say of an officer that he does not know his drill; but if you only say that he is in the habit of racing horses and does not run them fair, that he does not pay his losses at cards, and is guilty of other dishonourable practices, he has no redress. You must not say of a country gentleman that he has omitted to repair a bridge which he was bound to repair, for that is an indictable offence and you must not say that when sitting as a magistrate he leans against poachers, for that is slander of him in his office; but you may go about telling that he owes money to every tradesman in the parish, that he is a cruelly oppressive landlord, that he starves his servants, and is an unkind husband. You must not say of a surgeon that he is a bad operator; but you may tell any stories you please about his private life and to the discredit of his private character. And what is most scandalous of all, any one is at liberty to slander a women by imputations upon her chastity to any extent he pleases, the law provides no means for preventing him from doing so, for punishing him for his offence, or for giving compensation to his victim. Lord Campbell certainly did not exaggerate when he spoke (9 H. L. C. 593) of "the unsatisfactory state of our law, according to which the imputation, by words however gross, on any occassion, however public, upon the chastity of a modest matron or a pure virgin is not actionable without proof of special temporal damage to her;" nor Lord Brougham when he said that "such a state of thing can only be described as a barbarous state of our law."

Nor is the hardship of this state of the law very materially mitigated by the rule that slander becomes actionable if followed by special damage; for the law is clear that no special damage is sufficient for this purpose unless it be actual pecuniary injury, like the loss of custom by a tradesman, or at least the loss of some temporal and worldly advantage capable of being estimated in money, as the loss of a marriage by a lady has been said to be. The mental suffering caused by a slander and the loss of the world's respect and regard is no ground of action. In fact, so far has this doctrine been carried, that in *Lynch v. Knight*, 9 H. L. C. 577, first the Irish Exchequer Chamber, and afterwards the House of Lords, were divided upon the question, whether, if a person accused a wife of adultery, and in consequence of the accusation her husband turned her out of doors, this would be sufficient special damage to sustain an action. Several very learned judges in Ireland, and Lord Wensleydale in the House of Lords, thought it would not; for that the wife would only lose the pleasure of her husband's society; he would still be bound to support her, and therefore she would have suffered no loss which could be expressed in money.—*Solicitors' Journal.*

STATUTE OF LIMITATIONS.

The decision of Lord Chelmsford in *Seagram* v. *Knight*,* has occassioned much surprise in the profession. It had always been supposed to have been settled beyond doubt that, after the Statute of Limitations has once begun to run, its operation cannot be suspended. So Mr. Broom, in his commentaries, estimates the result of such decisions as there are bearing on the subject; and so Lord Abinger, in an *obiter dictum* in *Rhodes* v. *Smethurst*, supposed the law to be; indeed, so little doubt has been felt on the point that it seems to have been scarcely ever fairly raised before the courts. Now, however, Lord Chelmsford has definitely decided that the operation of the statute, after it has begun to run, can be suspended, in the case where the person who has a claim on another for a tortious act committed by the latter dies, and administration to his estate is taken out by the other.

This decision appears to have been somewhat by misadventure, if we may venture to use the expression. The case was one in which an appeal was made from a decree of the Master of the Rolls, upon a bill praying an account of timber felled by a tenant for life impeachable for waste. Lord Chelmsford stopped the counsel for the respondents, who were also the defendants, and delivered judgment, deciding that, as regarded a portion of the claim, the statute had barred the remedy, but that, as regarded the remainder, its operation had been suspended in the manner above mentioned: and his Lordship grounded this view upon two very old cases—one in Coke and the other in Salkeld—in which it was laid down that where administration of the goods of a creditor is committed to a debtor, this works, not an extinction of the debt, but a suspension of the remedy. No doubt it is very hard that the remedy should be suspended and yet the statute run on, but these cases afford, we think, no *authority* for holding a suspension of the operation of the statute. The respondents' counsel, finding at the conclusion of the judgment that it did not give them all they had contended for, were placed in a rather singular position, The appellants' counsel had been heard, and, without being heard themslves, they had had judgment given against them upon a part of their contention. By way of a sort of reply after judgment, they proceeded to "mention" *Rhodes* v. *Smethurst*, but Lord Chelmsford, after reading the remarks of Lord Abinger, to which his attention was directed, said that his opinion was the same, though not, perhaps, as strong as before. Possibly, had the respondents' counsel been heard, the decision upon the point of law would have been the other way. The case is certainly a very singular one.—*Solicitors' Journal.*

* See this case *ante* p. 266.

UPPER CANADA REPORTS.

COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, ESQ., *Barrister-at-Law, Reporter in Practice Court and Chambers.)*

DEVLIN v. MOYLAN.

Pleading several matters—Libel—Fair comment on public acts.

The alleged libel purported to be founded on information given to the defendant by "a resident of this city, yesterday" (meaning the day before the publication). One of the pleas sought to be pleaded alleged that the gravamen of the charge was matter of "public notoriety and discussion" and that the words used were a fair comment, &c., and making other statements which, it was alleged, would enable defendant to introduce evidence of irrelevant matters.

Held that a general plea that the publication was a fair *bona fide* comment, &c., might be pleaded, but the plea as now framed, and set out below, was inconsistent with the words used in the alleged libel, and could not be allowed.

[Chambers, September 30, 1867.]

This was an action for an alleged libel in *The Canadian Freeman*. The words complained of were as follows:—

"1844—What became of the repeal rent? An old repealer, a resident of this city, informed us yesterday, that in 1844, Mr. Barney Devlin was the recipient of a considerable sum subscribes towards the cause of repeal, that did not reach the Conciliation Hall. Could not Mr. Hagey or Mr. Brennan or some of the old residents of Montreal West, ask Barney for some information on this important point; by all means let there be light thrown on the repeal rent"

The defendant proposed to plead, with others, the following plea:—

"That before and at the time of the publication of the alleged words, the defendant was a candidate for the representation of the Western Electoral Division of the City of Montreal, in the House of Commons in Canada; that during his candidature, questions arose and were publicly discussed as to certain contributions of money, which the defendant had received in the year 1844, in the public capacity of Treasurer, to promote the repeal of the union between Great Britain and Ireland, and which it was publicly alleged had not been paid over for that purpose; that said questions as to the receipt and disposition of such money were matters of public notoriety and discussion, and were and are matters which it was lawful, fit and proper to discuss in reference to the defendant's said candidature, and the alleged libel was, and is a fair comment in a public newspaper on the public acts and conduct of the defendant; and the said words were published by the defendant, believing the same to be true, and without any malice."

McKenzie, Q. C., opposed the allowance of the plea, because it would enable the defendant improperly to introduce evidence of many irrelevant matters, and that the plea, if allowed at all, should be simply, that the publication was a fair comment upon the plaintiffs conduct and proceedings.—He referred to *Lucan* v *Smith*, 1 H & N. 481, as expressly in point; Bullen & Leake, 611, and notes; *Paris* v. *Levy*, 9 C. B. N. S. 342; *Lewis* v. *Levy*, E. B. & E. 537, 27 L. J. Q. B. 282; *Campbell* v *Spottiswoode* 3 B. & S. 769;

O'Brien v. *Clement*, 3 D. & L. 676; Cook on Defamation, 100.

Robt. A. Harrison, supported the summons, citing, *Turnbull* v. *Bird*, 2 F. & F. 508–524, *Paris* v. *Levy*, 2 F. & F. 71; *Seymour* v. *Butterworth*, 3 F. & F. 372; *Campbell* v. *Spottiswoode*, 3 F. & F. 421; *Morrison* v. *Belcher*, 3 F. & F. 614; *Hunter* v. *Sharpe*, 4 F. & F. 983; *Healy* v. *Barlow*, 4 F. & F. 224–230.

Adam Wilson, J.—The alleged libel purports to be founded on information given to the defendant by "an old repealer, a resident of Toronto, yesterday," that is, the day before the publication, while his plea professes to rest the excuse and justification for the publication, upon the fact that the matters of the libel were the subject of public notoriety.

These do not seem to me to be at all consistent with each other. The defendant is apparently shifting his ground from that which was expressly taken at the time of the publication. That which he learned afterwards—assuming that he did so learn it all—can, in the nature of things, be no excuse or justification for what he did before he did learn it.

It would not be proper on the eve of the trial, to make any observations not strictly called for by the nature of the present application, and therefore I say nothing more on the facts submitted to me; but for the reason before mentioned, as well as on the ground stated in the case of *Lucan* v. *Smith*, I cannot allow the plea as at present framed; but, if the defendant choose to frame it as a general plea, that the publication was a fair and *bona fide* comment, &c., I will allow it for what it may be worth, reserving to myself full liberty to deal with the plea afterwards, whether upon the trial or otherwise, as if I had not made the order for its allowance.

In an action of this kind, the defendant should be allowed every reasonable opportunity to excuse or justify his conduct, consistent with the plaintiff's rights, and the fair and convenient prosecution of the action.

Re Davidson.

Insolvent act—Allowance of appeal—Notice—Amendment.

An application of an insolvent for a discharge was dismissed by the County Judge on 16th September. On the 23rd September the insolvent gave notice of an intended application on the 24th September to a judge at Osgoode Hall, for leave to appeal. *Held*, that this notice was clearly insufficient, but on the authority of *Re Owen*, 12 Grant. 446, and in favor of the liberty of a subject, the notice was amended.

Quære as to the materials that should be before the judge on such an application.

(Chambers, Sept. 30, 1867.)

The Judge of the County Court of the County of Wentworth, on the 16th day of September last, made an order discharging the insolvent's application to be relieved from custody on a warrant for his arrest for contempt in not obeying an order of the judge.

Notice of appeal was served on the 20th of September, to the effect that an application would be made to a judge of one of the Superior Courts of Common Law at Osgoode Hall, on the 23rd day of the same month, for leave to appeal against the above order.

This did not arrive in time, and another notice was served on the 23rd of September, that a motion would be made before a judge at Osgoode Hall on the following day.

This last notice was the one which was relied upon as the effective one between the parties.

W. Sidney Smith, for the plaintiff, objected that this notice was irregular, inasmuch as one clear day's notice had not been given according to sec. 11, sub sec. 9 of Insolvent Act of 1864. That the eight days allowed to apply to appeal by the Act of 1865, sec. 15, if computed from the service on the 16th September, expired on the 24th, and then the notice should have been served on the 22nd for the 24th, and so the service on the 23rd did not afford the creditor the time he was entitled to after notice and before the motion was made; and that the material upon which the appeal was asked was insufficient. He cited *Re Sharpe*, 2 Chan. Cham. 75; and distinguished *Re Owen*, 12 Grant. 446; 3 U. C. L. J. N. S. 22.

Curran, for the defendant.

Adam Wilson, J.—The question argued before me was whether the petitioner was in a position to entitle him to the allowance of his appeal?

By the act of 1865, sec 15, the right of appeal is given against any order of a judge made upon any of the matters or things upon which he is authorised to adjudicate or to make any order by the acts of 1864 or 1865, and the delay for applying for the allowance of an appeal is, by the act of 1865, extended to eight days—which period is by sec. 7, sub-sec. 3, of the act of 1864, to be eight days "from the day on which the judgment of the judge is rendered."

By the act of 1864, sec 11, sub-sec 9, it is provided, under the head "Of procedure generally," that one clear day's notice of any petition, motion or rule shall be sufficient, if the party notified resides within fifteen miles of the place where the proceeding is to be taken, &c."

This service was made in Toronto on the 23rd, the one day's *clear* notice must therefore exclude the day of service and the day of hearing, so that either the service should have been on the 22nd for the 24th or the motion on the 25th upon a service on the 23rd; but the service on the 23rd and the motion on the 24th do not give the one clear day's notice.

Then it is said that I can amend the notice, and *Re Owen*, 12 Grant 446, is referred to for that purpose. That case goes the full length for which it was cited, and although I am not satisfied with the decision of the learned Vice-Chancellor, I am content to follow it on the present occasion.

