DIARY FOR DECEMBER.

2. Tues...County Court sittings for York begin.
4. Thur..Rehearing Term in Chancery begins. J. D. Armour sworn in Judge, Q.B., 1877.
5. Frid....Convocation meets.
6. Sat. .. Michaelmas Term ends.
7. Sun. ..2nd Sunday in Advent.
9. Tues...County Court sittings (ex. York) begin.
10. Thur..S. H. Blake sworn in as V. C., 1872.
14. Sun. ..3rd Sunday in Advent. Princess Alice died, 1873.
15. Mon. ..Morrison, J., sworn in Judge, Court of Appeal, 1877. Christmas Vacation in Supreme Court and Exchequer Court begins.
17. Wed...First Lower Canada Parliament met, 1792.
21. Sun. ..4th Sunday in Advent.
24. Wed...Christmas Vacation in Chancery and Court of Appeal begins.
25. Thur ..Christmas Day.
26. Frid. ..Upper Canada made a Province, 1791.
27. Sat. ..Spragge, V.C., appointed Chancellor, 1869.
28. Sun. ..1st Sunday after Christmas.
29. Mon....Nomination of candidates for municipal offices.
30. Tues...Convocation meets.
31. Wed...Revised Statutes of Ontario came into force, 1877.

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LAW SOCIETY OF UPPER CANADA. .....

Canada Law Journal.

Toronto, December, 1879.

The Right Hon Sir R. T. Kindersley died recently at the ripe age of eighty-seven. He was called to the bar in 1818. In 1848 he was made Master in Chancery, and three years later was appointed Vice-Chancellor. He retired in 1866, and was succeeded by Mr. Malins.

We are glad to know that Mr. J. A. Barron, Barrister-at-Law, has in the hands of the printer a work on the subject of Chattel Mortgages. Knowing the industry and intelligence of the author, we have no doubt he will produce a very useful and creditable volume. Chattel mortgages used to be "as thick as blackberries" in the good old days when creditors and sheriffs divided the spoil, and before the time came that official assignees got all and the creditors nothing; but though this sort of security is not quite so common now, there is ample room for a work on the subject.

An incident occurred during the trial of a cause in Chancery, at the recent sittings in Toronto, which was necessarily novel in this country, although probably common enough in the United States. The Attorney-General, Mr. Mowat, in speaking of a case in which he had given judgment, when occupying his former position as Vice-Chancellor, but which told against him in the case he was then arguing, said he should like to see it reversed on appeal, as the arguments that might be adduced against it induced him to think it was wrongly decided. The smile that rose on the face of the opposing counsel, the Treasurer of the Law Society, and others of the Bar, became audible as Mr. Vice-Chancellor Proud.

foot with a quizzical expression, solemnly remarked, "I fear I must pay more attention to the Judge than the Counsel."

THE LEGAL ARMY.

Some statistics from the records of the Law Society as to the increase in the ranks of our fraternity will not be uninteresting at the close of the year. It will be pleasant to many to know that there has been a very considerable falling off during the past twelve months in the numbers of those desiring to enter the profession. We much doubt if a rush of men into the profession argues a good state of things in the country at large. It certainly is not looked upon as an unmixed good amongst those whose names are enrolled at Osgoode Hall.

The records show that, in the year 1877, two hundred and nine young gentlemen presented themselves for examination, of whom one hundred and seventy-three passed. A larger number than usual —no less than 239—went up for examination in 1878, but the Examiners were equal to the occasion, and the slaughter was great, only one hundred and sixty-four coming back from "the jaws of death." In 1879, the number fell off considerably, one hundred and fifty-eight presenting themselves, of whom only one hundred and thirteen were successful.

In 1878, ninety-six articled clerks went up for examination, of whom seventy-two passed as attorneys, whilst in 1879 fifty-seven of the sixty-nine applicants stood the test. Of the seventy students who went before the Examiners for call, in 1878, only fifty-two were passed, whilst in 1879 nearly the same number went up for call as for attorneys (viz., sixty-seven), of whom fifty-two became barristers.

It is estimated that of those who pass the primary examination, only about one-half carry out their original intentions by becoming attorneys.

QUEEN'S COUNSEL.

Volumes have been written in the lay press during the past month, on the subject of the recent judgment in the Great Seal Case, or as it is otherwise styled, *Lenoir* v. *Ritchie*. We shall not at present discuss the judgment at any length, having only space for a *resumé* of the judgments delivered by the various Judges of the Supreme Court, and the judgment of Mr. Justice Gwynne, *in extenso*. We have obtained this judgment thinking that the views of the most recent Judge from Ontario, given in his usual careful and exhaustive manner, might best assist our readers, in this Province, (failing the judgments in full) in understanding the question. For the *resumé* we are indebted to the courtesy of Mr. Cassels, Registrar of the Supreme Court. So far the subject has been discussed in the public press solely from a party point of view. If the subject is not too stale when the politicians drop it for some more savoury bone we may take it up again.

We noticed that on the first day of the present Term, a prominent and much respected member of our Bar, who had been made a Queen's Counsel by the Lieutenant-Governor, under an Act of the Ontario Legislature, took his seat outside the Bar, and stated to the Court his reasons for so doing, namely, that as a doubt had been cast by such high authority on his right to wear silk he preferred to resume his old stuff gown. The Court without, expressing any opinion on the subject, thought that he had acted rightly; and courteously expressed the regret that there should be any

cause for his taking the course which a nice sense of propriety indicated. His brethren, whilst echoing the regret, will fully appreciate the action of Mr. Bethune. Others in the same position have not felt called upon to take this step, doubtless under the belief that the judgment of the Court does not decide the question. It is difficult to form an accurate opinion on the questions involved until after the case is reported.

It is supposed by some that the difficulty may be met by the Governor-General appointing those whose precedence and distinction has been questioned. Should Her Majesty's representative leave out of his list a few of those who have but scant claim to the honour, no great harm would result to the profession at large, nor be displeasing, we should suppose, to those who are unquestionably entitled to it.

THE PROFESSIONAL ARENA.

It was our unpleasant duty last month to animadvert upon the conduct of a member of the profession who had acted in a manner which we were compelled to characterise as illegal and unprofessional. We regret that an act of misconduct of another kind on the part of another barrister, residing in Toronto, has become so notorious that it would be affectation on our part to ignore it. In truth we should have been glad to have passed it over in silence, because, though fortunately uncommon, it was very discreditable. But that which the Chancellor of Ontario thought of so much importance as to have brought formally before the Court cannot well be overlooked; and it is now noticed, not so much in reference to the severe rebuke administered to the individual concerned, as a warning to others, who might be emboldened to follow a bad example were no notice taken of the occurrence.

It appears that two solicitors, a Mr. A. and a Mr. B. appeared before Mr. Thom, Taxing Officer of the Court of Chancery, in Toronto, on the taxation a bill of costs. A question having arisen as to some small item, Mr. A. declared that a statement made by Mr. B. was false, and that Mr. B. knew it to be false, &c. Mr. B. appealed for protection to the Taxing officer; but Mr. A continued to use similar expressions to, or in reference to Mr. B., in reference to various other items, which, but for the forbearance of the latter must have ended in a *fracas* there and then. We do not care to record the words used, but they were (as appears by the affidavit of Mr. Thom) of the most grossly insulting nature, and made in the presence of several other persons. The officer declined to continue the taxation, if such conduct was persisted in, and subsequently the parties left. Mr. B., however, after leaving the room asked Mr. A. to repeat what he had said in the office, which being done, Mr. B. with much promptitude administered a thrashing to Mr. A., much to the amusement of several witnesses waiting in the lobby to be heard before the Master. Mr. B. thereupon sent an apology to the Master, within the sanctity of whose domain the offence had been committed, for *his* share in the melee. The Master having obtained an affidavit of the facts from Mr. Thom laid the whole matter before the Chancellor, who subsequently directed counsel to bring it before the Court by way of motion to strike Mr. A. off the rolls.

When the motion came on for hearing, counsel appeared for Mr. A. and read an apology on his behalf. The Chancellor having asked if Mr. A. had also apologised to Mr. B., and being answered in

the affirmative spoke to the following effect:—

The Master was perfectly right in bringing to the notice of the Court the conduct of Mr. A. I am glad that in offering Mr. A's apology, his counsel has thought proper not to say anything in extenuation. The case is an extremly gross one, and I much regret that it should ever have occured. Although the apology now made is very full, I have much hesitation in accepting it. The accusations made by Mr. A. were such as no gentleman should ever make to another, and were couched in most offensive language. Gentlemen in the profession should not allow their tempers to get the better of them, nor forget that they are gentlemen, and they should act as such one towards another. I regret to say that I have on several occasions of late years noticed an unseemly bickering amongst practitioners when engaged in the conduct of suits, and especially in reference to the subject of costs. It is quite time that all this should cease. Courtesy from one solicitor to another is essential to the proper conduct of business and should never be forgotten. The present case shows to what a departure from this line of conduct may lead. I only remember one instance of a similar nature, in which an imputation of falsehood was made as in this case, and that happened many years ago. A solicitor who had been guilty of insulting and abusive language towards another solicitor in the conduct of business was so badly advised as to refuse for a time to make an apology, and he was suspended from practice until he did make an apology. I only mention this as indicating what procedure would probably be adopted by the Court in this case had an apology not been tendered. The language was grossly insulting, but as a full apology has been made, I feel bound to accept it. I trust, however, that Mr. A. feels the contrition which he expresses, and assuming that he does, the matter may be allowed to drop, on payment of the costs of the motion.

FRAUD ON THE INSOLVENT ACT.

The general rule that a man may do what he will with his own is qualified in the case of traders, by the consideration that he cannot make such an arrangement as that upon his insolvency any portion of his assets can be withdrawn from his creditors, and distributed or held otherwise than as provided by the Insolvent law. The cases on this branch of the law are collected and commented on in *Watson* v *Major*, 22 Gr. 198, and on appeal at p. 574.

There is another line of cases where the person, subsequently becoming insolvent, has executed an instrument in which it is provided that a right shall arise against him upon the commission of an act of insolvency, and where but for such insolvency the demand would not be in existence. Such securities are considered as being contrived for the purpose of evading the effect of the statute, and in effect operating as a fraud upon the Insolvent laws. The first case of the kind in this Province is *In re Hoskins*, 1 App. R. 379, where the insolvent had entered into a lease which contained a provision that, in the event of insolvency, the term should be forfeited and void, but the next *succeeding* current year's rent should be at once due and payable. The first year's rent was paid in advance, and during this first year the insolvency occurred. The second year's rent was claimed against the assignee; but the Court held that the claim was untenable, because the effect of it was to provide that for what turned out to be eleven months' possession, two years' rent should be paid, and therefore to give effect to the claim would be to divert from the body of the creditors so much of the assets as would be required to pay the second year's rent, for which

no value was received either by the insolvent or his creditors.

In *Ex parte Williams*, L. R. 7 Ch. D. 138, a mortgage executed by the insolvents contained an attornment clause by which the mortgagors became yearly tenants to the mortgagees at a rent seven times greater than the letting value of the premises. The mortgagors became bankrupt, and then the mortgagees claimed the right to distrain under the attornment clause. The Court enjoined the distress upon the ground, as it appears, that looking at the whole scope of the mortgage, and the intention of the parties, one could not help seeing that it was intended to make a different arrangement in the event of the mortgagors becoming bankrupt or not. The attornment clause was called by James, L. J., a contrivance to give the mortgagee an additional benefit in the case of the mortgagors' bankruptcy. It is observable in this case that this obnoxious clause had no reference in terms to the bankruptcy of the mortgagors, but the Court seem to have imported this term into it.