It was also argued that the case was not complete without all the papers which were before the judge below. I conceive it is only necessary that I should have before me such materials as will enable me to say whether the learned judge in the court below came to such a decision as should fairly and justly be reviewed, and I perceive in the petition before me, that after the order for the alleged contempt or disobedience of which the prisoner has been arrested, it is stated that the prisoner "was not asked for said books and documents, but nevertheless on the 17th of August, without any notice to me or any opportunity to show cause against it, a warrant was issued by the County Court Judge on the *ex-parte* application of the plaintiff, ordering me to be imprisoned for six months, on which I was

arrested in Montreal and conveyed thereon to Hamilton and lodged in the Common Gaol, where I am now incarcerated under the said warrant." Here there is a plain ground of complaint, for I think the debtor should have been called upon to shew cause why he did not obey the order, before he could be imprisoned for disobedience of it. I think there are other grounds stated which should not, in a case of personal liberty, be too severely scrutinised.

I shall allow the notice to be amended and on the return of it, if no other cause be shown, I shall allow the appeal.

Upon this intimation probably the other side may consent to the allowance being now made.

WEBSTER v. GORE.

Ejectment act—Endorsement on writ—Attorney and Agent.

A writ of ejectment should be endorsed with the name and abode of the attorney actually suing out the same, whether he sues out the same as agent for the attorney, or as himself the attorney for the plaintiff.

[Chambers, October 21, 1867.]

A summons was obtained calling on the plaintiff to shew cause why the writ of summons in ejectment issued in this cause and the copies thereof served on the defendants and the said service, should not be set aside for irregularity, on the ground that the residence of the plaintiff's attorney was not correctly stated in the endorsement on the said writs and copies, and the same were not endorsed with the name and place of abode of the attorney who actually sued out the said writ.

The plaintiff's attorney had an office at the Village of Petrolia, in the County of Lambton, and had resided there, but at the time this writ was issued, he had been abroad on business for some weeks The writ and copies were endorsed, "This writ is issued by O. J. Mackay, of the Village of Petrolia, in the County of Lambton, attorney for the said plaintiff, by Mr. Sullivan, his agent," but the place of residence of Mr. Sullivan was not endorsed.

Kerr, shewed cause, filing affidavits

It is shown by the affidavits that the plaintiff's attorney resided in Petrolia, though temporarily absent on business, and it is shown that his office is in Petrolia; and when attorney resides at one place and has an office at another, the place of his office should be endorsed on the writ, Arch. Prac. 10 ed. 172; *Yardley* v. *Jones*, 4 Dowl. 45; *Ablett* v. *Basham*, 5 E & B 1019; 25 L. J. Q B. 23 *Coppice* v. *Hunter*, 8 Dowl. 504.

The Ejectment act does not require the place of residence of an agent to be endorsed (sec 3)

The name and abode of the attorney issuing the same shall be endorsed thereon in like manner as the endorsement on writ of summons in a personal action. The C. L. P. Act, sec. 12, says that every writ shall be endorsed with the name and place of abode of the attorney *actually suing out* the same, and when he sues out the same as agent for another, the name and place of abode of such other attorney shall also be endorsed thereon. The omission of the word *actually* in the Ejectment act, shows it was not intended that the agent's residence should be endorsed on writs of ejectment.

Crombie, contra. Neither the place of abode of the attorney nor of the agent, has been endorsed on this writ.

ADAM WILSON, J.—I think the attorney issuing the writ under the Ejectment Act, must be read as the attorney *actually suing out* the writ in the C. L. P. Act, as the Ejectment Act refers to the C. L. P. Act in this respect, for the endorsement is to be "in like manner as the endorsements on writs of summons in a personal action."

The place of business is the proper description of the attorney, though it is not where he sleeps. *Yardley* v. *Jones*, 4 Dowl. 45; *Ablett* v. *Basham*, 5 E. & B 1019.

Now this writ appears to have been issued by Mr. Sullivan, as agent for Mr. Mackay, the plaintiff's attorney, and while the attorney's place of abode is sufficiently given, that of Mr. Mackay is not given at all.

I am obliged, therefore, to give effect to the summons. If this ejectment writ is within the 48th section of the C. L. P. Act, it may be amended by that statute; if not, I may amend as under the ordinary common law power, but it ought to be and is a cross-summons.

ENGLISH REPORTS.

CROWN CASES RESERVED.

REG. v. THOMAS MORRIS AND ANOTHER.

Manslaughter—Death subsequent to a conviction by a magistrate for the assault—Prior conviction for the assault no bar to indictment—24 & 25 Vict. cap. 100, sec. 45.

Where, upon indictment for manslaughter, it appeared that the prisoner had, in the lifetime of the deceased, been summoned before magistrates and convicted and sentenced to imprisonment with hard labour for the assaults which subsequently caused the death, and that he had undergone that sentence, it was

Held (Keily, C. B., dissentiente) that under 24 & 25 Vic. cap. 100, sec. 45, such conviction and punishment was no defence to an indictment for manslaughter.

[C. C. R., May 4; June 1.—15 W. R. 999.]

Case reserved by Pigott, B

Thomas Morris was tried before me at the Stafford Spring Assizes upon an indictment for the manslaughter of Timothy Lymer, by inflicting bodily injuries on him on the 25th of June.

It was proved in evidence that the prisoner had been summoned before the magistrates at the instance of the said Timothy Lymer for the assaults which caused the death, and was convicted and sentenced to imprisonment with hard labour. He underwent that punishment.

Timothy Lymer died on the 1st of September from the injuries resulting from the above-mentioned assaults It was contended under section 45 of 24 & 25 Vic. cap. 100, that the conviction for the assaults afforded a defence to the present indictment for manslaughter (see *Reg.* v. *Elrington*, 9 Cox C. C. 86; 10 W. R. 13.) There was a substantial question raised by the evidence whether the manslaughter was the result of injuries inflicted by the prisoner Morris or the other prisoner Gibbons, joined in the present indictment, and whether they were acting in concert. I thought it desirable to let the prisoner Morris have the benefit of either of the defences, and for that purpose to let the questions of fact go to the jury upon the plea of not guilty, and to reserve the question of law, under the aforesaid section 45, for the opinion of this Court.

The prisoner Gibbons was acquitted and the prisoner Morris was convicted.

If the Court should be of opinion that a conviction for the assault, at the instance of the injured person, under sec. 45, affords a defence in law to an indictment for manslaughter resulting from that assault, then a plea of not guilty to be entered, otherwise the prisoner Morris to be called up for judgment at the next assizes.

G. Browne for the prisoner. No counsel appeared on the other side.

[Martin, B., mentioned *Salvi's case*, reported in the Old Bailey Sessions Papers, 1857, vol. 46, p. 884, the nature of which is stated in the following judgment; and Kelly, C.B., said the question turned on the meaning of the words "for the same cause," in 24 & 25 Vic. cap. 100, sec. 45.] *Reg.* v. *Walker*, 2 Moo. & Ry. 44; *Reg.* v. *Elrington*, 1 B. & S 688, 10 W. R. 13; and *Reg.* v. *Stanton*, 5 Cox, C. C. 324, were referred to.

Cur. adv vult.

Kelly, C.B.—In this case I have the misfortune to differ with my learned brethren, who are of opinion that the conviction ought to be affirmed. The prisoner was charged before the magistrates with an assault, under the 24 & 25 Vict. cap. 100, at the instance of the party aggrieved, and now deceased. Timothy Lymer was convicted and sentenced to imprisonment with hard labour, and has undergone that sentence. The assault, the unlawful act with which he was charged, is the same assault, and one and the same act as that which caused the death of Lymer, and of which he has been convicted under the present indictment. I think therefore that the case comes within the precise words of section 45 of the 24 & 25 Vic. cap. 100, which provides that in such a case "he shall be released from all further or other proceedings civil or criminal for the same cause." It is true that the offence is now charged in other language, and that which before the magistrates was described as an assault is now described as manslaughter; but it is one and the same act, and the cause of the prosecution before the magistrates and the cause of this prosecution are one and the same cause. The case therefore comes within the letter as well as the spirit of the Act of Parliament, and I think that to sustain this conviction would be directly to violate the maxim or principle of the law, "*nemo debet vis vexari* (here we might say *puniri*) *pro eâdem causâ*." Cases may indeed be suggested in which there might be a failure of justice, as where an assault should have been treated lightly by a magistrate and upon conviction a slight sentence passed, and yet, from the subsequent death of the party assaulted, the offence might amount to murder; but such a case must be rare and exceptional, and I think we ought to presume that the magistrates will in all cases under this or any other Act of Parliament do their duty, and as, where the charge is made at the instance of the party aggrieved, it may also be presumed that the whole of the evidence would be fully brought before the magistrates, and upon conviction an adequate punishment inflicted accordingly. I do not think it was the intention of the Legislature or consistent with natural justice, that the accident of the subsequent death of the party should subject the accused to a repetition of the trial and the punishment. *Salvi's case* is clearly distinguishable. There the prisoner was indicted for the murder of one Robertson, and pleaded a plea of *autrefois acquit*, the acquittal having been upon an indictment for wounding with intent to kill. It was clear that this acquittal might have been pronounced upon the ground of the jury having negatived the intent to kill, and yet that the prisoner might well be guilty of the murder without an intent to kill the individual murdered, as if he had shot at another man, but unintentionally killed Robertson. The plea therefore of *autrefois acquit* was in that case properly overruled. Here, however, the prisoner has been tried, convicted, and punished for the very same offence in all its parts, though under a new name, as that for which he is now indicted and again convicted; and it seems to me that to allow this conviction to stand, is to punish a man twice for the very same cause in violation of the before mentioned maxim, and of the express declaration of the Act of Parliament. I think therefore that the conviction ought to be quashed.

Martin, B., said the question was whether the suffering the imprisonment imposed by the justices was a defence to this indictment. He agreed that *Salvi's case* was not in point. The meaning of the words "the same cause," in the 45th section, was the same cause as that on which the justices had adjudicated; and, in his opinion, a new offence arose when this man died.

Byles, J.—I am of opinion that under statute 24 & 25 Vic. cap. 100, sec. 45, the prior conviction of the assault affords no defence to the subsequent indictment of manslaughter, the death of the deceased having occurred after the conviction, but being a consequence of the assault. The form and intention of the common law pleas of *autrefois convict* and *autrefois acquit*, show that they apply only where there has been a former judicial decision on the same accusation in substance, and where the question in dispute has been already decided. There has, in the present case, been no judicial decision on the same accusation and the whole question now in dispute could not have been decided; for at the time of the hearing before the magistrates whether the assault would amount to culpable homicide or not, depended on the then future contingency whether it would cause death. The case of *Reg.* v. *Salvi*, argued before the Lord Chief Baron Pollock and my brothers Martin and Willes, if not precisely in point, is nevertheless a strong authority for this view of the law. But reliance is placed on the words of the statute (24 & 25 Vic. cap. 100, sec. 45) "for the same cause." It is to be observed that that statute does not say for the same act, but for the same cause. The word "cause" may undoubtedly mean act, but it is ambiguous, and it may also, perhaps with greater propriety, be held to mean "cause for the accusation." The cause for the present indictment comprehends more than the cause in the former summons before the magistrate, for it comprehends the death of the party assaulted. It is, therefore, at least in one sense, not the same cause. But if these observations on the meaning of the word "cause," as used in the statute, should appear to savour too much of refinement, and to be used in support of a

forced construction, it must be remembered that it is a sound rule to construe a statute in conformity with the common law rather than against it, except where or so far as the statute is plainly intended to alter the course of common law. An additional reason in this case for following the common law is the mischief which would result from a different construction. My brother Martin has already illustrated the mischief in civil cases by a reference to Lord Campbell's Act. And in criminal cases the mischief might be much greater, a murderer, for example, by suffering or obtaining a previous conviction for an assault, might escape the due punishment of his crime.

Keating and Shee, JJ., concurred.

Conviction affirmed.

COURT OF EXCHEQUER.

Re Robinson.

Attorney's bill—Taxation—Lapse of twelve months after delivery—"Special circumstances"—6 & 7 Vict. c. 73, s. 37.

The fact that an attorney's bill contains charges which are prima facie and in the absence of explanation excessive, may constitute a "special circumstance" within the meaning of the 6 & 7 Vict. c. 73, s. 37, enabling the court or a judge to order a reference for taxation after the expiration of twelve months from the delivery of the bill.

[Ex. Nov. 14, 1867.—17 L. T., N. S., 179.]

In this case Martin, B. had made an order referring an attorney's bill of costs to the master for taxation. The bill was delivered in Sept. 1866. The costs in question had been incurred in defending an action tried in the country, in which the plaintiff obtained a verdict, and the bill contained a number of items relating to attendance in London for the purposes of a motion for a new trial, and of the taxation of plaintiff's costs, the items of which it is unnecessary to specify, but which, as will be seen below, the court thought *prima facie*, and in the absence of special circumstances excessive in amount. The defendant's attorney had made several applications to the defendant for the amount, which in the first instance had been answered by promises of payment Subsequently to March 26, 1867, further applications for payment had been met with complaints that some of the charges were excessive, and demands of a reduction in the amount. Ultimately, upon the 6th Nov. 1867, being more than twelve months from the delivery of the bill, the order of reference to taxation was obtained by the defendant.

The 6 & 7 Vict. c. 73, s 37, provides for the reference of attorneys' bills for taxation, but contains the following proviso:

"Provided always, that no such reference as aforesaid shall be directed upon an application made by the party chargeable with such bill after a verdict shall have been obtained, or a writ of inquiry executed in any action for the recovery of the demand of such attorney, &c., or after the expiration of twelve months after such bill shall have been delivered, sent, or left as aforesaid, except under special circumstances to be proved to the satisfaction of the court or judge to whom the application for such reference shall be made."

Field, Q. C. (with him *Shepherd*) moved to set the order aside.—This question turns upon the meaning of the words "special circumstances," in the 6 & 7 Vict. c. 73, s. 37. There are no special circumstances within the meaning of the Act in this case. The amount of the charges made does not constitute such a circumstance. That was known to the defendant during the twelve months after the delivery of the bill, and special circumstances must be something which has occurred, or come to the party's knowledge, after the expiration of that time, or something involving fraud or misrepresentation on the part of the attorney by which the party charged has been induced not to move during the time. *Re Whicher*, 13 M. & W. 549.

Kelly, C B.—No court ought to interfere for the purpose of referring a bill to taxation after the lapse of twelve months upon grounds of a trivial character, or unless circumstances exist which make it only reasonable that it should be so referred. In this case, however, some of the charges made in the bill, are charges which are *prima facie* excessive. It is of course possible that it may be shown to the satisfaction of the master that by reason of special circumstances these charges were reasonable and necessary, but in the absence of such circumstances they are of an extreme nature, and such as the client has a fair right to have referred to taxation. I think, therefore, that although the twelve months had elapsed, special circumstances existed which rendered it quite competent for the judge to refer this bill for the taxation.

Martin, B.—I am of the same opinion. I do not say that it would be right to refer a bill to taxation on such grounds after the lapse of a very long period when the particulars had passed out of memory, but in this, two months had not elapsed after the twelve months.

Pigott, B.—I am of the same opinion I think that, in the interest of both attorneys and clients this Act should receive a liberal construction, and that when a judge has seen special circumstances in a case, we ought to be very slow in reviewing his decision. *Rule refused.*

CHANCERY.

Baxendale v. McMurray.

Nuisance—Fouling of a stream—Prescriptive right—Use of a new species of raw material in a manufacture—Practice—Jurisdiction of one Lord Justice sitting alone to hear appeals from decrees made upon motion for decree.

The defendant occupied paper mills on the banks of a stream, into which he discharged the refuse of his manufacture. A prescriptive right to foul the stream had been acquired by the defendant's predecessors in the occupation of the mills. Those predecessors used rags in the manufacture of papers. Soon after the defendant came into occupation of the mills he introduced into, and employed in, the manufacture a new raw material called *esparto grass*. Upon a suit by a neighbouring occupier to restrain the defendant from fouling the stream to the plaintiff's injury, it was contended that, independently of any increased fouling of the stream, the plaintiff had a right to an injunction by reason of the nuisance caused by the use of *esparto grass* being a new kind of nuisance in respect of which no prescriptive right had been acquired by the defendant.

Held, that it was not sufficient for the plaintiff to show that the defendant used in his manufacture a new raw material, but that he must show further a greater amount of pollution and injury arising from its use, and that the *onus* of showing this lay on the plaintiff.

The plaintiff not having shown this, his bill was dismissed with costs.

Under the statute 30 & 31 Vic. c. 64, s. 1, one Lord Justice sitting alone has jurisdiction to hear and decide appeals from decrees made upon motion for decree.

[L. J., July 31, 1867—16 W. R. 32.]

This was an appeal from a decree made by Vice-Chancellor Stuart, upon the plaintiff's motion for a decree, granting a perpetual injunction to restrain the defendant from fouling a stream to the injury of the plaintiff.

The plaintiff occupied premises upon the banks of the River Chess, in Hertfordshire, and the defendant occupied paper mills on the banks of the stream higher up than the plaintiff's premises, and the defendant discharged the refuse arising from his manufacture of paper into the stream. A prescriptive right to foul the stream to a certain extent had been acquired by the defendant's predecessors in the occupation of the same mills. Those predecessors manufactured paper from rags, but the defendant, soon after he came into the occupation of the mills, introduced into and employed in manufacture a new raw material called "Esparto Grass." The plaintiff filed his bill in this suit against the defendant, to restrain him from fouling the stream to the plaintiff's injury, and, on the hearing of a motion for decree, Vice-Chancellor Stuart made a decree for a perpetual injunction against the defendant. The defendant appealed.

Bacon, Q.C., *Sir R. Palmer*, Q.C., and *Fry*, for the defendant.

Dickinson, Q.C., and *Birley*, for the petitioner, contended that the use of a new raw material by the defendant constituted a new kind of nuisance, as to which the prescriptive right did not extend, and that the *onus* of showing that there was no nuisance lay upon the defendant.

The following cases were cited:—*Luttrell's case*, 2 Co. Rep. 493; *Dand* v. *Kingscote*, 6 M. & W. 174; *Bishop* v. *North*, 11 M. & W. 429; *Moore* v. *Webb*, 1 C. B. N. S. 672; *Case* v. *The Midland Counties R. Co*, 28 L. J. Ch. 727.

The evidence in the case was very voluminous, and the appeal was heard at great length before the Lords Justices Turner and Cairns, and at the conclusion of the arguments on June 4th, judgment was received. Before judgment was delivered the Lord Justice Turner died. Soon after the statute 30 & 31 Vic. c. 64 was passed which enables one Lord Justice sitting alone to hear and decide appeals in certain cases.

Section 1 of that Act is as follows:—"All the jurisdiction, powers, and authorities of the said Court of Appeal under the Act 14 & 15 Vic. c. 83, or under any other Act, may (except as hereinafter mentioned) either by both of the judges appointed under the said Act when sitting together, or by either of the said judges when sitting separately, or by the Lord Chancellor when sitting with the said judges, or either of them; provided that no decree made on the hearing of a cause or on further consideration, shall be reheard before the said judges when sitting separately, provided also that the Lord Chancellor shall and may, while sitting alone, have and exercise the like jurisdiction, power, and authorities as might have been exercised by the Lord Chancellor if this Act had not been passed.

July 29th.—The case was placed in the paper before Lord Cairns alone, with a view to his disposing of it. The parties, however, objected that it was doubtful whether, under the provisions of the above statute, one Lord Justice could decide an appeal from a decree, even though it were made upon motion for decree. It was therefore arranged that, in order to prevent any doubt as to the right of either party to appeal to the House of Lords, the case should be placed in the paper before both the Lord Justices, so that the judgment of the Court might be delivered by Lord Cairns, with the formal concurrence of Lord Justice Rolt.

July 41.—The arguments were *pro forma* reopened. Before giving judgment

Lord Cairns, L. J., said that, as a doubt had been expressed as to the jurisdiction conferred by the new Act, and as the question might be material with respect to other cases, he thought it proper to state that he had conferred with the Lord Chancellor, and with his learned brother Lord Justice Rolt, and that they all agreed in thinking that there could be no doubt that the words "hearing of a cause" were used in the new Act in the technical sense which had been previously attached to them. The distinction was known and established between bringing a cause to hearing by means of filing replication, and by means of a motion for decree, the latter method not being technically the hearing of the cause. There could be no doubt therefore, as to the jurisdiction of one member of the Court to hear and decide appeals from decrees made upon motion for decree.

Rolt, L. J., agreed that there could be no doubt that that was the meaning of the words in the Act.

Lord Cairns, L. J., then stated the nature of the case, and mentioned that the late Lord Justice concurred in the conclusion to which his Lordship had come. His Lordship then proceeded to say—Does the use of a new raw material in the manufacture of paper, from the mere circumstance that the material is new and different from that formerly used, destroy the right previously possessed by the defendant to discharge polluted water into the stream? With great respect to his Honour the Vice-Chancellor, I doubt whether the question on this part of the case is one as much of law as of fact. The question appears to me to be, what is the right or easement of the defendant? Is it a right, specific and defined, to pollute the stream by discharging the dirty water in which rags have been washed; or is it a right to discharge into the river the refuse liquor and foul washings produced by the manufacture at his mills of paper, in the reasonable and proper course of such manufacture, using the materials which are proper for the purpose, but not increasing, as against the servient tenement to any substantial or tangible degree, the amount of pollution? In my opinion the right of the defendant would, upon the facts before us, be found, and be properly found, by a jury to be the latter and not the former. It is difficult to suppose the existence of an easement, founded on and limited to the washing of rags If made specific in this way, it would be confined to rags known and in use at the time the easement was acquired, and the rags of textile fabrics, afterwards coming into use must, however valuable for the manufacture of paper, be excluded. Rags, again, would afford no standard by which to test or limit the amount of pollution Some would be much more dirty than others; the washings from some might be harmless, and from others dele-

terious. In rags produced from vegetable substance the properties of the fibrous matter might be very different; in some, as in linen and cotton rags, the fibre being elaborately treated in the course of manufacture; in others as in the coarse sacking or bagging, especially of hemp or jute, the fibre retaining much more of its original character,

I am therefore of opinion that it is not sufficient for the plaintiff to show that the defendant uses in the manufacture of paper a raw material different from that formerly employed; he must show, further, a greater amount of pollution, and injury arising from the use of this new material; and the *onus*, of conrse, of showing this lies on the plaintiff. His Lordship then discussed the evidence and came to the conclusion that the plaintiff had not made out his case. The bill must therefore be dismissed with costs, but there would be no costs of appeal

Rolt, L. J., expressed his formal concurrence.

Lawton v. Price.

Practice—Attendance before examiner—Expenses—Refusal to be sworn.

The defendant attended before the examiner for cross-examination on his affidavit made in the suit, but refused to be sworn until a sufficient sum for his expenses had been offered by the plaintiff.

The Court, on motion by the plaintiff, ordered him to attend again at his own expense.

[V. C. S. Nov. 14, 1867—17 L. T., N. S., 163,]

This was a motion that a defendant should be ordered to attend before the examiner at his own expenses, to be cross-examined on an affidavit made in the above cause. The facts were:

In June, 1867, the defendaat made the affidavit in question for the purpose of verifying his accounts as to the matters in dispute in the suit. Subsequently he was subpœnaed and attended at the office of the examiner for cross-examination, on the affidavit, but when there, refused to be sworn, in consequence, as was alleged, of a disagreement as to the sum to be paid for his expenses.

The plaintiff now moved as above, and further that the defendant might be ordered to bring with him and produce certain letters, and copies of letters, and also his letter-book or books, and all memoranda and accounts referred to in the subpœna obtained in the suit.