Some light is thrown upon this decision by the very recent case of *Re Stockton Iron Furnace Company*, 27 W. R. 433. The mortgage in that case also contained an attornment clause, but no sufficient evidence was given to make it apparent that the rent reserved was excessive as in the earlier case. Bacon, V. C., on the authority of *Ex parte Williams*, held the attornment clause bad and invalid, but the Court of Appeal reversed the finding. James, L. J., said: "If one could see that the rent was such an absurd sum that it really could never have been intended as a rent, but that it was only part of a device which would enable the mortgagee to obtain, in the event of the mortgagor's bankruptcy, something which he would not otherwise attain, the principle of *Ex parte Williams* would apply. And Bramwell, L. J., observed, "in *Ex parte Williams*, it was found that the intention and object of the arrangement was to commit a fraud on the bankruptcy laws; that the clause was to come into operation only in the event of bankruptcy. That was the substance of the agreement. There is nothing of the kind here."

It is evident that *Re Hoskins* goes very much further than these cases, because the attempt was in the English decisions to get a privilege over the other creditors by means of a distress. In *Re Hoskins* the attempt was merely to rank *pari passu* with the other creditors. Indeed Patterson, J., throws out his own views that, as between the parties, the bargain was binding and legal. He says at 1 App. R. p. 383: "As to the subsequent year's rent, I see no reason for refusing to hold that, as between the lessor and lessee, the amount became due and payable when the event happened, which the law declares shall produce the that result, viz.: the institution of the proceedings in insolvency." And again at p. 384, "It may be conceded that, as between the parties to the lease, it is an agreement in the nature of liquidated damages for the loss involved in the landlord's having to resume possession of the premises, and that, as I have already said, it creates a legal debt." But though there is some force in this reasoning it is difficult to see how effect can be given to these *dicta*. By the decision itself, it was held that the claim did not constitute a debt proveable in the insolvency proceedings; that being so, if it was yet valid between the parties, it would survive the insolvency and become a debt exigeable against the debtor when discharged from proveable claims. And in this way a debt, fraudulent in its inception as against the creditors, would

obtain ultimately a preference over them, and would be grouped in the same category with trust debts, and others to which the Act does not apply. The sounder conclusion, it is submitted, would be that such a claim, being founded on an illegal transaction, is, for all purposes, invalid. That, in brief, is the view of Thesiger, L. J., in *Ex parte Williams*, as he makes use of this language as to the attornment clause: "Then there was a separate stipulation *which might have taken effect in other event*, but which was palpably intended only to take effect in case of the mortgagor's bankruptcy." And it would seem to be the view of Mr. Justice Gwynne. Refer to his language in *Griffith* v *Brown*, 21 C. P. at p. 16.

An analogy also may be found in such cases as *Kerrison* v. *Cole*, 8 East, 231, where it was held that though a bill of sale for transferring the property in a ship by way of mortgage may be void, as such, for want of compliance with the requirements of the statute, 26 Geo. III., c. 60, yet it may be good as to the personal covenant contained therein, made by the mortgagor for the repayment of the money lent. Lord Ellenborough thought that to vacate the covenant for payment of the money lent would be going beyond the reason and object of the legislature in order to work injustice. And Le Blanc, J., said that as there was nothing immoral in the transaction itself there was no necessity for carrying the construction further. But in the case we are dealing with, no debt arises apart from the stipulation which is in contravention of the policy of the Insolvent Acts—there is no antecedent debt, and honesty does not require that remedies should be preserved as between the parties to the instrument which are not recognised in the administration of the assets by the assignee in insolvency.

NOTES OF CASES

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

COMMON PLEAS.

VACATION COURT.

Cameron, J.] [September 16.

CANADA AGRICULTURAL INSURANCE COMPANY v. WATT ET AL.

Principal and surety—Insurance agent—Bond for faithful discharge of duties.

Action on a bond given by defendants, W. and A., for the faithful performance of W's duties as plaintiffs' agent, and for the payment of all moneys, &c. received by him as such agent, alleging as a breach the nonpayment of certain moneys of the plaintiffs' received by him.

Plea: By defendant A, setting up, in substance, that when he executed the bond as such surety, W. was agent under an agreement with plaintiffs, whereby his remuneration was by fixed salary, and that afterwards, and before breach, the plaintiffs, without A's knowledge or consent, discharged W. from his then engagement, and re-engaged or re-appointed him on different terms, &c., namely, that his remuneration was to be by commission allowed for services performed, instead of by fixed salary as before.

Replication: In substance, that the remuneration of W, as such agent, whether by fixed salary or commission, formed no part of, and was not contemplated in the contract of suretyship, nor was the change in any way prejudicial to the interests of the surety, nor did it impose any greater liability upon him, and the said change did not include any change of the duties and obligations of said W as said agent.

Held, by CAMERON, J. replication bad, as being no answer to the plea which alleged a discharge of W. from his engagement and a re-engagement of him on different terms.

Semble, that the change in the mode of remuneration, namely by commission instead of by fixed salary would terminate the contract of suretyship.

A rejoinder alleged that A. was induced to enter into the said bond for said W. at a fixed salary, and believing such representation to be true he executed said bond, and the change in the plea set out was without his authority or consent

Semble, rejoinder good; that it was necessary to state that the said representation was made by plaintiffs, for under the rejoinder plaintiffs would have to prove that the representation was so made as to be binding on plaintiffs.

Bethune, Q.C., for plaintiff.

G. D. Dickson, for defendant.

Osler, J.] [October 3.

Ottawa Agricultural Insurance Co. v. Canada Guarantee Co.

Guarantee policy—Default in payment of moneys—Representation as to prior default—Meaning of—Pleading.

To an action on a guarantee policy for the due performance of one B's duties as secretary of plaintiffs' company, alleging a default in paying over certain moneys of plaintiffs, received by him, the defendant pleaded, setting up in substance a misrepresentation of plaintiffs, in stating that B had never been in arrear or in default in his accounts, yet that he had previously to the making of said representation been in arrear and in default, namely, while in the employment of one B.

Held, by Osler, J., plea good: that the proper construction of the contract alleged in the declaration was that the representation was not necessarily restricted to a default made while in plaintiff's service, but would include one made in any prior service, and that the extent of the representation might be proved at the trial.

J. K. Kerr, Q.C., for plaintiff.

H. J. Scott, for defendant.

CHANCERY.

Blake, V. C.] [Oct. 13.

Wilson v. Campbell.

Mortgage—Construction of—Interest.

This was a mortgage suit, and there being subsequent encumbrancers, a reference was directed to the Master. The proviso in the mortgage was as follows:—Provided this mortgage to be void on payment of the sum of $2,000 (in gold), of lawful money of Canada, together with interest thereon, at the rate of 8 per cent. per annum, as follows:—The said principal sum of $2,000 at the expiration of five years, from the date hereof, viz., April 16th, 1877, and the interest thereon at the rate aforesaid; in the mean time, half-yearly, on the 16th days of the months of October and April, in each and every year of the said term of five years; the first payment of interest to be made on the 16th day of October next, 1872, and also upon payment of interest, and after the rate aforesaid, upon all such interest money as shall be permitted or suffered to be in arrears, and unpaid after any of those days and times hereinbefore limited and appointed for payment thereof.

A subsequent encumbrancer appealed from the report made by the Master.

1. Because the Master in taking the plaintiffs' account, allowed them compound interest upon interest in arrear with rests, instead of allowing simple interest upon the interest in arrear.

2. Because the Master allowed the plaintiffs interest upon interest, subsequent to the time when the principal money secured by their mortgage fell due.

Appeal allowed on both grounds.

T. Langton, for the appellant.

J. C. Hamilton, contra.

Proudfoot, V.C.] [Nov. 11.

Maclennan v. M'Lean.

Mortgage—Mortgagee and mortgagor—Discharge of mortgage.

A mortgagor or other party entitled to the equity of redemption has a right to obtain at his own expense from the mortgagee a release of the mortgage, including a covenant against incumbrances. He is not obliged to accept the simple discharge of mortgage prescribed by the statute.

The purchaser of a mortgaged estate paid the amount due on the mortgage to the mortgagee, who executed a statutory discharge of the incumbrance, which recited that the money due upon the mortgage had

been paid by the mortgagor, and refused either to sign a discharge stating correctly the name of the plaintiff as the person paying, or to execute a release of the mortgage in his favour, the plaintiff offering to furnish satisfactory proof if desired, that he was the owner of the equty of redemption. The Court, on a bill filed for that purpose, ordered the mortgagee to execute the release and pay the costs of the suit.

Proudfoot, V. C.] [November 11.

Cannon v. Toronto Corn Exchange.

Incorporated society—By-law—Expulsion of member—Arbitration of questions arising between members.

The Toronto Corn Exchange was empowered to pass by-laws for the proper governance of the body. One of the by-laws enabled the society to expel any of its members for flagrant breaches of the rules of the body, and a refusal to submit a question arising between members to arbitration was declared to be a flagrant breach thereof. One member claimed against another (the plaintiff) a balance of $1.06, a sum of $397 for freight on grain purchased from him, and which, it appeared, the purchaser had been compelled to pay, and did pay under protest, before obtaining the grain, and which amount the purchaser insisted the plaintiff was bound to pay, and also a sum for costs incurred in an action brought by the purchaser to recover back the freight so paid from the carriers. The two first items the plaintiff admitted and offered to arrange, but disputed the last and refused to arbitrate as to any other item of the account than the last, whereupon the council of the defendants passed a vote of expulsion against the plaintiff, and did expel him from the benefits of the Association. On a bill filed to set aside such order of expulsion and reinstate the plaintiff in his rights of membership, the Court granted the relief prayed with costs; and,

Quære, whether either of the items was such a claim as the statute contemplated being the subject of a reference between members of the Association.

The by-laws of an association provided that notice of a meeting for the expulsion of a member must be given. *Held*, that a notice of "a meeting to take into consideration the conduct of a member" was not a compliance with such provision, and that such notice should state what the object of the meeting was.

Chancellor.] [November 12.

Clemmow v. Booth.

Purchaser of part of mortgage estate—Party seeking equity must do equity—Costs.

The rule that "he who comes for equity must do equity" applied where a purchaser of a portion of an estate subject to mortgage gave a covenant to pay a proportion of the mortgage money. On a bill being filed by the vendor's assignee to compel payment by the purchaser, the Court refused to give such relief except upon the terms of the vendor's share of the mortgage debt being paid at the same time, although there was no covenant on the part of the vendor that he would pay. But the Court refused to include a direction that the payment by the purchaser of his share should be conditional on the payment by other and independent purchasers of other parts of the estate of their shares of the sum due.

In such a case, however, it would seem that any of such purchasers paying the amounts properly payable by others would be entitled to use the name of the plaintiff in proceeding against such defaulting purchasers upon indemnifying him against costs.

The plaintiff by his bill did not submit to do what he was bound to do as the price of the relief asked; and the defendant asked relief which the Court could not grant. On pronouncing a decree, costs were refused to either party.

Chancellor.] [November 12.

Jack v. Greig.

Fraudulent conveyance—Father and son—Money lent by son.

A son left his father's house at the age of sixteen, with the assent of the father, a farmer, and went to teach school at a dis-

tance from his father's residence, it being agreed between them that he should remit to his father from time to time so much of his earnings as he did not require for his support, and that the same should be repaid by the father after the son should attain majority, as the son should want it from time to time for his support and education at a College or High School. Accordingly remittances were alleged to have been made to his father, which on the son coming of age amounted to $600 and upwards when he found his father was unable to repay his advances. It was then arranged that the son should make further advances, and that unless the father repaid them the son was to have the farm conveyed to him, subject to certain incumbrances upon it. Advances were subsequently made by the son, and on a settlement in 1877 it was ascertained that the father's indebtedness amounted to $1,600, which it was then agreed should be the consideration for the purchase of the equity of redemption of the father in the premises, the conveyance of which was impeached by a judgment creditor of the father under the 13th Elizabeth. The Court being satisfied of the *bona fides* of the dealings between the father and son, and that the sums claimed had really been advanced by the son (although the only evidence of the dealings was that of the father and son), dismissed the bill; but the case being of such a peculiar character, the dealings so loose, and the evidence of actual advances so much less satisfactory than it might have been, as to invite investigation, without costs.