On the part of the defendant, it was objected that the subpœna was irregular in form, and that he had not been properly served with it.

Bacon, Q C, and *Dumerque* appeared in support of the motion.

Dickinson, Q C., and *Morris*, for the defendant, contended that he was right in objecting to be sworn until an adequate amount had been offered for his expeneses. He was perfectly willing and ready to be cross-examined as soon as a proper sum had been arranged. It did not devolve on the plaintiff to fix the amount, but was a matter which ought to have been referred by him to the taxing master. Independently of the question of expenses there were irregularities in the subpœna which justified the defendant in the course he had taken. By the orders of the court notice to cross-examine must be given within fourteen days. Now the affidavit was filed June 18, and the subpœna was not served on the defendant until July 8, several days after the time fixed by the orders. The subpœna also stated that the defendant was to be cross-examined on accounts as well as on the whole of the evidence. This was contrary to the practice: (*Re Lord's Estate*, L. Rep 2 Eq. 605.) Although the defendant had gone to the examiner's office, his attendance was voluntary, he had not been sworn, and could not be considered to have attended in form, or to have waived his right to object to the irregularities in the subpœna.

The Vice-Chancellor.—It is shown by the examiner's certificate that the defendant attended at the examiner's office. It is stated that he refused to be examined on account of the insufficiency of the sum offered for his expenses. It was certainly open both to him and the plaintiff to have suggested that the taxing master should certify what was the proper sum to be paid, but that was not done. There has been an attempt to show that his refusal to be sworn arose out of certain irregularities in the subpœna, and not merely on account of the insufficient offer for expenses. That, however, does not appear to be the case, and, even if it were, the fact of the defendant having attended has put an end to any question as to irregularity, and it cannot now be raised. There must be an order that the defendant attend at his own expense, and pay the costs af this application The plaintiff must undertake to pay the amount certified by the taxing master for the former attendance.

IRISH REPORTS.

QUEEN'S BENCH.

Belfast Banking Company v. Stanley.

Demurrer—Surety as maker of joint promissory note—Reasonable time—Equitable plea.

To an action on a joint promissory note of three persons payable one month after demand, one of the makers pleaded on equitable grounds that he made the note as surety for another of the makers without consideration, of which the holders had notice, and that the holders did not make any demand from any of the joint makers of the note within a reasonable time, but delayed for an unreasonable time, to wit, ten years.

Held, a bad plea.

[Q. B. (Ir.) April 25, 30—15 W. R. 989.]

This was an action on a promissory note. The plaintiffs complained that the defendant, on the 5th July, 1855, by his promissory note now due, promised to pay the Belfast Banking Company on order at their office in Armagh £200 one month after demand, and the plaintiffs averred that afterwards, to wit, on 1st March, 1866, payment of said note was duly demanded of the defendant, and that more than one month had elapsed since the making of the said demand, but the defendant did not pay the said note, although the same was duly presented for payment at the office of the defendants in Armagh on the 19th November, 1866.

The defendant by his fourth plea said, upon equitable grounds, that he made the said note with one Jervais Winder and one Benjamin Peebles Davidson, and as the joint and several note of said three persons, he, the said Winder,

and defendant making and signing same for the accommodation of said Benjamin P. Davidson, and as his sureties *only*, to secure a debt due to the plaintiffs by the said Davidson, and not otherwise, and that when the said note was made and delivered by defendant to plaintiffs it was agreed between plaintiffs and the several makers thereof that defendant and Winder should be liable to plaintiffs as sureties for said Davidson only, and except as aforesaid there never was any value or consideration for the making of the said note by the defendant; and the defendant said that although from the time of the making of the said note hitherto the plaintiffs were always the holders of the said note, the said plaintiffs did not within a reasonable time after the making of said note, after the making and delivering thereof to them as aforesaid, make any demand for the payment of the same according to the tenor thereof, either from the said Davidson, the principal debtor, or from the said J. Winder, or this defendant; but on the contrary, they the plaintiffs delayed to make any such demand for an unreasonable time, to wit, for the period of ten years from the making of said note and the delivery thereof to the plaintiffs.

To this defence the plaintiffs demurred, because it showed no obligation on the part of the plaintiffs to demand the payment of the said note within any particular time from any of the parties in said defence mentioned, and because the forbearance of the plaintiffs to demand the payment of the said note within a reasonable time does not either at law or equity discharge the defendant from his liability to pay the said note.

George Foley, (with him *McDonnell*, Q. C) in support of the demurrer. The plea only shows forbearance No agreement to proceed within a reasonable time is alleged, and there is no obligation by law to proceed within any given time. Mere *laches* on the part of the creditor would not discharge a surety. He cited *Madden* v. *McMullen*, 13 Ir. C. L 303; *Mors* v. *Hall*, 5 Ex. 47; *Frazer* v. *Jordan*, 8 E. & B. 305; *Gorng* v. *Edmonds*, 6 Bing. 94; *Wright* v. *Simpson*, 6 Ves. 714, 734; *Tucker* v. *Laing*, 2 K. & Johns. 749.

Monroe, (with him *Harrison*, Q C and *Falkiner*, Q C.) in support of the plea This is rightly pleaded as an equitable defence: *Pooley* v. *Harradine*, 5 W. R. 405; 7 E. & B 431; 3 Jur. N S. 488; *Davies* v. *Stainbank*, 6 De G. M. & G. 679. The defendant does not lose his rights as a surety because he is *prima facie* a principal. The tenor of the note may be departed from in order to recognize and give effect to those rights. *Greenough* v. *McClelland*, 30 L. J. Q. B. 15; 8 W. R. 612; *Lawrence* v. *Walmsley*, 31 L.J. C.P. 143; 10 W. R. 344. As against the person secondarily liable the holder must show that he has used due diligence in performing all the duties imposed upon him as against the person primarily liable: see *Mutual Loan Fund Association* v. *Sudlow*, 5 C. B. N. S. 451, where the surety was held discharged (though primarily liable by the tenor of the note) because the creditor had wasted the assets of the principal debtor. This, being the case of a negotiable instrument, is distinguishable from the cases cited on the other side. The ordinary case of a person secondarily liable on a negotiable instrument is that of drawer or indorser, and once it is shown that the defendant is a person secondarily liable on this note, he is then in the same position as if he appeared as an indorser. Indorsers are entitled to notice of dishonour, and to have proceedings taken against the principal within a reasonable time, else there is a presumption that the bill is paid, in favour of the person secondarily liable. See Story on Bills, 409, section 322.

It would be inequitable to make any distinction between a surety in the position of the defendant and an indorser. The Statute of Limitations would not begin to run till demand was made; and in such a case it has been held that demand must be made within a reasonable time. *Codman* v. *Rogers*, 10 Pick 112.

McDonnell, Q C., in reply.

O'Brien, J.—The defence here does not attempt to set up any special agreement between the parties, which would impose upon the plaintiffs the duty of making the demand for payment within any certain time. It does not aver that there was any application made to the plaintiffs to proceed upon the note. It does not even aver that the delay was not without the full concurrence of the defendant, or that any damage accrued to the defendant by reason of such delay; it is quite consistent with the plea that the defendant is as well able to pay the note as ever. Now, although all the parties are on the face of the note equally liable at law, still if the defendant signed the note for the accommodation of a third person without consideration, and that the plaintiffs had notice of this, he will be considered as a surety, and entitled to plead on equitable grounds any circumstances which would entitle a surety to be discharged in a court of equity. Here it is relied upon as a discharge that an unreasonable time elapsed before demand was made by the plaintiffs, but it is not alleged that they were ever called upon to present the note by the defendant or any one else. And in *Madden* v. *McMullen* (*supra*) and *Wright* v. *Simpson* (*supra*) it is laid down that mere non-feasance of the creditor will not discharge the surety, if the creditor has not been required to take proceedings to recover the debt from the principal. It was argued on the part of the defendant that this is an analogous case to the liability of an indorser of a bill or note, which ceases after a reasonable time has elapsed without any proceedings by the holder against the parties primarily liable. But there the respective liabilities of the parties appear in the face of the note; the position of the indorsee as a surety is clear and unmistakable; but no case has decided that mere lapse of a time can discharge a surety who sets up his rights of suretyship only by altering the *prima facie* liability of the parties as they appear on the face of the note. The distinction between securities payable at a certain date, viz., ordinary bills, cheques, &c., which are intended to be used immediately, and such instruments as this promissory note, payable on demand, and intended to be a continuing security, is clearly pointed out in *Brook* v. *Mitchell*, 9 M. & W. 18. I am therefore of opinion that the demurrer should be allowed.

George, J., concurred.

UNITED STATES REPORTS.

DISTRICT COURT, PHILADELPHIA.

MAHONEY v. RAILROAD.

The negligence of a person having a child in charge, but without authority of its parents, is not a defence to an action by the child.

New trial.

Opinion by Sharswood, P. J.

We think there was evidence of negligence in the servants of the defendants sufficient to justify the verdict. It is not necessary here to say whether a mere scintilla is enough. On that point the finding of the jury is approved by the judge before whom the trial was had.

The question then reserved is simply this, assuming negligence on the part of the defendants, whether the negligence of a person who, without express authority from the parents, but as an act of kindness, takes charge of an infant child, contributing to the injury, is any defence in an action by the child? In this instance the unfortunate woman who laid hold of the child to carry it across the track of the railroad, and who lost her own life in the attempt, was the aunt of the plaintiff. The plaintiff did not reside with the aunt, and no evidence was offered to show any authority in her. If, however this was an action by the father to recover damages for the death of the child, a very different question would be presented. It would most probably be held that it was negligence to suffer such an infant to be on the streets without a caretaker, and he could not hold the defendants responsible, whether he had appointed a care taker who was negligent or left the child to roam at large without one. To a child of plaintiff's years no contributory negligence can be imputed. Neither is the plaintiff precluded from recovery against one joint tort feasor, by showing that others have borne a share in it. All torts by several persons are joint or several at the election of the injured party, but one satisfaction can be recovered, and there is no contribution among tort feasors. Hence springs the right of a plaintiff, who has recovered several verdicts against different defendants, to elect *de melioribus damnis*. There is nothing in the case to show that plaintiff could not have included her aunt as defendant with the company or their officers, or maintained a separate action against her. The English case cited and relied on by the counsel of defendants, *Waite* v. *North-Eastern Railway Company*, 7 W. R. 311, was the case of the negligence of the person in charge of a child, who had taken and paid for his passage with defendants, a railroad company, and while waiting in the depôt to get on board, the child was injured by the approach of another train, of which the defendants had given no notice. The defendants might well have said we would not have received the child as a passenger without a care taker, or if we had we would have put him in charge of a servant, or in a place where no harm could come to him till the train was ready to start. The decisions of the New York and Massachusetts courts are certainly entitled to very high respect, but they are not authority binding on us, and the precise point was not made or met in those cases. *Hartfield* v *Roper*, 21 Wend. 615; *Holly* v. *The Boston Gas Co.* 8 Gray 123.

In this decision we think that we are fully sustained by the opinion of our own Supreme Court in *Smith* v *O'Connor*, 12 Wright, 218.

Rule discharged and judgment for plaintiff on point reserved.

DIGEST.

DIGEST OF ENGLISH LAW REPORTS.

FOR THE MONTHS OF FEBRUARY, MARCH AND AND APRIL, 1867.

(*Continued from page* 308)

WILL.

1. A will was written on one page of a sheet, and the testator's signature was at the end of that page, with the words, "Witness, W. Hatton;" and the names of three persons were written, under a memorandum not testamentary, at the top of the second page. *Held*, that from the position of the three names, and the circumstances of the case, the names were not placed there for the purpose of attesting the will, and probate was refused.—*Goods of Wilson*, Law Rep. 1 P. & D. 269.

2. A. made a will in 1837, appointing B. an executor and residuary legatee. In 1861 she delivered the will and her deeds to B. for safe custody, first sending for C., and asking him to witness the delivery. Before the delivery, she wrote her name at the foot of the will, and C. and B. theirs, the latter with the prefix, "executor." A. gave no reason for signing, and said nothing to B. and C. about being witnesses to her will. *Held*, that this was not a re-execution of the will, and that the will was entitled to probate by virtue of the original execution. —*Dunn* v. *Dunn*, Law Rep. 1 P. & D. 277.

3. By letters-patent, the barony of B. was conferred on E. for life, remainder to R., E.'s second son, in tail male, remainder to E.'s younger sons in tail male successively. The patent contained a shifting clause, that, in certain events, the barony should go over. Subsequently, a testator gave her freeholds, leaseholds and chattels to trustees on trust, to "convey, settle and assure" the same "in a course of entail to correspond, as nearly as might be," with the barony, in such manner and form as the trustees should consider proper, or their counsel should advise. *Held*, that the freeholds ought not to be settled in strict settlement, but must follow the limitations of the barony, so that R. would be tenant, not for life, but in tail male; that the leaseholds and chattels must go with the real estate as far as practicable; and

that the shifting clause in the settlement must follow that in the letters-patent. — *Viscount Holmesdale* v. *West*, Law Rep. 3 Eq. 474.

4. Testator, after giving all his property on trust for the maintenance of his sons (naming them) and his daughter H., till H., who was the youngest child, should attain twenty-one, devised particular lands to each of his sons in tail male. He then directed, that, if any of his sons should die during the minority of H., as aforesaid; *or*, if any of them should die without having such issue, as aforesaid, and either before or after their or his share should be divisible according to the will, the share or shares of him or them so dying should go "to my next surviving son, according to the seniority of age," in like manner as the original shares. J., a son, died during H.'s life, leaving children. *Held*, that J.'s estate tail was divested by his death, and went over; *held*, further, that as the testator had arranged his sons' names in the descending order of birth, "next surviving" meant "next younger" son.—*Eastwood* v. *Lockwood*, Law Rep. 3 Eq. 487.

5. Gift of an annuity, to be equally divided between A. and B. for and during their joint lives, or the life of the survivor or longer liver of them respectively. *Held*, that A. and B. took as tenants in common, and that the share of one dying went to his representative.—*Bryan* v. *Twigg*, Law Rep. 3 Eq. 433.

6. Testator gave property on trust to accumulate till his eldest daughter should attain twenty-one, and then a third to be paid to her; the other two-thirds to continue accumulating till his second daughter should attain twenty-one, and then a third to her; the other third to be paid to his youngest daughter on her attaining twenty-one. If one or more of his daughters should die under twenty-one without issue, then the share or shares of such one or more so dying, to be paid to his surviving daughters or daughter. He directed his trustees, when each daughter should attain twenty-one, or marry, to convey to her one-third of the property for life, remainder to her children in fee. In default of issue of any one or more of his daughters, he directed the share or shares of such one or more dying without issue to be limited so as to go to her surviving sisters and their issue, in like manner as the original thirds were directed to be conveyed to each of them. And if all the daughters should die without issue in their mother's lifetime, he gave the property to his wife for life, remainder over. He also directed that, in the conveyances to his daughters, all necessary provisions should be inserted to protect the entail and succession designed to be effected on his daughters, and the issue of them. *Held*, that the children of a daughter first dying should participate in the share of a daughter afterwards dying under twenty-one without issue, and that "surviving" must be read "other."—*Hurry* v. *Morgan*, Law Rep. 3 Eq. 152.

7. One who had bought a leasehold interest which was assigned to him, and afterwards the reversion in fee, which was conveyed to a trustee for himself, subject to the lease, gave to his wife by will "the whole of my personal property, estate and effects, of every and whatsoever kind they may be." *Held*, that the term passed under the will as a term in gross, and not attendant on the inheritance, but that the reversion did not pass.—*Belaney* v. *Belaney*, Law Rep. 2 Ch. 138.

8. Testatrix directed the interest of stock to be paid to D. for life, and at his death to be transferred to his personal representatives. *Held*, that D. took an absolute interest.—*Alger* v. *Parrott*, Law Rep. 3 Eq. 328.

9. A., by a will purporting to dispose of "all his worldly estate and effects in manner following," directed his debts paid out of his personal estate, and that his executors should sell all his stocks and such other part of his personal estate as was in its nature saleable, and collect and get in all money due and owing to him, and all other his estate, and convert the same into money, and hold the proceeds on trust to pay debts, and invest the residue thereof on certain trusts. After making his will, A. bought a house. *Held*, on a bill for specific performance by A.'s executrix against a purchaser of the house, that she had power under the will to sell the house, and specific performance was decreed.—*Hamilton* v. *Buckmaster*, Law Rep. 3 Eq. 323.

10. The presumption that a will which cannot be found was destroyed by the testator with the intention of revoking it, and not with the intention of setting up an earlier will, can be rebutted only by clear and satisfactory evidence.—*Eckersley* v. *Platt*, Law Rep. 1 P. & D. 281.

11. A., owning with others rights of pasture over certain lands, by will, before the Wills Act, devised the estate in respect of which these rights of his were held. Afterwards A., joining with his co-owners of these rights, and with the owners of the lands over which they extended, granted the rights and lands to trustees on trust to allot and convey the lands among the grantors, and to make roads, &c.

The trustees reconveyed to A. a portion of the lands, in lieu of his rights, by a deed to which A. was party. A. died before the deed was executed. *Held*, that the conveyance to the trustees revoked the devise.—*Grant* v. *Bridger*, Law Rep. 3 Eq. 347.

12. A testator gave his estates to trustees, to stand possessed of the real estate for the use of his nephew, for life, with remainder to the first and other sons of the nephew in tail, and to stand possessed of the personal estate, on the same trusts as his real estate, "or as near thereto as the rules of law and equity will permit," provided that the personal estate should not vest absolutely in any tenant in tail, unless such person should attain twenty-one. After the testator's death, the nephew died, leaving a son. *Held* (Lord St. Leonards *dissentiente*), that the gift of personalty was not void for remoteness as a gift to such tenant in tail as should attain twenty-one, but was a gift to the first tenant in tail of the real estate by purchase; and that, therefore, the son took an absolute interest in the personalty, liable to be divested on his dying before twenty-one.—*Christie* v. *Gosling*, Law Rep. 1 H. L. 279.

13. Legacy to trustees, in trust so long as A. should not become bankrupt, to pay him the interest till he should attain twenty-five, so that he might not deprive himself thereof by anticipation, in which events A. should lose all benefit of the provision, "my object being for A.'s personal wants till any of such events should happen, and then for the good of his family." On the happening of any such event, the fund to be in trust for A.'s children; but if A. should then have no children, the fund was to fall into the residue, subject to a power in the trustees to pay A. any sum they may deem fit in their discretion. The fund was to be paid to A. at twenty-five; if he died under twenty-five, leaving children, the fund was to be in trust for them. There was also a power of advancement for A.'s benefit. A. died under twenty-one, unmarried. *Held*, that A. had a vested interest in the money, subject to be divested in the event of bankruptcy, or alienation, or death without children under twenty-five, and that, as none of these had happened, his estate was absolute.—*Pearson* v. *Dolman*, Law Rep. 3 Eq. 315.

14. A testator devised certain land on trust for his son, and then to be divided among such of his daughters as should be living at the son's death, and the children, grandchildren, and issue of such of his daughters as should then be dead; such children, grandchildren and issue respectively to take equally among them the shares to which their parents would have been entitled had they been living. M., one of the daughters, died before the son, having had ten children; six of those had died in her lifetime (five childless, and one leaving children who were alive at the son's death); one other of M.'s children died before the son, leaving a child who also died before the son; three of M.'s children survived the son. *Held*, that the gift to M.'s children was not substitutional, but original, and that it was not necessary that they should survive the period of distribution in order to take; *held*, further, that M.'s grandchildren took only the shares to which their parents would have been entitled if living, and not equally with the children.—*In re Orton's Trust*, Law Rep. 3 Eq. 375.

See Administration; Election; Executor; Foreign Court; Probate Practice; Revocation of Will; Vested Interest.

Witness.

1. An action of ejectment was brought by A.'s son, claiming as A.'s heir, supposing that A. was dead. Another action of ejectment was afterwards brought by A. for the same premises. *Held*, that there was no privity of estate between A. and his son, and therefore that evidence of what had been said by a witness at the trial of the former action, who had since died, not being admissible against A., was not admissible for him.—*Morgan* v. *Nicholl*, Law Rep. 2 C. P. 117.

2. A company resolved that its seal should be affixed to documents only in the presence of two directors, who were to attest it by their signatures. A bill of sale was sealed with the seal of the company, and adjoining the seal were the words, "Seal of the said company affixed in the presence of A. B. and C. D." *Held* (Byles, J., *dubitante*), that A. B. and C. D. were not attesting witnesses, within the meaning of 17 & 18 Vic. c. 36, § 1, and therefore their addresses need not be stated in the affidavit accompanying the bill of sale.—*Deffell* v. *White*, Law Rep. 2 C. P. 144.

See Equity Pleading and Practice, 2; Will, 1, 2.

FOR THE MONTHS OF MAY, JUNE AND JULY, 1867

Account.—*See* Interest, 1.

Ademption.—*See* Will, 5.

Administration.

1. Administration, with the will annexed, granted to one as creditor for funeral expenses, who had undertaken the funeral at the request of the residuary legatee named in the will.—*Newcombe* v. *Beloe*, Law Rep. 1 P. & D. 314.

2. When probate is granted of two papers, as together containing the will of the deceased, it is the practice to make the grant to all the executors named in both papers.—*Goods of Morgan*, Law Rep. 1 P. & D. 323.

3. Administration duty must be paid on all the intestate's personal estate, including contingent interests; and where such duty was not paid on a contingent interest which afterwards fell into possession, *held*, that duty must be paid on the present value of the absolute interest, and not on the value of the contingent interest at the date of administration, though, if duty had then been paid on the value of the contingency, nothing further would have been payable on the contingency having subsequently fallen into possession.—*Lord* v. *Colvin*, Law Rep. 3 Eq. 737.

See Equity Pleading and Practice, 2; Probate Practice.

Admiralty.

1. In a cause of collision, the plaintiffs need not allege that they kept their course as the sailing rules required, but it lies on the defendants to allege the violation of the rules.—*The West of England*, Law Rep. 1 Adm. & Ecc. 308.

2. A mortgagee arrested a ship, but failed in his suit. The court condemned him in damages, on the ground that, with adequate knowledge of the circumstances, he had arrested the ship when no money was due him, and had endeavored to make good his claim by bringing charges of fraud, which were not sustained, against the owner.—*The Cathcart*, Law Rep. Adm. & Ecc. 314.

See Production of Documents, 2.

Agent.—*See* Principal and Agent.

Agreement.—*See* Contract.

Annuity.

A testator directed his trustees to invest the whole of his estate, and with and out of the annual proceeds to levy and raise the annual sum of £100, and to pay the same to S. for life; "and from and after the payment," and "subject thereto," to pay the income of the trust funds to certain persons for life, and to divide the principal among their children. The income did not suffice to pay the annuity in full. *Held*, that the annuity was not payable out of the *corpus*, and that the income only must be paid to S. during his life.—*Birch* v. *Sherratt*, Law Rep. 4 Eq. 58.

Arbitrator.—*See* Award.

Assault.—*See* Autrefois Convict.

Attorney.—*See* Solicitor.

Autrefois Convict.

A conviction by justices, at A.'s instance, for an assault upon A., and imprisonment thereon, are not, either at common law or under the 24 & 25 Vic. c. 100, § 45, a bar to an indictment for manslaughter, should A. subsequently die from the effects of the assault (Kelly, C.B., *dissentiente*).—*The Queen* v. *Morris*, Law Rep. 1 C. C. 90.

Award.