Chancellor.] [November 12.

Howey v. Howey.

Alimony—Desertion—Exclusion.

In consequence of a wife having disobeyed her husband by visiting at the house of his brother-in-law, the husband put her bed and bedding and chest outside the dwelling-house and locked the door of the house against her. *Held*, that this was such an act of exclusion and expulsion by the husband as entitled the wife to a decree for alimony.

COMMON LAW CHAMBERS.

Hay v. Drake.

Osler, J.] [Oct. 14.

Sheriff's fees—Taxation—Revision.

Where a Sheriff's fees have been taxed before a Deputy Clerk of the Crown, under R. S. O., ch. 66, sec. 48, a revision of such taxation cannot take place before the principal Clerk of the Crown, but the Court may refer the bill back to the same Deputy Clerk for a revision of the taxation, where it clearly appears that items have been improperly allowed.

Merchants' Bank v. Pierson.

Osler, J.] [Oct. 14.

Examination—Non-production of books—Attachment.

A manager of a bank having been ordered to attend for examination, in a cause in which the bank was the plaintiff, he was notified by a notice endorsed on the order to produce the books of the bank at such examination. This he neglected to do.

Held, that proceedings against him for attachment must be made before the Court, and not before a Judge in Chambers.

Wilson v. Ætna Life Assurance Co.

Mr. Dalton, Q.C.] [Oct. 22.

Foreign corporation—Service—Agent.

The defendants were a foreign Insurance Company, doing business in Ontario, and having a head office for this Province at Toronto. The writ of summons was served on the local agent of the defendants' company at Ottawa.

Held, that the service was good.

Denmark v. McConaghy.

Osler, J.] [Oct. 28.

Examination—Fees—Stamps—Deputy Clerk of Crown.

Where an examination of parties pursuant to R. S. O., ch. 50, sec. 161, takes place before a Deputy Clerk of the Crown, though not designated in the order as acting in his official capacity, the fees for such examination are payable in stamps, and not in money.

BROWN v. CORPORATION OF YORK.

Mr. Dalton, Q.C.] [Oct. 31.

Pleading—Jurisdiction—Plea in bar.

The plaintiff brought his action against the Corporation of the County of York, for non-repair of a highway at Islington, not stating in what county that place was situated, and laid his venue in Peel. The defendant pleaded that the Court ought not to have further cognizance of the action, because the cause of action was local and arose in York and not in Peel. He also pleaded pleas in bar.

Held, that this being a plea to the jurisdiction it could not be pleaded along with pleas in bar.

THORBURN v. BROWN.

Mr. Dalton, Q.C.] [Oct. 31.

Examination of parties—Order to re-examine.

A party, who has before judgment examined another party to the cause adverse in interest, is not entitled to a re-examination of the same party, except under the most special circumstances.

HYDE v. CASMEA.

Mr. Dalton, Q.C.] [Oct. 31.

Similiter—Jury notice—Joinder.

The plaintiff joined issue upon the defendant's pleas and at the same time filed a similiter, without a jury notice. The defendant afterwards filed a second similiter, and with it a jury notice.

Held, that the first similiter was good, that the second was unnecessary, and must, together with the jury notice, be struck out.

CHANCERY CHAMBERS.

BIGGAR v. WAY.

Blake, V. C.] [Oct. 27.

Abatement—Time—Practice.

In this case the Master's report made in March, 1879, fixed the 17th September following, for Austin and Hilton, the subsequent encumbrancers, to redeem. The sole plaintiff died on 24th of May, 1879, an order of Revivor was obtained on 24th June, 1879, and served on the 1st September, 1879.

An order of the Referee appointed a new day for payment, allowing Austin and Hilton an additional length of time to redeem, equal to the time the suit remained abated, viz., from 24th May to 14 days after the service of order of revivor.

Miller, for the representatives of the plaintiff appealed from the Refree's order.

Spencer, contra.

BLAKE, V.C., considered that the practice of allowing such time on abatement well settled and dismissed appeal with costs.

IMPERIAL LOAN COMPANY v. O'SULLIVAN.

Spragge, C.] [June

Subsequent encumbrancers—Priority.

Where there were two encumbrances registered against property, the first encumbrancer pressing the mortgagor for payment, and selling out the chattels in a hotel on the property, and where at the request and instance of the mortgagor, and to stop such sale, A advanced $1,000 to the first mortgagee, and took a mortgage to secure himself from the mortgagor, but with no understanding with the first encumbrancers.

Held, that A, though he reduced the first mortgage by $1,000, and so bettered the position of the second mortgage by that amount, could not in the absence of express stipulation with the first mortgagee obtain priority over the second mortgage.

O'Sullivan, for defendant (appellant).

Worrell, for defendant Crombie (respondent.

CANADA REPORTS.

SUPREME COURT OF CANADA.

ELECTION CASES.

THE MONTMORENCY CASE.

VALIN v. LANGLOIS.

Con. Elec. Act, 1874, *held constitutional—Power of Dominion Legislature to confer on Courts, authority to deal with election cases—Con. Elec. Act*, 1874, *established a Dominion Election Court, when it utilised Provincial Courts and Judges.*

[Ottawa, Oct. 28, 1879.

Appeal from the judgment of the Hon. Mr. Chief Justice Meredith of the Superior

Court for Lower Canada, rendered in the above cases, on the 15th January, 1879.

The petitioner Langlois filed on the 4th November, 1878, in the Superior Court for Lower Canada a petition under the Controverted Elections Act, 1874, complaining of the undue election and return of the respondent Valin as member for the House of Commons for the County of Montmorency.

The respondent Valin filed certain preliminary objections. One called in question the jurisdiction of the Court. This objection was raised in the following terms:—

"That this Court is incompetent to decide the pretended election petition presented in this cause :

Because, according to the B. N. A. Act, 1867, the jurisdiction of Courts of Justice is given by Provincial Legislatures ;

Because the Legislature of the Province of Quebec has never given to the Superior Court, nor to any Judge of that Court, the power to decide petitions relating to the election of members of the House of Commons of Canada.

Because the Controverted Elections Act, 1874, is *ultra vires* and unconstitutional in so far as it gives to the Superior Court of the Province of Quebec the power to decide petitions relating to the election of members of the House of Commons of Canada."

The Chief Justice of the Superior Court by his judgment dismissed the objections, and maintained the jurisdiction of the Court. His judgment is reported at length in the Quebec Law Reports, vol 5, page 1.

The objection in the case before the Court, although by its terms confined to the Superior Court for Lower Canada, brought forward for discussion and adjudication the more general question as to the right of the Dominion Legislature to impose on the Courts of the various Provinces and the Judges of such Courts the duty of trying controverted elections of members of the House of Commons. This question has given rise to considerable diversity of judicial opinion, as appears by reference to the following cases :—

See *Ryan* v. *Devlin* (Montreal Centre case), 20 L. C. Jur. 77 ; *Owens* v. *Cushing*, (Argenteuil case), 20 L. C. Jur. 86 ; *Bruneau* v. *Massie*, 23 L. C. Jur. 60 ; *Belanger* v. *Caron* (County of Quebec case), Q. L. R. 19 ; *Dubuc* v. *Vallee* Q. L. R. 34 ; *Guay* v. *Blanchet*, (Levis case), Q. L. R. 43 ; *Plumb* v. *Hughes* (Niagara case), 29 U. C. C. P. 261 ; *Deslauriers* v. *Larue* (Bellechasse case), not yet reported.

H. C. Pelletier Q.C., for appellant.
Langlois, Q.C., for respondent.

Held, on appeal :

1. The property and civil rights referred to in sub-sec. 13 of sec. 92 of the Act were the property and the ordinary civil rights over which the power to legislate had been reserved to the Local Legislatures, and neither this, nor the right to organize Provincial Courts by the Provincial Legislatures, was intended in any way to interfere with, or give to such Provincial Legislatures any right to restrict or limit the powers in other parts of the Statute conferred on the Dominion Parliament ; and that the right to direct the procedure in civil matters in those Courts (sub-sec. 14 of sec. 92) had reference to the procedure in matters over which the Provincial Legislature had power to give those Courts jurisdiction, and did not in any way interfere with, or restrict, the right and power of the Dominion Parliament to direct the mode of procedure to be adopted in cases over which it has jurisdiction, and where it was exclusively authorized and empowered to deal with the subject matter ; or take from the existing Courts the duty of administering the laws of the land.

2. Whether the Controverted Election Act of 1874 established a Dominion Election Court or not, the Parliament of the Dominion, in legislating on this matter, on which they alone in the Dominion could legislate, had a perfect right to confer on the Provincial Courts power and authority to deal with the subject matter as Parliament should enact ; that this legislation, being within the legislative power conferred on them by the Imperial Parliament, their enactments in reference thereto become the law of the land which the Queen's Courts are bound to administer.

3. The Supreme and Superior Courts of the Provinces are bound to execute all laws in force in the Dominion, whether they are enacted by the Parliament of the Dominion or by the Local Legislatures. They are no mere local courts for the administration of the local laws passed by the local Legislatures of the Provinces in which they are organized. They are the Courts which were the Courts of the respective Provinces established before Confederation, and were continued "as if the union had not been made" by the 129th sec. of the B. N. A. Act, and subject, as therein expressly provided, "to be repealed, abolished or altered by the Parliament of Canada, or by the Legislatures of the respective Provinces, according to the authority of the Parliament, or of that Legislature under this Act."

4. Section 101 of the B. N. A. Act providing for "the establishment of any additional Courts for the better administration of the laws of Canada, gives a power which is to be exercised only as occasion should require, and in the event of the

existing tribunals becoming incapable of executing the Federal laws.

5. *Per* Ritchie, C.J., and Taschereau and Gwynne, J J., the Controverted Elections Act, 1874, established, as the Act of 1873 did, a Dominion Court, though it utilized for that purpose the Provincial Courts and Judges.

SAME CASE.

Con. Elec. Act, 1874, *sec.* 8 *ss*, 2—*Service of petition—Delay—Counter petition.*

The appellant, Valin, also appealed from the decision of Meredith, C. J., dismissing a counter petition, filed by Valin against Langlois, alleging that Langlois was a candidate at the same election and was guilty, as well by himself, as by his agents, with his knowledge and consent, of corrupt practices at the said election. The petition was dismissed because it had not been served until after the expiry of the 30 days mentioned at the beginning of sub-section 2 of section 8 of the Controverted Elections Act, 1874, and because the extra delay of 15 days mentioned towards the end of the said sub-section, within which extra delay the petition had been served, is exceptional and confined to a petition alleging corrupt practices *after the return.*

H. C. Pelletier, Q. C., for appellant.

Langlois, Q. C., the respondent in person.

Held: 1. *Per* Ritchie, C. J., and Strong, J., that a counter petition is only to be presented in the case where the unsuccessful candidate is not a petitioner, and that on this ground, without expressing any opinion on the other parts of sub-section 2 of section 8, the appeal should be dismissed.

2. *Per* Fournier, Taschereau and Gwynne, J. J., that the appeal should be dismissed for the reasons given by Meredith, C. J.

Henry, J., dissented and held that the appeal should be allowed with costs.

Appeal dismissed with costs.

NORTH ONTARIO CASE.

WHEELER v. GIBBS.

Notice of setting down appeal—Supreme Court Act, sec. 28—*Rules* 56, 69.

[Ottawa, Oct. 28th, 1879.