1. An agreement to submit the affairs of a partnership to arbitration, and that the submission shall be made a rule of a court of common law, cannot be pleaded in bar to a suit in equity, seeking discovery, complaining that the plaintiff is harrassed by actions, and praying for a receiver; though, before the bill was filed, arbitrators were appointed, and, since bill filed, the submission has been made a rule of the court.—*Cooke* v. *Cooke*, Law Rep. 4 Eq. 77.

2. In a policy of fire insurance under seal, the insurers covenanted to pay any loss not exceeding a certain amount, "according to the exact tenor of the articles subjoined." One of these was, that the assured should send in particulars of his loss, "which loss, after the same shall be adjusted, shall immediately be paid" by the insurers, with an option to rebuild, provided that any difference touching the loss shall be referred to arbitrators, whose award shall be final; but, if any fraud appears, the assured shall forfeit his claim. To an action on this policy the insurers pleaded this article; that a difference had arisen; that the plaintiff had not submitted the matter to arbitration; and that the loss had not been adjusted. *Held*, on demurrer (Bramwell, B., *dissentiente*), that the covenant was only to pay the adjusted loss, and that no action lay.—*Elliott* v. *Royal Exchange Assurance Co.*, Law Rep. 2 Ex. 237.

3. By order of court, a cause, and all matters in difference between the parties, were referred to an arbitrator. The award, which professed to be "of and concerning all the matters referred to me in the cause and under the order," after disposing of the issues in the cause, proceeded. "As to the matter concerning two bills of exchange," &c., "I award," &c., and then provided for costs. *Held*, that the award sufficiently disposed of all the matters in difference, though a claim by the defendants for goods sold to the plaintiff, which had been brought to the arbitrator's notice, was not specifically disposed of.—*Jewell* v. *Christie*, Law R. 2 C.P. 296.

4. The omission by arbitrators to give one of the parties to the difference an opportunity to be heard, cannot be pleaded to an action on the award, or replied to a plea relying on the award. *Semble*, such omission is good ground for a motion to set the award aside or refer it back.—*Thorburn* v. *Barnes*, Law R. 2 C. P. 384.

5. A matter was submitted to the award of A. and B., or such third person as they should appoint umpire under their hands, to be indorsed on the submission. A. and B. named each an umpire, and each agreed that the other's nominee was a fit person; but, not being able to agree which should be appointed, they decided by lot, and afterwards, at separate times and places, signed the indorsement of the appointment on the submission. *Held* (1), that the appointment was valid; and (2) that the indorsement of it, not being a judicial act, need not be done by A. and B. at the same time.—*Re Hopper*, Law Rep. 2 Q. B. 367.

6. After the last meeting between arbitrators and an umpire, but before the latter had made his award, the arbitrators, the umpire, and the attorney of W. (one of the parties), an innkeeper, dined with W., at his invitation. The umpire afterwards made his award in favor of W. *Held*, that, though the proceeding was very improper, there was not sufficient ground for refusing to enforce the award, it not appearing that there had been any intention to corrupt or influence the umpire, or that he had been so influenced.—*Ib.* Law Rep. 2 Q. B. 367.

7. Two parties agreed that a third might make with in a certain time an award on a matter in difference. The award was not made within the time specified; but one of the parties, not knowing that fact, took it up, and paid the charges for it. *Held*, that his doing so did not amount to a waiver of the condition as to time.—*Earl of Darnley* v. *London, Chatham and Dover Railway*, Law Rep. 2 H. L. 43.

BANKRUPTCY.

1. The lessee of a quarry, who digs rock and works it up into slates for sale, does not thereby become a trader within the meaning of the bankrupt laws, nor yet by selling tools and gunpowder to his workmen, nor by selling to a builder spare iron, to be used in buildings on the quarry.

Dealing in shares in joint-stock companies is not trading under the bankrupt laws.

A trading out of any district will support an adjudication of bankruptcy in the district.—*In re Cleland*, Law Rep. 2 Ch. 466.

2. A creditor who has acquiesced in the execution of a deed of assignment by the debtor to trustees for the benefit of creditors, and who has benefited by it, by having the property protected from execution, cannot avail himself of it as an act of bankruptcy, though he may not so have assented to it as to be bound by its provisions.—*Ex parte Strey*, Law Rep. 2 Ch. 374.

3. B. became insolvent in 1827. His mother held a security on a contingent interest of his expectant on her death, which interest would fail if he died in her lifetime. She did not prove in the insolvency, but retained her security, and the assignee sold the equity of redemption. In 1857 B. died, and in 1864 his mother. In 1866, further assets having unexpectedly come in, the representatives of the mother claimed to prove. *Held*, that the proof was rightly admitted.—*Ex parte Peake*, Law. Rep. 2 Ch. 453.

4. A creditor's assignee applied for an order to annul an adjudication made on the bankrupt's application, in order that an adjudication by a creditor might be obtained, for the purpose of impeaching certain mortgages of the whole of the assets, as being fraudulent preferences. The assignee had known of the existence of the mortgages, and that they exceeded the value of the property comprised in them, for more than four months before his application. *Held*, that this delay was fatal to the application.—*Ex parte Davis & Denton*, Law Rep. 2 Ch. 363.

5. The right of an assignee to arrest, and the liability of a bankrupt to be arrested, under the Bankruptcy Act of 1849, are "rights" and "penalties," and therefore preserved by the proviso in the statute repealing that act.—*Graham* v. *Robinson*, Law Rep. 2 Q. B. 387.

See COMPOSITION DEED; EMBEZZLEMENT; INTERPLEADER.

BENEFIT SOCIETY.

The rules of a benefit building society empowered it to advance to its members the amount of their shares, secured by mortgage, repayable by monthly contributions covering principal and interest, and imposed fines for non-payment of the contributions at the rate of 5 per cent. a month. *Held*, that the fines were reasonable within 6 & 7 Wm. IV. c. 32, § 1; that they were not within the doctrine of equitable relief against penalties, but that they did not carry interest; and that a borrowing member could not redeem his mortgage without paying the fines incurred.—*Parker* v. *Butcher*, Law Rep. 3 Eq. 762.

BILL OF LADING.

The defendants owned a ship engaged in the Mediterranean trade. It is the custom in that trade for a ship's agent to sign bills of lading instead of the master, and no difference is recognized between the efficacy of his signature and that of the master. The defendants' agents at Genoa signed a bill of lading for manganese, shipped in bulk and not weighed

at the time of shipment, which described the manganese as of a certain weight, but contained in print the words, "weight, contents and value unknown." All the manganese shipped was delivered to the plaintiff, the assignee, for full value of the bill, but it was found short of the weight stated in the bill. In an action to recover damages for non-delivery of the full weight, *held*, that the defendants were not bound by the signature of their agents for a greater quantity than was actually shipped. *Semble*, that the printed words controlled the statement of weight.—*Jessel* v. *Bath*, Law Rep. 2 Ex. 267.

See Ship, 1, 2; Stoppage in Transitu.

Bills and Notes.

A bank gave A. the following letter addressed to him: "You are hereby authorized to draw on this bank to the extent of £15,000, and such drafts I undertake duly to honor on presentation. This credit will remain in force for twelve months from its date, and parties negotiating bills under it are requested to indorse the particulars on the back hereof." A. drew bills under this letter to the amount of £6,000, and indorsed them to the plaintiff, who duly indorsed particulars on the letter. The bank was afterwards wound up, and A. was indebted to it to an amount exceeding what was due on the bills. *Held*, that whatever might be the effect of the letter of credit at law, in equity the plaintiff could prove against the bank for the amount due on the bills, without regard to the state of accounts between the bank and A. —*In re Agra & Masterman's Bank*, Law Rep. 2 Ch. 391.

See Trust, 2.

Blasphemy.—*See* Illegal Contract.

Bond.—*See* Surety.

Capital.—*See* Annuity.

Carrier.

1. A carrier of passengers for hire is not bound at his peril to provide a carriage roadworthy at the commencement of the journey; and he is not liable for injuries to a passenger caused by a defect in the carriage, if the defect were such that it could be neither guarded against in the process of construction nor discovered by subsequent examination. Per Mellor and Lush, JJ. (Blackburn, J., *dissentiente*), the carrier must provide at his peril a carriage in fact reasonably sufficient, and is liable for the consequences of a latent defect.—*Readhead* v. *Midland Railway Co.*, Law Rep. 2 Q. B. 412.

2. By statute, railway companies are bound to carry children under three years without charge, and children between three and twelve at *half price*. A woman, carrying her child three years and two months old, bought a ticket for herself on the defendants' railway, but none for the child. No question was asked as to the child's age, and the mother had no intention to defraud the company. The child was injured by the negligence of the defendants' servants. *Held*, that he could recover against the defendants.—*Austin* v. *Great Western Railway Co.*, Law Rep. 2 Q. B. 442.

3. A commercial traveller delivered a parcel of samples to a common carrier to be carried to A., but did not state the contents of the parcel, nor the purpose for which it was required. By the carrier's negligence, the parcel was delayed, and the traveller spent three days at A., unemployed, waiting for it. *Held*, in an action against the carrier for negligence, that the hotel expenses of the traveller while so waiting were too remote, and could not be recovered. —*Woodyer* v. *Great Western Railway Co.*, Law Rep. 2 C. P. 318.

4. A contract by a railway company to carry cattle, signed by the party sending them, provided thus: (1) "The owner undertakes all risks of loading, unloading and carriage, whether arising from the default of the company's servants, or from defect in the station, or other places of loading or unloading, or of the carriage in which the cattle may be loaded or conveyed, or from any other cause whatever." (2) "The company will grant free passes to persons having the care of cattle, as an inducement to the owners to send proper persons with them." *Held*, that the first provision was unreasonable, and so void by 17 & 18 Vic. c. 31, § 7; and that it was not made reasonable by the owner taking advantage of the second provision.—*Rooth* v. *N. E. Railway Co.*, Law Rep. 2 C. P. 173.

5. A contract by a railway company to carry goods by a given train, which ordinarily arrives at a particular hour, does not amount to a warranty that it will so arrive, though the company's servants know that the sender's object requires that it should so arrive.—*Lord* v. *Midland Railway Co.*, Law Rep. 2 C. P. 339.

Charity.

It being impossible, from the decrease in value of the property of a school founded in the reign of Henry VIII., to carry out the system of gratuitous education sanctioned by a scheme in 1849, the court, regarding the founder's manifest intention not to make a school for the poor only, but to establish a liberal system of education, allowed the admission of boys beyond the number of free scholars, on pay-

ment of fees; but (differing from Wood, V. C.) directed that all the scholars, paying and free, should be considered as equally on the foundation, and that there should be no competitive examination for admission as free scholars.—*Manchester School Case*, Law Rep. 2 Ch. 497.

See Mortmain.

Collision.—*See* Admiralty, 1; Ship, 3.

Common Carrier.—*See* Carrier.

Company.—*See* Equity Pleading and Practice, 3; Husband and Wife, 1; Marshalling of Assets; Misrepresentation, 1; Principal and Agent, 1.

Composition Deed.

1. In a former action by the plaintiff against the defendant, the defendant pleaded the general issue, but afterwards withdrew his plea, on the plaintiff's agreeing not to sign judgment before May 8th. On May 7th, the defendant registered a composition deed under the Bankrupt Act, 1861, § 192, but did not plead it to the action. On the 8th, the plaintiff signed judgment. In an action on the judgment, *held*, that the defendant could avail himself of the deed, because (1) he had not had sufficient opportunity to plead it in the former action; Whether, if he had had the opportunity and power to plead the deed to the former action, he could now avail himself of it, *quære*.—*Braun* v. *Weller*, Law Rep. 2 Ex. 183.

2. The plaintiff having issued execution, the defendant's attorney notified the sheriff's officer, who consented to withdraw only on the attorney's undertaking for the debt and costs. When the undertaking was given, the deed was in fact registered. The defendant having paid the sheriff the amount of the undertaking under protest, and the sheriff having paid it into court, *held*, on the defendant's motion, that the defendant was entitled to the money.—*Milner* v. *Rawlings*, Law Rep. 2 Ex. 249.

Concealment.—*See* Misrepresentation.

Condition.—*See* Award, 2, 7; Sale.

Conflict of Laws.—*See* Foreign Court.

Contract.

A contract is not binding on the party proposing it till its acceptance by the other party has been communicated to him or his agent.—*Hebb's Case*, Law Rep. 4 Eq. 9.

See Bill of Lading; Bills and Notes; Carrier, 4, 5; Frauds, Statute of; Husband and Wife, 1, 2; Illegal Contract; Mistake; Sale; Specific Performance.

Conversion.—*See* Mortmain, 2; Probate Practice, 1.

Conviction.

The 11 & 12 Vic. c. 43, § 25, provides, that, when justices of the peace shall "adjudge the defendant to be imprisoned, and such defendant shall then be in prison, undergoing imprisonment on a conviction, or any other offence," the justices may "award that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant shall have been previously sentenced." *Held*, that, when a defendant is convicted at one time of several distinct offences, the justices have power to award that the imprisonment under one or more of the convictions shall commence at the expiration of the sentences previously pronounced.—*The Queen* v. *Cutbush*, Law Rep. 2 Q. B. 379.

See Autrefois Convict.

Copyright.

1. The piracy of an engraving by photography is within the statutes for the protection of artists and engravers.—*Graves* v. *Ashford*, (Exch. Ch.) Law Rep. 2 C. P. 410.

2. The plaintiff, being clerk of the London Coal Market, was in the habit of publishing annually, by authority of the corporation, statistical returns, extracted from the corporation books in his custody, of all coal imported into London: these returns were supplied to subscribers at 3*l.* 3*s.* a year. The defendant published a work giving the mineral statistics of the United Kingdom during preceding years, at a cost of 2*s.* 6*d.*, and introduced therein the returns published by the plaintiff for the preceding nine years, such returns forming about one-third of the defendant's book. The source from which this information was derived was prominently acknowledged. On bill for an injunction, *held*, that the result in such cases is the true test of the act; and full acknowledgment, and the absence of dishonest intention, will not excuse the appropriation, if the effect of it is of necessity to injure and supersede the sale of the original work, and that the plaintiff was entitled to an injunction.—*Scott* v. *Stanford* Law Rep. 3 Eq. 718.

3. By the International Copyright Act, 7 Vic. c. 12, § 6, no author of any musical composition first published abroad shall be entitled to the benefit of the act, unless the title of the musical composition and the name of the author or composer are registered in England. N. composed and published an opera in full score at Berlin, and, after his death, B. arranged the score of the whole opera for the piano-forte; also the overture for the piano, and the whole opera *pour le piano seul*. In registering these

arrangements, N's name was inserted as composer. *Held*, that the arrangements for the piano-forte were independent musical compositions, of which B., not N., was the composer, and the entry was invalid.—*Wood* v. *Boosey*, Law Rep. 2 Q. B. 340.

Corporation.—*See* Company.

Corpus.—*See* Annuity.

Covenant.—*See* Award, 2; Husband and Wife, 3; Landlord and Tenant, 2, 3.

Criminal Law.—*See* Autrefois Convict; Conviction; Embezzlement; Felony.

Cruelty.

To establish a charge of cruelty, actual violence of such character as to endanger personal health or safety, or the reasonable apprehension of such violence, must be proved. The ground of the court's interference is the wife's safety, and the impossibility of her fulfilling the duties of matrimony in a state of dread.—*Milford* v. *Milford*, Law Rep. 1 P. & D. 295.

Damages.—*See* Admiralty, 2; Carrier, 3; Equity, 2; Frauds, Statute of, 1; Landlord and Tenant, 2.

Desertion.

Desertion *held* to commence not when the husband and wife ceased to cohabit, but when the husband made up his mind to abandon his wife and live with another woman.—*Gatehouse* v. *Gatehouse*, Law Rep. 1 P. & D. 331.

Devise.

A will made before the Wills Act was to this effect: "As touching my worldly estate, I give and bequeath to my wife, whom I likewise make sole executrix, all my lands and tenements, by her freely to be possessed and enjoyed, together with all my houses and household goods, deeds and moveable effects; all my children to be educated and settled in business according to my wife's discretion." *Held*, that the last clause indicated an intention that the wife should take such an estate as would enable her to carry out the testator's wishes, and that therefore she took the fee.—*Lloyd* v. *Jackson*, (Exch. Ch.) Law Rep. 2 Q. B. 269.

See Legacy; Mortmain, 2, 3; Power; Will, 5-8.

Discovery.—*See* Equity Pleading and Practice, 1; Production of Documents, 1.

Divorce.—*See* Cruelty; Desertion; Nullity of Marriage.

Easement.—*See* Watercourse.

Embezzlement.

A married woman having been adjudged bankrupt on her own petition, in which she described herself as a widow, was afterwards convicted of having embezzled her property. *Held*, that the conviction was wrong, as the property was her husband's.—*The Queen* v. *Robinson*, Law Rep. 1 C. C. 80.

Equity.

1. *Semble*, a bill in equity lies to enforce a right of stoppage *in transitu*.—*Schotsmans* v. *Lancashire and Yorkshire Railway Co.*, Law Rep. 2 Ch. 332.

2. A. filed a bill against B. for the cancellation of bills of exchange drawn by B. and accepted by A., in part performance of a contract, of which B. failed to perform on his part, and for an injunction to restrain B. from parting with or suing on the bills; and, pending the suit, A. commenced an action against B. for damage for breach of the contract. *Held*, that A. was not obliged to elect whether he would proceed at law or in equity.—*Anglo-Danubian Co.* v. *Rogerson*, Law Rep. 4 Eq. 3.

See Bills and Notes; Mistake.

Equity Pleading and Practice.

1. Demurrer allowed to a bill brought by "The United States of America," on the ground that a foreign State is not entitled to sue in a court of equity without putting forward some public officer on whom process may be served, and who can be called on to give discovery on a cross bill.—*United States of America* v. *Wagner*, Law Rep. 3 Eq. 724.

2. A legatee, defendant to an administration suit instituted by executors, can allege in his answer and prove by evidence a case of wilful default against the executors; and if he does not do so, but after an administration decree files a bill against the executors, such bill is a supplemental bill, in the nature of a bill of review, and cannot be filed without leave of court.—*Harvey* v. *Bradley*, Law Rep. 4 Eq. 13.

3. The plaintiff filed a bill, on behalf of himself and the other shareholders, against the company and other persons, impeaching certain transactions on the ground of fraud. The defendants' answer was excepted to for insufficiency; and, while the exceptions were pending, the defendants moved to take the bill off the file or to stay proceedings. At the hearing of the motion, it appeared that the plaintiff had lost money by speculating in the shares of the company, and that he owned only five shares, which he had purchased solely for the purpose of qualifying himself to bring the suit and of being bought off. *Held*, that, at that stage of the cause, the defendants not having sufficiently denied the charges of fraud, *mala fides* of the plaintiff in filing the bill was no ground for

taking it off the file.—*Seaton* v. *Grant*, Law Rep. 2 Ch. 459.

4. Money will not be ordered brought into court on motion before decree, unless it appears clearly on the answer to belong to the plaintiff. —*Hagell* v. *Currie*, Law Rep. 2 Ch. 449.

See Interpleader; Production of Documents. 1; Vendor and Purchaser of Real Estate, 2.

Estate by Implication.

A testator gave a sum of stock in trust for a married woman for life, and, after her decease, if she should leave children, on trust for her husband for life; and, after his decease, on trust to divide the same among the children, but, if no child, then on trust, after the decease of husband and wife, to other persons absolutely. The husband survived the wife, but there were no children. *Held*, that the husband took a life interest by implication. — *Blake's Trust*, Law Rep. 3 Eq. 799.

Estoppel.—*See* Bankruptcy, 2.

Evidence.

It was the duty of a clerk, who managed a branch business of the plaintiffs, as general merchants, to keep them advised of all business transacted. In discharge of this duty he wrote them a letter, stating that the defendant had sent three boxes to the office, and giving details of the transaction under which they were sent. *Held*, that this letter was not admissible in evidence against the defendant after the clerk's death, as it was neither a declaration against direct pecuniary interest, nor an entry made in the discharge of a duty to do a particular act and make a record of it.—*Smith* v. *Blakey*, Law Rep. 2 Q. B. 326.

See Production of Documents; Witness.

Execution.—*See* Composition Deed, 2; Interpleader; Priority, 3.

Executor.—*See* Administration, 2; Probate Practice.

Felony.

The 24 & 25 Vic. c. 94, § 2, which makes it a felony to "counsel or procure any other person to commit a felony," does not apply where such felony is not actually committed.—*The Queen* v. *Gregory*, Law Rep. 1 C. C. 77.

Foreign Court.

A British ship, mortgaged in England, was sent to New Orleans. There A. & B., a New Orleans firm, all the members of which were domiciled Englishmen, and all but one resident in England, sued the owner of the ship, and, as the courts of Louisiana do not recognize the rights of mortgagees not in possession, seized the ship on writs of attachment. The mortgagees then, to prevent the sale of the ship, gave A. & B. bonds for the amounts to be recovered in the actions, on which the ship was released. On bill by the mortgagees to have the holders of the bonds restrained from suing on them, and to have the bonds given up, *held*, that the court had no jurisdiction to stay proceedings on the bonds, because (1) the court would not have restrained the attachments, as it could not have placed all creditors, foreign and domestic, on the same footing; (2) if it could, the mortgagees should have had the attachments restrained, and not have given bonds; and (3) if the prayer were granted, the courts of New Orleans would never again release an English ship on the bond of a mortgagee.—*Liverpool Marine Credit Co.* v. *Hunter*, Law Rep. 4 Eq. 62.

Foreign State.—*See* Equity Pleading and Practice, 1.

Forfeiture.

The income of a trust fund was payable to B. for life, or till he should assign the same, or "do or suffer any act" whereby it should become payable to another. A judgment creditor of B. obtained a charging order against the fund. *Held*, that, under the words, "suffer any act," a forfeiture had accrued of B.'s interest.—*Roffey* v. *Bent*, Law Rep. 3 Eq. 759.

Fraud.

In equity, nothing can be called fraud, or treated as fraud, except an act which involves grave moral guilt. The expression, "constructive fraud" disapproved of.—*Smallcomb's Case*, Law Rep. 3 Eq. 769.

Frauds, Statute of.

1. The defendant contracted in writing to sell the plaintiff five hundred tons of iron, to be delivered by the end of July. The defendant delivered none of the iron by that time, nor up to the February following, when the plaintiff went into the market, and, the price having risen between July and February, he sought to recover, as damages for breach of the contract, the difference between the contract the plaintiff's delay was at the defendant's price and the market price in February. There was evidence from which the jury might infer that request. The jury having found a verdict for the full amount claimed, *held*, that the evidence went to show, not a new contract, but simply a voluntary forbearance by the plaintiff, at the defendant's request; that the Statute of Frauds, therefore, did not apply, and that the verdict ought to stand.—*Ogle* v. *Earl Vane*, Law Rep. 2 Q. B. 275.

2. C., proposing to marry H., wrote a paper beginning, "In the event of a marriage between the undermentioned parties, the following conditions as a basis for a marriage settlement are mutually agreed on." Then followed several sentences, each in this form: "C. to do so and so, H. to have so and so." The name of neither party was subscribed. The paper was handed to H.'s solicitor; but no marriage settlement was ever executed, and there was evidence that its execution was waived. *Held* (independently of the question of waiver), that there was no contract signed by the parties within the meaning of the Statute of Frauds.—*Caton* v. *Caton*, Law Rep, 2 H. L. 127.

Freight.—*See* Insurance; Ship, 2.

General Words.—*See* Legacy, 1.

Guaranty.