Motion to quash the appeal on behalf of the respondent, on the ground that the appellant had not, within three days after the setting down of the appeal for hearing by the Registrar of the Supreme Court of Canada, given notice in writing of such setting down, nor applied to and obtained from the judge who tried the petition further time for giving such notice, as required by section 48 of the Supreme and Exchequer Court Act.

The record was transmitted to the Registrar of the Supreme Court on the 11th June, 1879. On the 24th September, 1879, application was made on behalf of the appellant to the Chief Justice, under Rule 55 (Supreme Court Rules), to dispense with printing part of the record. It appearing, when this application was made, that the fee for entering the appeal had not been paid to the Registrar (see Rule 56 and schedule therein referred to), the Chief Justice refused to entertain the application until such fee should be paid and the appeal duly entered. Thereupon the agent for appellant's solicitors paid the fee and the Registrar set the appeal down for hearing on the then next session of the Court, and the Chief Justice made the order as asked. On the 20th October following the agent for the appellant's solicitor made another application to further limit the printing, which was granted upon payment of $5 costs to the respondent. The agent for the respondent's solicitor appeared on both these applications.

No notice of the setting down of the motion of the petition for hearing was served until the 28th October, nor had any application been made to the Judge who tried the petition for further time to give notice.

Cockburn, Q. C., for respondent. The notice is a condition precedent, that the Supreme Court had no jurisdiction to hear the appeal in the absence of such notice, nor any power to relieve against failure to give it. He cited Maxwell on Statutes, p. 334, and cases there referred to.

McTavish contra. The appearance by the agent of the respondents' solicitors on the application, more especially the attendance on the later application and the acceptance of the costs, is a waiver of the provision as to notice; and in any event, the objection is a formal one to which Rule 69 applies.

Held, That the provision of the statute requiring notice to be given within the three days after the setting down of the appeal, or within such further time as the Judge who tried the petition might allow, was imperative and not directory, and the giving such notice was a condition precedent to to the right of the Supreme Court to entertain the appeal; that the objection went to the jurisdiction of the Court, and was not one merely of form which could be dealt with under Rule 69, or deemed to have been waived; and that, therefore, the appeal could not be heard, but must be struck out of the list of appeals with costs of the motion.

Peter Lenoir et al. *Appellants.*

AND

Joseph Norman Ritchie, *Respondent.*

Supreme Court—Jurisdiction—Powers of Local Legislatures—Power of Appointment of Queen's Counsel vested in Governor-General as representing Her Majesty.

[Ottawa, Oct. 31.

This was an appeal from the Supreme Court of Nova Scotia, in the matter of the application of Joseph Norman Ritchie, for the recognition of his rank and precedence as Queen's Counsel.

Joseph Norman Ritchie, a barrister of the Supreme Court of Nova Scotia, was appointed one of Her Majesty's Queen's Counsel for Nova Scotia on the 26th December, 1872, by Letters Patent under the Great Seal of Canada. On the 7th of May, 1874, the Legislature of Nova Scotia passed an Act (37 Vict., c. 20) authorizing the Lieutenant-Governor of Nova Scotia to appoint Queen's Counsel for that Province. On the same day the Legislature of Nova Scotia passed an Act (37 Vict., cap. 21) to regulate the precedence of the bar in Nova Scotia. No Queen's Counsel were appointed for Nova Scotia by the Lieutenant-Governor, between the 1st day of July, 1867, and the passage of the last mentioned Act, nor until the 27th May, 1876. On the 27th May, 1876, Letters Patent were issued by the Lieutenant-Governor of Nova Scotia, appointing appellants, together with other barristers, Queen's Counsel, which Letters Patent, also professed to regulate their precedence in the order therein mentioned, naming the appellants (Mr. Lenoir and Mr. Haliburton) and others before the respondent. Subsequent to the 27th of May, 1876, the prothonotary of the Supreme Court of Nova Scotia at Halifax, in making up the dockets, &c., gave the appellants with others, precedence over the respondent which had not been accorded to them since the date of the respondent's appointment in 1872. Thereupon, on the 3rd of January, 1877, the respondent applied to the Supreme Court of Nova Scotia, and obtained a rule *nisi*, to confirm the precedence given him by his Letters Patent, and to direct that he should have precedence in that Court over all Queen's Counsel appointed for the Province of Nova Scotia since the date of his patent. Among other grounds, the appellants urged in support of the rule, that the 20th and 21st chapters of the Provincial statutes of 1874, were *ultra vires*, and the appointments under them invalid; that as regards chapter 21, it could have no retrospective effect, and that the letters patent themselves were not sealed with the proper Great Seal of the Province of Nova Scotia, and were, therefore, void. The Supreme Court of Nova Scotia, by a majority of judges, made the rule absolute on the second of the above grounds, maintaining the validity of the acts mentioned. But although it was not, therefore, material to the issue, in the opinion of the Court, to consider the question of the validity of the seal used, the members of the Court thought that question of so much importance, that in their judgments, they dwelt at considerable length upon it, and the majority of the judges held that the seal affixed to the patent was not the true Great Seal of Nova Scotia. The Judges of the Supreme Court of Canada have held that it was not necessary for them to consider this question, and therefore no further reference need to be made to it.

A preliminary question was raised on behalf of the respondent, to the effect that the Supreme Court of Canada had no jurisdiction, inasmuch as the judgment complained of was not one from which an appeal would lie, under the provisions of the Supreme and Exchequer Court Act.

Haliburton, Q.C., for appellants.
Cockburn, Q.C., for respondent.

Held 1. That the judgment of the Court below was one from which an appeal would lie to the Supreme Court of Canada; Fournier, J., dissenting, on the ground that the judgment was one rendered by the Supreme Court of Nova Scotia, in the exercise of the discretionary power which all Courts of original jurisdiction have of regulating their affairs, and that it would be impossible, in the event of the Supreme Court of Canada reversing the decision of the Court below, for the former Court to enforce its order, which would therefore remain a dead letter.

2. *Per* Strong Fournier, and Taschereau, JJ.—That the Acts of the Legislature of Nova Scotia were not restrospective, and must be so construed as not to disturb or take away precedence given by the patent issued to the respondent; and that the Letters Patent issued under the authority of those Acts were void in so far as they attempted to interfere with the privileges of the respondent.

3. *Per* Henry, Taschereau and Gwynne, J.J.—That the acts of the Legislature of Nova Scotia in question are *ultra vires* and void, if their intention be to invest the Lieutenant-Governor with the authority of appointing to the rank or dignity of Queen's Counsel, which Her Majesty herself, or through her representative His Excellency the Governor-General alone, has the right to confer.

4 .*Per* Henry and Gwynne, JJ.—That the said acts do profess to invest the Lieu-

tenant-Governor with such authority, and are therefore *ultra vires* and void.

5. *Per* Taschereau, J.—That the Act of the Legislature of Nova Scotia, 37 Vict., c. 20, simply authorizes the Lieutenant-Governor to appoint provincial officers connected with the administration of justice to be known under the name of "Her Majesty's Counsel learned in the law," but that does not make them of the rank and dignity of that name granted by Her Majesty. It is a mere provincial office under that name. which the Provincial Legislature had the right to create, and the appellants are not Queen's Counsel at all in the sense attached to the name in the respondent's commission.

6. *Per* Henry, Taschereau and Gwynne JJ.—That the British North America Act, 1867, does not either expressly, or by inference, divest Her Majesty of this branch of her prerogative and confer it upon the Provincial Legislature or the Lieutenant-Governors of the Provinces. That Her Majesty forms no integral part of the Legislatures of the Provinces as she does of the Dominion Parliament, and is no party to the laws made by the Local Legislatures, and that no Act of any such Legislatures, can in any manner impair or affect Her Majesty's right to the exclusive exercise of all her prerogative powers.

7. *Per* Strong and Fournier, JJ.—That it is unnecessary to consider the question of the constitutionality of the Acts in question ; that the presumption is so much in favour of the validity of the Acts that the Court ought not to deal with the question of their constitutionality, unless the subject matter under consideration imperatively requires it.

The Chief Justice, being related to one of the parties, took no part in the judgment.

The following is the judgment of

GWYNNE, J.—The respondent has raised three points of objection to the Appeal.

1st. He contends that the order of the Supreme Court of Nova Scotia, against which this appeal is brought, is not one from which an appeal lies within the meaning of the Statute constituting this Court ; but that order is undoubtedly a final disposition of the matter relating to which it is made, and, if the contention of the appellants be well founded, materially impairs the legal rights of the appellants, and does therefore clearly, as it appears to me, constitute appealable matter.

2nd. He contends that the Letters Patent, by which the Appellants were purported to be made Queen's Counsel were not under the Great Seal of the Province, as they professed to be. It was admitted on the argument that we have been relieved by an Act of the Dominion Parliament, 40 Vic. ch. 4, from the necessity of determining this point, and of entering into the interesting heraldic research which it seemed to open ; from this necessity, however, in the view which I take, we should have been relieved independently of that Act.

And 3rdly, which is the sole objection on the merits, he contends that the appointment of Queen's Counsel is *ultra vires* of the Provincial Executive, and that the Act of the Legislature of Nova Scotia 37 Vic. ch. 20 (in virtue of which the appointment of the appellants is by the Letters Patent under which they claim professed to be made) is *ultra vires* of the Provincial Legislature. This latter point the Supreme Court of Nova Scotia, while deciding in favour of the respondent upon another ground, pronounced to be quite untenable, but with great deference to the learned judges of that Court it seems to raise a very grave constitutional question. It was not disputed, as indeed it could not be, that the right to appoint Queen's Counsel is a branch of the Royal Prerogative; that it (equally with the power to grant Letters Patent of precedence, and to appoint Serjeants-at-law, Judges, Knights, Baronets, and other superior titles of dignity and honour) flows from the fountain of honour which has its seat and source in the person of Royalty. In England, in point of form, a Queen's Counsel is the standing counsel of the Queen, retained by her to be of her counsel in all matters in which she may require his services. Substantially, the title is one of honour and professional rank, conferring precedence upon the person invested with the honour. Though in point of fact the recipients of this honour are nominated and selected by the Chancellor for the time being, yet in point of form, the Queen's pleasure is taken upon their appointment. In the Colonies, the appointments were made, sometimes, I believe, under the Royal Sign Manual, but more usually by Letters Patent under the Great Seal of the particular Province of whose Bar the recipient is a member, signed by Her Majesty's representative within the Province, in virtue of the authority vested in him by his commission appointing him Her Majesty's representative, and in pursuance of Royal Instructions from time to time given to him, governing him in the execution of the powers vested in him in respect of matters in which the Royal Prerogative is concerned.

An Act of Parliament passed by the old Legislature of the respective Provinces, which now constitute the Confederate Provinces of the Dominion of Canada, under the constitution which they had before Confederation, of which Legislatures

Her Majesty was an integral part, as she is of the Imperial Parliament, upon being assented to by the crown, was competent to divest Her Majesty of the right to exercise within the Province any portion of her royal prerogative; but at the time of the dissolution of those old provincial constitutions upon the passing of the British North America Act, and of the creation of the new constitutions under which those Provinces were made members of the Confederation now existing, there had been no Act passed detaching the right to appoint Queen's Counsel from the Royal prerogative, or in any manner impairing or affecting Her Majesty's exclusive right to appoint them. The questions therefore which now arise are: Has the British North America Act invested the Lieutenant-Governors of the respective Provinces constituting the Confederation with the right and power to exercise this branch of the Royal prerogative, or has it invested the Legislatures of those Provinces with any control over it, for if Her Majesty is not, by that Act of Parliament, divested of this, her prerogative right, it must follow from the nature of the new constitutions which that Act confers upon the several Provinces, that no Act of any of the Provincial Legislatures thereby constituted can in any manner divest Her Majesty of this or any other branch of her prerogative, or impair or affect her exclusive right to the exercise of it. It is a well established rule that the crown cannot be divested of its prerogative, even by an Act of Parliament passed by Queen, Lords and Commons, unless by express words or necessary implication. The presumption is that Parliament does not intend to deprive the crown of any prerogative, right or property, unless it expresses its intention to do so in explicit terms, or makes the inference irresistible. Now, when we consider the object of the British North America Act, the first thing that occurs to us is, that from anything appearing in it, there does not seem to be any reason or necessity for stripping the crown of its prerogative in respect of the particular matter in question, for the purpose of placing it under the control of the subordinate executive or legislative authorities of the respective provinces which the Act brings into existence. The particular right in question cannot consistently be vested in the crown, and also at the same time in either the executive or legislative authorities of the respective provinces; to be invested in either of the latter it must be absolutely separated from the prerogative, for if Her Majesty should still retain the power to appoint Queen's Counsel, or to grant Letters Patent of Precedence, she must retain it in virtue of that prerogative in virtue of which she originally held it. It would be quite anomalous and unwarranted by anything in the British Constitution of an analogous character, and it would be quite derogatory to the royal diguity that this power to confer rank and precedence which, by the constitution, Her Majesty possesses in right of her prerogative, should be shared by her with any subordinate person or authority.

If either authority should have power at pleasure to make appointments superseding those made by the other, the right to confer rank and precedence would in fact rest with neither.

In order, therefore, to vest the power in the subordinate Her Majesty must, *quoad* the power, be divested of her prerogative. Now, does the British North America Act in express terms, or by irresistible inference, divest Her Majesty of this branch of her prerogative?

By this Act, which is the sole constitutional charter of the Dominion of Canada and of the respective Provinces constituting the Confederation, Her Majesty expressly retains all her Imperial rights as the sole and supreme executive authority of the Dominion, and her position as an integral part of the Dominion Parliament. The Dominion of Canada is constituted a *quasi* Imperial power in which Her Majesty retains all her executive and legislative authority in all matters not placed under the exclusive control of the Provincial authorities, in the same manner as she does in the British Isles, while the Provincial governments are, as it were, carved out of, and subordinated to, the Dominion. The head of their Executive Government is not an officer appointed by Her Majesty, or holding any commission from her, or in any manner personally representing Her, but an officer of the Dominion Government appointed by the Governor-General, acting under the advice of a council which the Act constitutes the Privy Council of the Dominion. The Queen forms no part of the Provincial Legislatures as she does of the Dominion Parliament, the Provincial Legislatures consist in some Provinces of such subordinate executive officers and of a Legislative Assembly, and in others of such executive officers and of a Legislative Council and Assembly.

The use of Her Majesty's name by these Provincial authorities is by the Act confined to the summoning and calling together the legislatures, and singularly as it seems, this is, by the 82nd section, rather by accident I apprehend than design, confined to the Lieutenant-Governors of Ontario and Quebec.

By the 91st section it is declared that the Acts of the Dominion Parliament shall be

made by the Queen by and with the advice of the Senate and House of Commons, treating the Queen herself as an integral part of the Parliament, whilst the 92nd section enacts that the "Legislatures" of the respective Provinces, that is to say, the Lieutenant-Governor and the Legislative Assembly in Provinces having but one House, and the Lieutenant-Governor and the Legislative Council and Assembly in Provinces having two Houses, shall make laws in relation to matters coming within certain enumerated classes of subjects to which their jurisdiction is limited. Nothing can be plainer, as it seems to me, than that the several Provinces are subordinate to the Dominion Government, and that the Queen is no party to the laws made by those Local Legislatures, and that no Act of any such Legislatures can in any manner impair or affect Her Majesty's right to the exclusive exercise of all her prerogative powers, which she continues to enjoy untramelled, except in so far as we are obliged to hold that, by the express terms of the British North America Act, or by irresistible inference from what is there expressed, she has by that Act consented to being divested of any part of such prerogative.

It is contended that the 92nd section, subsection 14, involves such consent. That subsection places under the exclusive control of the Provincial Legislatures "the administration of justice in the Province, including the constitution, maintenance, and organization of Provincial Courts both of civil and criminal jurisdiction, and including procedure in civil matters in those courts;" but applying the well established rule as to the construction of statutes, namely, that the crown cannot be divested of its prerogative by statute, unless by express words or necessary implication, it appears to me to be very clear that nothing in this section can have the effect contended for; for Queen's Counsel have never been, nor can they be, regarded as a necessary element in the constitution and organization of courts either of civil or criminal jurisdiction. Those courts in fact were constituted and in perfect organization before ever the title or rank of Queen's Counsel was created, and they could still be conducted in full and perfect efficiency though that rank should never have been conferred. They are not in any sense officers of the courts, nor Provincial officers. In the whole course of Imperial and Provincial legislation, although Courts of Justice have been constituted by Act of Parliament, never has provision been made for the appointment of Queen's Counsel as part of the constitution and organization of such courts, nor has it ever been suggested, I venture to say, until now, that they form a part of such organization. The power to create this rank or order, having, by the constitution, existed always in virtue of the royal prerogative right to create titles of dignity and honour, the transfer of such branch of the prerogative from the crown to the Provincial Legislature could only be effected by language expressed in the most explicit terms. By the 96th section of the Act the power of appointing Judges, who do form a most essential element in the constitution of courts for the administration of justice, is transferred, not, however, to the Provincial, but to the Dominion Government. As to the appointment of Queen's Counsel nothing is said, nor is there any subject placed under the exclusive control of the Provincial Executive or Legislative authorities which, by the most forced construction, can, in my opinion, be said *necessarily* to involve the right to appoint Queen's Counsel. The result must therefore be that this right still continues to form, as it ever has formed, part of the royal prerogative vested in Her Majesty (who still retains her supreme executive authority over the Dominion of Canada equally as over the British Isles) to be exercised by her at her pleasure, either under her sign manual of through the high officer the Governor-General of the Dominion, who alone within these Confederated Provinces fills the position of Her Majesty's representative.

The Provincial Statute, in virtue of which the Letters Patent appointing the appellants are professed to be issued, recites that the Lieutenant-Governor *of right* ought to have the power of appointment. I fail to see, however, *by what right* that officer, who is not by the constitution Her Majesty's representative, *ought* to have the power to confer this title of honour in preference to Her Majesty herself, and to Her representative the Governor-General of the Dominion. I presume it will not be contended that greater discretion in conferring the rank upon the most worthy would be thus secured. The Imperial Parliament, however, is the only power which can vest the right in the Provincial Executive, and if it has not done so, no other power, not even the Provincial Legislature, is competent to say that of *right* the power *ought* to be vested in it. There are other considerations also, which appear to show the inconvenience of vesting such a right in the Provincial Authorities.

If vested in them it might with much force be asked what right could their Letters Patent confer, to entitle the recipient to recognition in this Court, or in any other Dominion Court, as for example the Maritime Courts, or an Insolvent Court, if such

should be established, while Her Majesty's appointment can confer the like rank in all those Courts, as well as in the Provincial Courts, and as well out of those Courts as within their precincts.

Then again, by an old law of the Province of Upper Canada, it was enacted that it should no longer be necessary that Commissions should be issued for holding Courts of Assize and *Nisi Prius*, Oyer and Terminer and General Gaol Delivery, but that if they should issue, they should contain the names of the Chief Justices and Judges of the Superior Courts of Common Law, and that they might also contain the names of any of the Judges of the County Courts, and of any of Her Majesty's Counsel learned in the law, of the Upper Canada Bar, one of whom shall preside in the absence of the Chief Justices, and of all the other Judges of the said Superior Courts, and that if no such Commissions should be issued, the said Courts should be presided over by one of the Chief Justices, or of the Judges of the said Superior Courts, or in their absence, then by some one Judge of a County Court, *or by some one of Her Majesty's Counsel, learned in the law of the Upper Canada Bar*, upon such Judge or Counsel being requested by any one of the said Chief Justices or Judges of such Superior Courts to attend for that purpose.

Now, if by any chance a gentleman claiming to hold the rank of a Queen's Counsel in virtue of Letters Patent, signed by a Lieutenant-Governor, should preside at a Court of Oyer and Terminer upon the trial of an important criminal case, and the validity of the trial should be called in question upon the ground that the gentleman presiding was not qualified to sit as a Judge, not having any commission from the Dominion Government, conferring upon him the rank of "Judge," and not having any appointment from Her Majesty conferring upon him the rank of "Queen's Counsel," a very embarrassing question might arise and the ends of justice might be frustrated. Convenience, therefore, as well as the observance of uniformity in the exercise of the power, would seem to concur with other considerations in pointing to the propriety of this branch of the Royal prerogative being maintained as of old inseparably annexed to that prerogative, and to be exercised at the sole discretion of Her Majesty, through Her sole representative in this Dominion, His Excellency the Governor-General.

The Provincial Act which contains the above recital, proceeds to declare and enact that it was and is lawful for the Lieutenant-Governor by Letters Patent under the Great Seal of the Province of Nova Scotia, to appoint from among the members of the Bar of Nova Scotia, such persons as he may deem right to be during pleasure Provincial officers, under the name of Her Majesty's Counsel learned in the law for the Province of Nova Scotia.

Now, if "it has been, and is lawful" for the Lieutenant-Governor to make Queen's Counsel, it can only be so by the provisions of the B. N. A. Act. If that Act does confer the power upon the Provincial Executive, no doubt the Lieutenant-Governor has it, and a Provincial Act can add no force to the Imperial Act. But if the Imperial Act does not confer the power then the Lieutenant-Governor has it not, nor can any Act of the Provincial Legislature effectually declare that he has, or by enactment pointing to the future confer it upon him.

The futility of a declaratory Act passed by a subordinate Legislature for the purpose of authoritatively defining the intention entertained by the Supreme Parliament in the Act which gives to the subordinate its existence, and professing to put a construction upon a doubtful point in that Act as to the powers conferred upon the subordinate is too apparent to need comment. The office of a declaratory Act is of a nature which requires that it should be passed only by the power which passed the Act, the intention of which is professed to be declared; and as to an Act providing for the future for the extension of the limits of the authority of the Lieutenant-Governor, it is equally plain that no power but the Imperial Parliament, which has set limits to the jurisdiction of the Provincial Executive, can extend these limits and enlarge that jurisdiction.

It has been said that the Crown officers in England at some time have given it as their opinion that the power claimed to be exercised by the Lieut.-Governor might be conferred upon him by an Act of the Provincial Legislature, of which he himself is a component part. I have not seen their opinion, nor have I been able to suggest to myself the arguments by which such an opinion could be supported; all I can say therefore, in the absence of the light of the opinion given, is, that, in the best exercise of my own judgment which I am bound to exercise here to the utmost of my ability, with such light as I have, I have been unable to bring my mind to any other conclusion than that the Letters Patent under which the appellants claim rank as Queen's Counsel, and the Provincial Statute in virtue of which these Letters Patent issued, as well as the Act regulating precedence are, for the reasons above given, null and void, and for this reason I am of opinion that the appeal should be dismissed with cost.

Appeal dismissed with costs.

ENGLISH REPORTS.

DIGEST OF THE ENGLISH LAW REPORTS FOR NOVEMBER AND DECEMBER, 1878, AND JANUARY, 1879.

(Continued from p. 296.)

[This number includes the following of the Law Reports: 9 Ch. D. 1-734; 10 Ch. D.-48; 3 Q. B. D. 643-807; 4 Q. B. D. 1-18; 3 C. P. D. 393-537; 4 C. P. D. 1-24; 3 Ex. D. 313-383; 4 Ex. D. 1-31; 3 P. D. 73-198; 3 App. Cas. 933-1373.]

Laches.—See Mortgage, 3.

Lease.