A.'s son being indebted to B. & Co. for coal supplied on credit, and B. & Co. refusing to continue the supply unless guaranteed, A. gave this guaranty: "In consideration of the credit given by B. & Co. to my son, for coal supplied to him, I hereby hold myself responsible as a guarantee to them for the sum of 100*l.*; and, in default of his payment of any accounts due, I bind myself by this note to pay to B. & Co. whatever may be owing, to an amount not exceeding 100*l.*" *Held*, a continuing guarantee.—*Wood* v. *Priestner*, (Exch. Ch.) Law Rep. 2 Ex. 282.

See Surety.

Guardian ad Litem.—*See* Nullity of Marriage, 2.

Highway.—*See* Negligence, 3.

Homicide.—*See* Autrefois Convict.

Husband and Wife.

1. The separate estate of a married woman is bound by her debts, obligations and engagements contracted for herself on the credit of that estate; and whether such obligations were so contracted must be judged by the circumstances of each case. There is nothing in the nature of a joint-stock company, in the absence of any special clauses in its articles of agreement, to prevent a married woman being a shareholder in her own right so as to bind her separate estate.—*Mathewman's Case*, Law Rep. 3 Eq. 781.

2. A. by will appointed real estate to B., a married woman. By a later will, A. gave all his property to E. The later will was propounded by E., and opposed by D., the heir of A. A compromise was made, the effect of which was that E. gave up his suit, and abandoned all benefit under the later will, in consideration of receiving £15,000 out of the estate. The agreement for a compromise, afterwards made a rule of court, was signed by E., by C., husband of B. (B. was present in court, though not a party to the suit), for himself and his wife, and by X., D.'s attorney, for D. and B., though without any express authority from B. *Held*, that though B. had adopted and acted on the agreement, and was enjoying the property under it, E., who knew that B. was a married woman, and could not bind her real estate except in the way prescribed by law, could not enforce the agreement against her.—*Nicholl* v. *Jones*, Law Rep. 3 Eq. 696.

3. A marriage settlement contained a covenant, that, if the wife then was, or should during the coverture become, entitled to any property to the value of 400*l.*, for any estate or interest whatever, it should be settled on certain trusts. The wife was then entitled, on her mother's death, to a share in a sum of stock in her own right, and to a further share as next of kin of a deceased brother. The value of the shares together was over 400*l.*; but the value of the wife's reversionary interest in them, at the date of the settlement, was less than 400*l.* *Held*, (1) that the share was included in the covenant, as property to which the wife was entitled at the time of her marriage; (2) that the covenant referred to the value of the property, not to the value of the wife's reversionary interest in it; (3) that, in estimating the value, the aggregate value of the sums must be taken.—*In re Mackenzie's Settlement*, Law R. 2 Ch. 345.

See Cruelty; Desertion; Embezzlement; Nullity of Marriage.

Illegal Contract.

The defendant agreed to let rooms to the plaintiff; afterwards, learning that they were to be used for lectures maintaining that the character of Christ is defective and his teaching misleading, and that the Bible is no more inspired than any other book, he refused to allow the use of the rooms, but did not give this as a reason for the refusal. In an action for breach of contract, *held*, (1) that the purpose for which the plaintiff intended to use the rooms was blasphemous and illegal, and that the contract could not be enforced at law; (2) that the defendant might justify his refusal on this ground, notwithstanding his having given a different reason.—*Cowen* v. *Milbourn*, Law Rep. 2 Ex. 230.

See Railway, 2.

Income.—*See* Annuity.

Insanity.—*See* Nullity of Marriage.

Insurance.

Ship-owners insured the chartered freight for a voyage. The policy contained the regular

suing and laboring clause, and a warranty against particular average. During the voyage the vessel put into a port of distress, so damaged that she became a total wreck. The cargo was landed and forwarded in another ship to its destination, at an expense less than the chartered freight, and on its arrival the full chartered freight was paid to the owners. *Held*, that the ship-owners could recover from the insurers, under the suing and labouring clause, the expense of forwarding the cargo by the second ship; and that the application of that clause was not excluded by the warranty against particular average.—*Kidston* v. *Empire Marine Insurance Co.*, (Exch. Ch.) Law Rep. 2 C. P. 357.

See Award, 2; Marshalling of Assets.

Interest.

1. An agent had the entire management of his principal's affairs for several years, during which he was never called on to account; errors were then discovered in some of his accounts, and he paid a small sum, alleging it to be in final settlement, and that little, if anything, more was due. On bill filed and accounts taken, a large sum was found due. *Held*, under the circumstances, fraud not being proved, he was not chargeable with interest on the balances in his hands till the date of the certificate of the amount due.—*Turner* v. *Burkinshaw*, Law Rep. 2 Ch. 488.

2. At the time of an inquisition by a jury before the sheriff, as to the compensation to be paid for land taken by a railway company, there was an executory agreement by which that company would be ultimately amalgamated with another company in which the sheriff was a shareholder. *Held*, that the sheriff was not "interested in the matter in dispute" so as to invalidate the proceedings.—*The Queen* v. *Manchester, Sheffield and Lincolnshire Railway Co.*, Law Rep. 2 Q. B. 336.

Interpleader.

A sheriff, in possession of goods under a writ of *fi. fa.*, was served with notice of an adjudication in bankruptcy against the debtor, and notice by the assignee to quit possession. The execution creditor then obtained an order requiring the sheriff to make a return to the writ. The sheriff sold the goods. *Held*, that the sheriff was entitled to file a bill of interpleader against the assignee and the execution creditor; and the assignee was, on interpleader, entitled to the proceeds of the sale. *Child* v. *Mann*, Law Rep. 3 Eq. 806.

Judgment.—*See* Scire Facias.

REVIEWS.

The Law and Practice under the Act for Quieting Titles to Real Estate in Upper Canada. By Robert J. Turner, Esq., Barrister-at-Law, Referee of Titles. Toronto: Adam, Stevenson & Co., Law Publishers, 1867.

This manual, giving all the information that can at present be collected on the subject of which it treats, will be gladly received by the profession; and none the less so from the acknowledged ability of its editors,—and we use the plural number as we understand that Mr. Leith was also concerned in it.

It commences with some practical instructions as to the preliminary investigation of the title, the preparation of the case to be submitted, and the mode in which the application and the evidence to support it should be brought before the Referee. Then follows a letter from Mr. Vice-Chancellor Mowat, who, when in parliament, was the framer of the act (which letter, together with the preliminary chapter, added to and slightly altered, has already been published in the *Law Journal*) Then is given the Act for Quieting Titles *in extenso*, and the orders of of Court Chancery of August 31, 1867.

Some practical remarks upon those parts of the act requiring explanation, and as to the means of proof and evidence, as to vendor's lien, mode of appeal, a tariff of costs, together with a number of useful forms to be used in the course of the proceedings, and an index.

The information to be derived from, and instruction given in this book, are the more valuable, as coming from those who are practically engaged in the working of the act, and who here speak, as it were, *ex cathedra*. We unhesitatingly recommend it to the Deputy Masters who have been appointed to certain duties under the Act, to the profession, and all others interested "in the premises."

There is every reason to believe that the aid of this Act will be largely invoked, and familiarity with its provisions on the part of the profession will be as beneficial to clients who desire to "speed" their causes, as to the Referees, whose time is often wasted by the want of the knowledge as to minor details, which this little would supply them with.

The Year Book and Almanac of Canada, for the Year 1868. John Lowe & Co., 67, Great St. James Street, Montreal.

This "Annual Statistical Abstract for the Dominion, and Record of Legislation and of Public Men in British North America," as it calls itself, meets with our unqualified approval. It reflects as much credit upon its intelligent and careful editor, Arthur Harvey, F.S.S., &c., of Ottawa, as upon the publishers. The printing and type is superior to anything of the kind that we have seen produced in

Canada, and is equal, we should say, to anything that comes from England.

The mass of information it contains is very great, and is collected with great care and judgment. The present volume, which is the second annual one, contains, amongst other things, partly in addition to and partly instead of the information given in the first volume,—A chapter on the boundaries of British North America, giving the text of the treaties, and the decisions of the Commissioners in relation thereto,—An historical sketch of the official proceedings preliminary to Confederation,—A general view of the climatology of British North America,—A paper shewing the monthly traffic receipts of all our railways for several years past,—A statement respecting the value of our fisheries,—A complete alphabetical list of the post-offices and telegraph stations in the Dominion, &c. &c. Many of these papers are of peculiar interest in the present juncture, and for future reference will be invaluable.

The chapter on "Our Boundaries" again brings forcibly to our remembrance the craft of the United States authorities and the imbecility and disregard of the public interests of those concerned on behalf of the British Government in the settlement of the boundaries between the United States and these Provinces. The unblushing effrontery, or, to use the words of the editor, "the injustice, arrogance and fraud" on the part of the American authorities, which is shewn by a succint statement of the facts and documents, is not a pleasant subject to dwell upon: it may, however, be profitable as a warning to us for the future. The following remarks, which we quote from this chapter, have a refreshing vigor about them which we much admire:

"Injustice, arrogance and fraud do not always prosper long. It would be hard to tell how it may be brought about, but the writer entertains the hope that some day by purchase, by the vote of the people of the districts in question, by voluntary, or perhaps even by involuntary cession on the part of the United States, these districts, as well as the country between the Kennebec and the St. Croix, all parts of our home farm, will be re-united to the Dominion."

It would be idle to attempt in our limited space to give even an outline of the contents of this volume. It is only by the compactness and excellent arrangement of the matter, that it could be put into the 167 pages of which the "Year Book for 1868" is composed. A well executed map of the Dominion adds to the completeness of the publication.

All who are interested in the progress of the Dominion should provide themselves, from time to time, with a complete series of this record of its statistics.

The New Dominion Monthly—November and December 1867. Montreal: John Dougall & Son, 126 Great St James St. $1 00 per annum in advance.

Many have been the attempts made to establish a Magazine of light reading for the British Provinces of North America. All, so far, have failed, though many were for a time at least supported by considerable talent and industry. It seems scarcely possible to hope, flooded as the country is with the many excellent serials of England, at very reasonable rates, that the present attempt will be more successful. Times however have somewhat changed—the daily increasing wealth and population of the provinces, their recent confederation giving us "a local habitation and a name," and the exceedingly low price at which this publication is published, may, and we hope will, combine to make it more successful than its predecessors.

This magazine is a combination, partly original and partly selected, with a corner reserved for the benefit of the younger portions of a family. The matter is of a sketchy, interesting character, and we are glad to see that the Hon. Thos. D'Arcy McGee, whose literary abilities are so well known, is one of the contributors to its pages.

We do not desire to criticise this enterprising and creditable attempt to supply from amongst ourselves that which we have had to seek from other sources. We wish it all success.

A Judge on the Treadmill.—It is said that Baron Platt, when once visiting a penal service institution, inspected the treadmill with the rest, and being practically disposed, the learned judge philanthrophically trusted himself on the treadmill, desiring the warder to set it in motion. The machine accordingly adjusted, and his lordship began to lift his feet. In a few minutes, however, he had had quite enough of it, and called to be released; but this was not so easy. "Please my lord," said the man, "you can't get off. It's set for twenty minutes; that's the shortest time we can make it go." So the judge was in durance until his "term" expired.

ASSIZES

City of Toronto.—Monday, Dec. 30th, 1867.
County of York.—9th January, 1868.

APPOINTMENTS TO OFFICE.

COUNTY JUDGE.

THOMAS MILLER, of the Town of Berlin, in the County of Waterloo, in the Province of Ontario, Barrister-at-Law, to be Judge of the County Court in and for the County of Halton, in the said Province, in the room of Joseph Davis, Esquire, deceased. (Gazetted 30th Nov., 1867.)

TO CORRESPONDENTS.

"A Subscriber," whose letter appeared in our last number, may possibly be misled by some of the remarks in answer. A reference to page 228 of the *Law Journal* for 1865, where the rule of the Law Society affecting cases similar to his is given, will, we think, furnish the information he requires.—Eds. L. J.

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W. C. Chewett & Co., Printers, 17 & 19 King Street East, Toronto.