July 15, 1861, B. made a contract with R. and F., to grant them an underlease of premises then leased and occupied by B., for the residue of the term, for which B. held the same, except the last ten days; the underlease to contain covenants and clauses similar to those in B.'s lease, and R. and F. to execute a counterpart of such underlease, without requiring any evidence of B's title. In pursuance thereof, B.'s solicitor prepared a lease for twenty-three years less ten days, with a covenant, *inter alia*, for quiet enjoyment of that time. R. and F. did not compare the underlease with B.'s lease. It turned out that the latter had only sixteen years to run. *Held*, that R. and F. had no remedy. They had been negligent in not inspecting the lease, and the rule of *caveat emptor* applied.—*Besley* v. *Besley*, 9 Ch. D. 103.

See Sale, 2.

Legacy.—See Set-off; Trust, 1.

Libel.—See Slander.

Limitations, Statute of.

A partnership between N. and C. terminated in 1861, when C. acknowledged a debt on balance due from him to N., of £787, and promised to pay it in a month, but had never paid it. Since then, N. had importuned him to enter into the partnership accounts and pay him; but C. had refused, and finally repudiated the debt and liability. N. brought suit, setting up these facts, and C. pleaded the Statute of Limitations by demurrer. *Held*, that the statute was a defence, and that it could be pleaded by way of demurrer. *Miller* v. *Miller*, L. R. 6 Eq. 499, criticised.—*Noyes* v. *Crawley*, 10 Ch. D. 31.

See Injunction, 1; Mortgage, 2.

Liquidation.—See Bankruptcy, 2.

Marriage.—See Domicile; Infancy.

Marriage Settlement.—See Settlement, 1.

Married Woman.

An application by a woman, aged fifty-four years and six months, who had been married three years and had no children, for payment to her of a fund of which she had the life-interest, remainder to her children, was refused. —*Croxton* v. *May*, 9 Ch. D. 388.

See Husband and Wife; Pleading and Practice; Settlement, 4; Trust, 2.

Master and Servant.

1. The defendants had a wharf on the Thames, where coal was brought in barges, to be used in their business of brewers. A gang of men unloaded the barges at 1*s.* 9*d.* a ton, paid by the defendants. One A., a servant of the defendants, hired the plaintiff to work in the gang. A was charged with getting the barges discharged, and either he or some other of the gang received the money in the lump from the defendants, and distributed it to the men who did the work. He hired the men; but they could not be dismissed without reference to the defendants. In the course of his work, the plaintiff was injured by a barrel negligently let fall upon him by another servant of defendants engaged in moving barrels at a point where plaintiff had often been, and knew what was going on. *Held*, that the defendants were not liable. The plaintiff was their servant, and not A.'s, and, though not engaged in the same work, he and the servant whose negligence caused the injury were fellow-servants. A. was a foreman, not a subcontractor. — *Charles* v. *Taylor*, 3 C. P. D. 492.

2. At L. there are two railway stations, that of the N. Railway, and that of the defendant, abutting on each other and having parallel lines of rails, with signals and points governing the entrance of trains, worked by signalmen whose duty is common to both stations. S., a signal-man, was hired and paid by the N. railway and wore its uniform. His duties were, however, common to the two railways, though he did not know the fact when he was appointed. In the discharge of his duty, S. signalled an engine of defendant coming towards the station on the N. company's arrival rails, with an N. company truck, to go on the defendant's departure-rails. The driver did so, and ran in, and then reversed and ran out on the other track, and negligently struck and killed S., without any negligence on the part of S. *Held*, that the defendant company was liable.—*Swainson* v. *The North Eastern Railway Co.*, 3 Ex. D. 341.

Misdescription.—See Will, 10.

Mortgage.

1. D., having no right or title in certain premises, mortgaged them to the plaintiff by producing forged deeds. The mortgage contained no recitals, but there were the usual covenants of mortgagor's title, and a covenant that he "had full power to grant and convey the said premises in manner aforesaid." Subsequently D. acquired the legal estate, and then mortgaged the property to the defendant, who had no knowledge of the previous mortgage. *Held*, that the implication, in the covenants of the mortgage to the plaintiff, as to the legal seisin of the mortgagor, D., did not amount to such an exact averment of title as to create an estoppel to deny it, against him

and those claiming under him; and the defendant was entitled as against the plaintiffs.—*General Finance, Mortgage, and Discount Co.* v. *Liberator Permanent Benefit Building Society*, 10 Ch. D. 15.

2. A. W. bequeathed her residuary personal estate, consisting of a mortgage on real estate of £3,000, to trustees for the benefit of several persons, and in reversion for W. H. The trustees continued to let the property lie in the mortgage. In 1861, W. H. mortgaged his reversionary interest, to secure a debt and interest. In 1871, he died, having paid no interest on the debt, and without other property than the reversion. In 1877, the reversion fell in. *Held*, that the mortgagee was entitled to interest from the date of the loan, out of the fund. W. H.'s mortgage was not a charge on real estate within the Statute of Limitations, 3 & 4 Will. IV., c. 27.—*Smith* v. *Hill*, 9 Ch. D. 143.

3. B. & S., partners, petitioned in liquidation. B. had personal assets, consisting of household furniture in his dwelling, and personal creditors. The joint creditors granted a discharge. B.'s separate creditors never had. The trustee in liquidation for the firm suffered B., by indulgence, to retain his furniture in his house, and B. subsequently mortgaged it to defendants, who took possession, and B. afterwards filed another petition. The second trustee laid no claim to the furniture, and, the defendants having sold it, the first trustee sued for the proceeds. *Held*, that he was entitled. Leaving the furniture with the debtor did not show *laches* in the trustee, such as to make the defendants think it was the debtor's.—*Meggy* v. *The Imperial Discount Co., Limited*, 3 Q. B. D. 711.

4. By the Bills of Sale Act, 1854 (17 & 18 Vict., c. 36, § 1), a bill of sale of personal property not registered, "shall, as against all assignees of the estate and effects of the person whose goods . . . are comprised in such bill of sale under the laws relating to bankruptcy, be null and void," so far as regards goods "which, at the time of such bankruptcy, shall be in the possession, or apparent possession, of the person making such bill of sale." A mortgage of trade-fixtures and loose chattels was made by two partners, but not registered. After a year, the firm dissolved, and one went on alone. Six months after, he took an assignment of the other's part of the mortgaged property. Three months afterwards, he went into liquidation. There was no evidence of consent, on the part of the mortgagee, to the transfer of possession. *Held*, that the trustee in liquidation took the loose chattels and half the fixtures.—*Ex parte Brown. In re Reed*, 9 Ch. D. 389.

5. In 1875, C. borrowed of S. £1,000, and gave a memorandum that he had deposited two policies of insurance on his life with S., as security therefor, and that, on request, he would execute a valid mortgage thereof to S. C. pretended that he had left one of the policies at home, by mistake, and S. lent the money and completed the transaction, on C.'s promise to send the policy next day. It turned out that the other policy had been deposited with one T., in 1871, by way of equitable mortgage for a loan. Notice of an "assignment" of a policy is necessary to bind the company, by the Policies of Assurance Act, 1867 (30 & 31 Vict. c. 144). S. gave due notice of his transaction. T. gave no notice. *Held*, that the transaction with S. was not an "assignment" within the Act, and hence T., who had possession of the policy, was entitled, as against S., although T. had given no notice.—*Spencer* v. *Clarke*, 9 Ch. D. 137.

6. B., the plaintiff, advanced £500, through his solicitor, R., the defendant, towards a loan of £800, to one K., on a deposit of title-deeds to be made with B. through R. R. advanced the other £300, and took a mortgage in his own name. R. subsequently deposited the deeds with the U. Bank, and got a loan thereon of £400. The Bank said they had no knowledge of B.'s interest in the title-deeds. R. became bankrupt. *Held*, that B., for his £500, had priority over the bank's security. R. got from B., also, an advance on some houses belonging to R.'s father's estate, the legal estate of which was outstanding. R.'s sister, W., was interested in the estate, and he acted as her solicitor. He deposited the title-deeds with B. W., becoming dissatisfied with R.'s management, insisted on a settlement, and it was arranged that R. should make a mortgage of all his interest in the estate to W. This mortgage was put on record. R. acted as W.'s solicitor. *Held*, that W. must have been affected with knowledge of B.'s claim through employing R. as her solicitor, and B.'s security had priority.—*Bradley* v. *Riches*, 9 Ch. D. 189.

7. In 1868, T. assigned in mortgage some life policies to F. & G., his solicitors. T. died in 1869 and left all his property to his wife and appointed her executrix. F. & G. paid themselves out of the policies and had a surplus left. T. had creditors and turned out insolvent. In pursuance of a suit by the executrix, at the instance of K., a judgment creditor, against F. & G., a decree was made, finding a balance due from them on a mortgagor and mortgagee account. The executrix then died, leaving F. as her executor, who was also her sole legal representative. K. was substituted as plaintiff. F. & G. wished to be allowed, against the balance in their hands, some simple-contract debts which they set up. Refused.—*Talbot* v. *Frere*, 9 Ch. D. 568.

See Solicitor, 1.

Name.—See Will, 12.

Necessaries.—See Husband and Wife.

Negligence.

1. A dock company, required, by Act of Parliament, to maintain an embankment at a certain height, failed to do so. An extraordinary high tide came, and the water flowed over the embankment several inches above the height at which the company was required to keep the embankment, and injured the plaintiff's property. *Held*, that the company was liable, but it might show that the damage

caused by its negligence and that caused by the overflow above the prescribed height of the embankment could be divided. —*Nitro-Phosphate & Odam's Chemical Manure Co.* v. *London & St. Katharine Dock Co.*, 9 Ch. D. 503.

2. Sewer and highway authorities made a contract for laying a sewer along a highway. The contractor dug a trench ten feet deep, which was filled up after the sewer was laid, and, on inspection by the surveyor of the said authorities, pronounced satisfactory. Some months afterwards, the plaintiff's horse, passing over the highway, broke through into a hole about a foot deep, and was injured. No cause could be seen for the subsidence, and a few hours before the accident the surface of the road was intact. *Held*, that there was evidence that the work was not properly done, and the authorities were liable as for misfeasance.—*Smith* v. *West Derby Local Board*, 3 C. P. D. 423.

See Evidence, 1; Lease; Master and Servant, 1; Solicitor, 1. 2.

Next of Kin. See Will, 11.

Notice.—See Bills and Notes; Company, 1; Insurance, 2; Mortgage, 5, 6.

Nuisance.

A yew tree planted four feet from a fence grew and expanded its branches beyond the fence into the plaintiff's close, and his horse cropped the branches and died of the poison. The defendant knew of the growth of the tree. *Held*, that he was liable.—*Crowhurst* v. *The Burial Board of the Parish of Amersham*, 4 Ex. D. 5.

Order.—See Assignment; Contract, 3.

Parties.

W., claiming as next of kin, got administration, and divided the residue, and died, and afterwards the plaintiffs, claiming to be sole next of kin of the intestate, brought suit against W.'s executors for the amount which came into W.'s hands, and asked that W.'s estate might be administered, so far as was necessary to secure his claims, and the administrator *ad litem* of the intestate was made a party. *Held*, that a general administrator of the intestate's estate was a necessary party. —*Dowdeswell* v. *Dowdeswell*, 9 Ch. D. 294.

See Pleading and Practice, 3.

Partnership.

Under a partnership made in March, it was agreed that the accounts should be made up on March 25 and September 29 of each year, and, in case of withdrawal or death of a partner, his interest should be reckoned as of the last previous account-day so fixed. On the following September 29, the accounts were so made up, and it was then agreed that thereafter the accounts should be made up only once a year and on that day. The next May a partner died. *Held*, that his interest should be computed as of the date of March 25 preceding and not of September 29.—*Lawes* v. *Lawes*, 9 Ch. D. 98.

See Accounts, 2; Bills and Notes; Limitations, Statute of.

Party-wall.

At common law, no action lies by one co-owner of a party-wall against the other, for digging out the foundation for the sake of replacing it by a new and better one, provided the proceeding is *bona fide* for improving the property, and no danger or damage attains it. —*Standard Bank of British South America* v. *Stokes*, 9 Ch. D. 68.

Patent.

1. Action for infringement of a patent for "improvements in screws and screw-drivers, and in machinery for the manufacture of screws." The question what constitutes a valid patent in point of novelty, and what constitutes an infringement, discussed.—*Frearson* v. *Loe*, 9 Ch. D. 48.

2. Discrepancy between provisional and complete specifications. The first claimed for the use of a solution of gelatine and bisulpide of lime for preserving meat. The latter mentioned only the use of bisulphide of lime, without more. By a prior patent, this substance had been used. *Held*, that, considering the evidence, the next patentees might possibly claim for the process described in the provisional specification, but that that claimed in the complete specification was not novel.—*Bailey* v. *Robertson*, 3 App. Cas. 1055.

Pilot.—See Collision.

Pleading and Practice.

1. Plaintiffs claimed as owners in fee, and the defendant denied, and alleged that they were freehold tenants of his manor. Thereupon, the plaintiffs asked to inspect the manor rolls. They did not any where, even in the alternative, admit that they were freehold tenants. Refused.—*Owen* v. *Wynn*, 9 Ch. D. 29.

2. In an action for damage to cargo, the defendant called for inspection of a survey of the ship, which plaintiffs replied had been procured by them for the purposes of the action solely. *Held*, that the defendant was not entitled. - *The Theodor Körner*, 3 P. D. 162.

3. A married woman, having separate property settled to her use without power of anticipation, cannot be sued personally for debts contracted by her since her marriage, without joining her husband and her settlement trustees.—*Atwood* v. *Chichester*, 3 Q. B. D. 722.

See Evidence, 3; Injunction, 2; Limitations, Statute of; Parties; Solicitor, 2; Specific Performance, 2.

Policy.—See Mortgage, 3.

Power.—See Appointment.

Promotion.—See Company, 2.

Railway.

1. A railway acquires the fee-simple in lands taken for its purposes; but the land must be

used for those purposes. A railway cannot obstruct the windows of a building adjoining the railway, so as to prevent the owner from acquiring an adverse right to look across the railway. An adjoining owner may acquire land left outside the fence enclosing the railway land, by adverse possession, on the presumption that the railway has abandoned it.—*Norton* v. *London & North-Western Railway Co.*, 9 Ch. D. 623.

2. By the Railway and Canal Traffic Act (17 & 18 Vict. c. 31, § 2), railway companies are forbidden to "give any undue or unreasonable preference or advantage to, or in favour of, any particular person or company," in the matter of carrying and forwarding freight. Respondent had a brewery at B. where there were three other breweries. The latter were connected with the M. railway. Respondent's was not. In order to get some of the freight from the three breweries away from the M. railway, the appellant railway carted their goods from the breweries to its freight depot, free of charge, and still made a profit on the whole transportation. The appellant made a charge to the respondent and all others for the same service. *Held*, that this was an "undue preference" within the act, and the respondent could recover in an action for money had and received, what he had paid under protest for such cartage.—*The London & North-Western Railway Co.* v. *Evershed*, 3 App. Cas. 1029; s. c. 2 Q. B. D. 254; 3 Q. B. D. 134.

See EVIDENCE, 1; INJUNCTION, 2.

RESIDUE.—See WILL, 3.

REVERSION.—See MORTGAGE, 2,

SALE.

1. Shares were sold by auction August 1. Under the conditions of sale, twenty per cent of the price was paid down. The transfer was to be made August 29, and the balance paid, "when and where the purchases are to be completed, and in this respect time shall be of the essence of the contract." If a purchaser failed to "complete the purchase on August 29," the deposit money was to be forfeited. August 28, a dividend was declared. *Held*, to belong to the purchaser.—*Black* v. *Homersham*, 4 Ex. 24.

2. C. & Co., furniture dealers, delivered furniture to R. under this agreement: R. was to pay C. &. Co. £10 down, and £5 on the fourth of each succeeding month, and also give C. & Co. his promissory notes as collateral security for the above payments, without prejudice to C. & Co.'s title. If C. & Co. removed the furniture, the notes were to be given up. R. was to pay the rent on the premises where the furniture was kept, promptly, and not remove, sell, or encumber the goods. If the notes were not paid when due, C. & Co. could remove the goods, and R. forfeited what he had paid, without remedy. On payment by R. of the full agreed value of the furniture £65, as aforesaid, the goods were to become his property. Otherwise, and until then, they remained the property of C. & Co. and were simply on hire to R. R. filed a petition in liquidation, and C. & Co. removed the goods, and the trustees claimed them. *Held*, that the agreement was not a bill of sale, and hence did not require to be registered, and C. & Co, were entitled.—*Ex parte Crawcour. In re Robertson*, 9 Ch. D. 419.

See SHIPPING AND ADMIRALTY, 2.

SALVAGE.

The *Cleopatra*, built for conveying the obelisk Cleopatra's Needle from Egypt to London, was abandoned in the Bay of Biscay, and was found on her beam ends by the steamship *Fitzmaurice*, and towed safely into the port of Ferrol. The court, by consent, fixed the value of the property saved at £25,000, and awarded £2,000 salvage, giving £1,200 to the owner, £250 to the master, and the balance to the crew, according to their rank and their services as salvors.—*The Cleopatra*, 3 P. D. 145.

SEISIN.

In 1864, R. died intestate, being seised in fee of freehold houses. A., his sole heiress at law, did not enter in possession, but R.'s widow, under colour of a pretended will, unlawfully entered and remained in possession till 1869, when she died, having devised the estates to the defendants, who entered and remained from that time in possession. A. died in 1871, and, by will dated in 1870, devised to plaintiff "all real estate (if any) of which I may die seised" must be construed technically, and as the testatrix had not seisin at the time of her death, the plaintiff could not recover.—*Leach* v. *Jay*, 9 Ch. D. 42; s. c. 6 Ch. D. 496.

SET-OFF.

H., by will dated in 1862, left E. property. H. died in 1875. A week before her death, E. had been adjudged bankrupt. He owed H. a debt contracted in 1869. *Held*, that there could be no set-off, but the whole of the legacy must be turned over to the trustees in bankruptcy.—*In re Hodgson, Hodgson* v. *Fox*, 9 Ch. 673.

SETTLEMENT.

1. In an antenuptial settlement, H., the intending husband, made a covenant that, in case, during the joint lives of himself and his intended wife, "any future portion, or real or personal estate" should come to or devolve upon her or him in her right under a certain will named, or any other will, donation, or settlement, or in any other manner, "whether in possession, reversion, remainder, contingency, or expectancy," the husband and all other necessary parties would concur with the wife in all reasonable acts to settle "all such future portion, real or personal estate," according to the settlement then being made. The intended wife was entitled, at that time, contingently on the happening of two events, to a fund, under the will named. These two events happened during the coverture; but the fund was not reduced to possession until after her death. *Held*, reversing the decision of MALINS, V. C., that it was not governed by the covenant in the settlement.—*In re Michell's Trusts*, 9 Ch. D. 5; s. c., 6 Ch. D. 618.

2. G., by will, directed his trustees to hold and apply the whole residue of his estate "for behoof of my several nieces after named and their children in the following proportions, viz.," one-third for I. G. for life, and her child or children in fee; one-third for C. B. G. for life, and her child or children in fee; and one-third to his nieces, the four children of C. M., equally for life, and "the lawful child or children . . . of their bodies, equally among them *per stirpes* in fee; or one-fourth part share of that said third part to the child or children respectively of each of my said nieces, equally among them, if more than one, in fee." If I. G. or C. B. G. died unmarried, or without leaving children who should attain the age of twenty-one, or marry, then her share fell to the other. If both died, as above, then "their shares shall fall and accrue to my other nieces," the children of C. M., "and their children respectively, in life rent and fee, and equally among them *per stirpes*, as provided with respect to their own shares of my estate." If any of the children of C. M. should die as above, the survivors took his or her share in the same manner. I. G. and C. B. G. died without issue. One of the children of C. M. died, leaving a child over twenty-one and married. This child died, without issue, before I. G. and C. B. G. died. *Held*, that the legal representatives of the grandchiild of C. M. were entitled to a share in the fee of the two-thirds, of which I. G. and C. B. G. had the life interest.—*Taylor* v. *Graham*, 3 App. Cas. 1287.

3. By T.'s daughter's marriage settlement, £500 was settled on her, and T. therein covenanted with the trustees to pay a further sum of £500, on the same terms, before a certain time, and also that on his death his executors should transfer to them £2,000 consols. The trust in the settlement was subject to appointment by the daughter, with the consent of the trustees, for her for life to her separate use, then for her husband for life, then for all the children of the marriage who, being sons, should attain twenty-one or, being daughters, should attain that age or marry, and, if more than one, equally, with hotchpot. On the failure of all this, for the husband absolutely. T. paid the £500, and in 1871 paid £1,000 on the covenant to transfer the consols. Consols were then below par. The trustees released T. to the extent of £1,000 consols. In 1873, T. made a will, and died. By the will, T. gave his trustees £2,800, in trust for his daughter, for her sole use for life, without power of alienation or anticipation, and then for her children who should attain twenty-one. He gave the residue to his sons. Nothing was said about payment of debts. *Held*, that the daughter was entitled both under the covenant in the settlement and under the will.—*In re Tussaud's Estate. Tussaud* v. *Tussaud*, 9 Ch. D. 363.

4. By a marriage settlement made in 1817, freehold, leasehold, and other personal property was given in trust, to pay and apply the income in the maintenance, education, and support of the children of J. M., deceased, until the youngest should attain twenty-one, in such shares as the trustees should think proper, and then to pay over the fund itself to the children, and, "in case either of the children of the said J. M. should depart this life without leaving lawful issue," then to pay the fund over to third persons named. J. M. had two children, A. and B. A. died in 1861, having attained twenty-one, intestate and unmarried. B. died in 1820, intestate, leaving one child, C., and having had no other. *Held*, that C. took an estate in fee under the will and not an estate-tail.—*Olivant* v. *Wright*, 9 Ch. D. 646.

5. April 30, 1872, B., by deed-poll, declared as follows: "Whereas I am beneficially possessed of the ground-rents hereby intended to be settled, now in consideration of my love and affection for my wife, I do hereby settle, assign, transfer, and set over unto my said wife . . . as though she was a single woman . . . all that my share [in the ground-rents] as though she were now a *feme sole* and unmarried, and in accordance with the spirit and intention of the recent act of Parliament entitled, The Married Women's Property Act, 1870." The deed was duly registered, and the wife from that time received the rents. *Held*, that though, as a voluntary assignment, it would be invalid, yet it amounted to a declaration of trust, and, as such, was valid.—*Baddeley* v. *Baddeley*, 9 Ch. D. 113.

Slander.

An editor had been convicted of stealing feathers and had been sentenced to twelve months' penal labour as a felon, which sentence he had duly served out. Afterwards a brother editor called him a "felon editor," and justified by asserting the above facts. Replication, that as he, the convict, had served out his sentence, he was no longer "felon." On demurer, *held*, a good reply.—*Leyman* v. *Latimer*, 3 Ex. D. 352; s. c. 3 Ex. D. 15.

Solicitor.

1. W. held a mortgage for £4,600 on land, and made a further advance of £400, on condition that an adjoining piece of subsequently acquired land should be included in the mortgage. A lien on this piece for £46 was overlooked by W.'s solicitor, and W. had to pay this sum to clear the title upon a sale of the property. *Held*, negligence in the solicitor, and the measure of damage was £46.—*Whiteman* v. *Hawkins*, 4 C. P. D. 13.

2. When a suit was compromised, and each party was to pay his own costs, the plaintiff complained that by the negligence of his solicitor, his costs had been unnecessarily increased. *Held*, that such a question could not be considered on a motion for taxation of costs.—*The Papa de Rossie*, 3 P. D. 160.

3. The undertaking of a solicitor to conduct the matters of a creditor in bankruptcy proceedings is not necessarily an entire contract on which, according to the old rule, he may receive nothing except actual disbursements,

until the business is finally concluded.—*In re Hall*, 9 Ch. D. 538.

SOVEREIGN.—See JURISDICTION, 1.

SPECIALTY.—See MORTGAGE, 7.

SPECIFIC PERFORMANCE.

1. H contracted with R. and L. for purchase of a leasehold. It turned out that L. had no interest in the property, and R. was entitled to one moiety subject to a mortgage incorrectly mentioned in the agreement as being on the whole property. *Held*, that H. could have specific performance against R. for his interest. —*Horrocks* v. *Rigby*, 9 Ch. D. 180.

2. Plaintiff claimed specific performance of an agreement which he set forth. Defendant objected that the agreement was not accurately set forth, and finally produced a document differing from that produced by plaintiff. The latter amended his claim with reference to the document produced by the defendant. By the specific performance as claimed, different and additional parties to those named in the agreement produced by the defendant were set up as purchasers. But it appeared that defendant had offered the property to others for the same price, from which it was inferred that the person to whom he should sell was immaterial to him. *Held*, that plaintiff was entitled to specific performance on his claim as amended.—*Smith* v. *Wheatcroft*, 9 Ch. D. 223.

See CONTRACT, 1; INJUNCTION, 2.

STATUTE.—See NEGLIGENCE, 1; RAILWAY, 2.

STATUTE OF LIMITATIONS.—See LIMITATIONS, STATUTE OF.

SUCCESSION.—See SETTLEMENT, 2.

TRADEMARK.

W. was an English cotton manufacturer, G., a merchant in Rangoon, and R., a commission merchant at Manchester. They made an arrangement by which W.'s goods should be shipped through R. to G., and introduced into India. W. was to pay G. a commission, and G., in turn, allowed R. one. R. superintended the bleaching and finishing of the goods, but at W.'s expense. They agreed on a mark to distinguish the goods. This was made up of R.'s arms and name, a symbol of an elephant before used by G., and some lettering purporting to have come from W. The arrangement was quite new. After seven years' business under these arrangements, W. ceased sending goods through R., and sent them through F., who retained the same device, except that the name of F. stood in place of that of R. R. continued to export, using the old device. On cross-actions for injunction, *held*, that nobody was entitled to the exclusive use of the device first used under the agreement between R., G., and W.—*Robinson* v. *Finlay*. *Finlay* v. *Robinson*, 9 Ch. D. 487.

TRESPASS.

Appellants were fox-hunting, and, attempting to pursue the fox upon the land of the respondent, he resisted, and they committed an assault upon him, for which they were fined. *Held*, correct. A man has no right to go on the land of another *in invitum* for such a purpose. *Gundry* v. *Fetham* (1 T. R. 334), and remark of BROOK, J. (Year Book, 12 Hen. VIII. p. 10), discussed.—*Pau* v. *Summerhayes*, 4 Q. B D. 9.

TROVER.—See VENDOR AND PURCHASER.

TRUST.

1. A testator left all his estate and property, "save and except such parts thereof as are hereby otherwise specifically devised," to S. and F., trustees, upon trust to pay his widow an annuity out of the profits of his business to be carried on by his three sons, L., H., and S., for the benefit of his wife and children, and also out of "all profits arising from" any part of testator's entire property. He gave certain specific legacies to his children, the business to L., J., and S., as above, and of a certain estate called Seskin Ryan he directed the rents to be paid to his widow, and, at her death, the estate itself given to L., his eldest son. As to Seskin Ryan and some other dispositions, he said, "I will, order, and direct that all the said bequests shall stand and hold good to them, L., J., and S., only on condition of well and truly paying the several legacies herein directed, and discharging with fidelity the different trusts by this will committed to them." He ordered a schedule of his property to be made, and then all such property contained therein should "become the sole property of" L., J., and S. as residuary legatees, "on paying and discharging the different legacies and trusts in this my will." The widow received the rents of Seskin Ryan until her death in 1865. For some years before that the business had been unprofitable, and the widow's annuity had been unpaid. L. did not continue in the business. On the widow's death, she left her property to her daughter. C. L. took possession of Seskin Ryan in 1865, and died in 1873. C. died subsequently, and her executors claimed payment of the unsatisfied annuity, on the ground that the will imposed a trust on Seskin Ryan to pay it. *Held*, that the will did not create a trust.—*Cunningham* v. *Foot*, 3 App. Cas. 974.

2. M., trustee of a fund to pay the income to a wife for her separate use for life, sold out the stocks where the fund stood, and invested the proceeds in other stocks in the joint names of himself and the husband, at the latter's request. The income was paid to the husband. The trustee died, and the husband sold the stocks and appropriated the money without the knowledge of his wife. They afterwards separated, and the wife brought an action against him and the executor of the trustee. *Held*, that she was entitled to have the fund replaced, and to recover the income from the time when the stocks were sold by the husband. As to the dividends before that time, she was held to have had knowledge that the husband received them, and to have assented

to his doing so.—*Dixon* v. *Dixon*, 9 Ch. D. 587.

See Insurance, 1; Settlement, 2; Will, 9.

Trustee.—See Bankruptcy.

Vendor and Purchaser.

The plaintiff, J., employed L. to make one hundred waggons at £18 each, according to a sample. Plaintiff had previously contracted with W. to furnish the waggons at £21 10s. each. L., in turn, employed the W. Co. to make the waggons at £17 each. Subsequently the W. Co. arranged with the plaintiff to charge him direct for the waggons. L. assented to this. Some waggons were afterwards delivered by the W. Co. the defendant railway company, to the order of the plaintiff. The plaintiff wrote the W. Co. that the customers complained of the waggons, as not up to sample. Later, while thirty-eight waggons were lying at the station to plaintiff's order, he wrote the W. Co., enclosing a letter from him to L., in which he said he would dispose of the waggons at the best price obtainable, as they were unsatisfactory to the buyers, and hold L responsible. L. had previously written the W. Co. that, as the waggons were unsatissatisfactory and not according to sample, he would have nothing more to do with them, and hold the W. Co. answerable. The jury found that L. rejected the waggons. The waggons were held by the railway company to the order of the plaintiff, but, in spite of express notice to deliver them to no one else, the company delivered them to the W. Co. In an action for conversion against the W. Co. and the railway company, *held*, that the property in the goods and the right to possession being in the plaintiff, he could recover against both defendants; and the measure of damages was the full value of the goods, according to the general rule in trover against strangers.—*Johnson* v. *The Lancashire and Yorkshire Railway Co. and The Wigan Waggon Co., Limited*, 3 C. P. D. 499.

See Covenant; Injunction, 2; Lease; Specific Performance, 1, 2.

Voluntary Settlement.- See Settlement, 4.

Will.

1. A testatrix gave portions of the residue to her niece and nephew. By a codicil she revoked these gifts and confirmed her will. By a second codicil she devised certain messuages, acquired since her will was made, to her trustees for purposes specified, and added, "In other respects, I confirm my said will." *Held*, that this phrase referred to the will as altered by the first codicil, and the niece and nephew could not take.—*Green* v. *Tribe*, 9 Ch. D. 231.

2. A testatrix gave "all the rest of my property to be equally divided between the five daughters of" S. and M. L. At the date of the will, S. and M. L. had five daughters and no more. Two of these subsequently, and to the knowledge of the testatrix, died before her. *Held*, a gift to the five, *personæ designatæ*, and not as a class.—*In re Smith's Trusts*, 9 Ch. D. 117.

3. O. died in 1860, leaving a will made in 1859, by which he gave all the estates of which he should be seised or possessed in trust as follows: to leave his wife the use of the dwelling-house; to convert the personalty into money, pay his debts, except a mortgage debt on a leasehold farm at C., given to his son, J. O.; to invest the proceeds, and pay the income to his wife for life or until her marriage. She was to maintain the children, and if J. O. attained twenty-one before he came into his estate at C., she was to allow him £40 a year out of the income, so long as she should be entitled to it. At her decease, the trust was, to assign his leasehold estate at C. to J. O., subject to the mortgage, and charged with the "annuity of £9, now charged thereon in favour of my sister." If the son, J. O., died under twenty-one without leaving children, there was a gift over. Then came a direction to sell all the testator's real and personal property, "except the leasehold at C., bequeathed to" the son, J. O., for the benefit of all the children, except J. O., living at testator's decease, and attaining twenty-one. If the wife wanted to carry on the farm at C. with J. O., she was to be at liberty to do so, and she could control all the stock for that purpose, and at her death or marriage the trustees were to sell it for the benefit of the children, except J. O. O., at the date of the will, had one son and three daughters. He had two leaseholds at C., one subject to the annuity of £9, the other to the mortgage mentioned. After the date of the will, he bargained for another leasehold at C., adjoining the others, but died before the conveyance was completed. J. O. died before his mother, having attained twenty-one. *Held*, that all the leaseholds at C. went to J. O., and the £40 a year must be paid to his representatives until the death or marriage of his mother.—*In re Ord, deceased. Dickinson* v. *Dickinson*, 9 Ch. D. 667.

4. B. bequeathed £500 "to the incumbent for the time being of U——, the income to be applied, when necessary, in keeping in good repair the grave and the railing and tombstone of my late father, and the remainder of such income to be applied by such incumbent, for the time being, in providing wine and bread for the sick poor of U." *Held*, that the gift for the grave being void, the whole was applicable to the charity.—*In re Birkett*, 9 Ch. D. 576.

5. H., by will, gave "the sum of £100 to each of the children of my niece, E., who shall live to attain the age of twenty-one years." E. was living at the death of H., and had no children. *Held*, that children born after the testatrix's death could not take. The rule, based on convenience, that under a gift of a fixed sum to each of a class at a future period, no one of the class, born after the death of the testator can be admitted, was applied.—*Rogers* v. *Mutch*, 10 Ch. D. 25.

6. H., by will dated March 6, 1828, gave a fund, in trust, to his wife for life, after her death to F. for life, and at his death, "in trust for the lawful issue of the said F. surviving

him, equally to be divided between them if more than one, share and share alike, and if but one, then for such only child, that is to say in trust," till death or marriage. "And in default of issue of said F. becoming entitled to the said" fund, to such persons as his wife should appoint. H. died in 1828, his widow in 1835, and F. in 1875, leaving "issue surviving" him, a son, a daughter, six children of a deceased son, and four of a deceased daughter. *Held*, that, in the connection, "issue" meant "children," and the surviving son and daughter of F. took to the exclusion of the children of the deceased son and daughter.—*In re Hopkins's Trusts*, 9 Ch. D. 131.

7. B., by his will, gave his wife all his personal eftate, including all his farming implements and stock, live and dead, for her life, without impeachment for waste or liability on account of diminution or depreciation, and after her decease he bequeathed the rest and residue of his personalty upon trust for his children. *Held*, that the wife took an absolute interest in the farming implements and stock.—*Bretön* v. *Mockett*, 9 Ch. D. 95.

8. Trust to divide the fund into three parts, and pay "one-third part to the heirs or next of kin of T. L." *Held*, a gift to the statutory next of kin of T. L., as a class.—*In re Thompson's Trusts*, 9 Ch. D. 607.

9. P., by will, gave his wife the whole of his real and personal property for her sole use, after payment of his debts, and added, "It is my wish that whatever property my wife might possess at her death be equally divided between my children." *Held*, that she took absolutely, unaffected by any trust for the children.—*Parnall* v. *Parnall*, 9 Ch. D. 96.

10. C. bequeathed a newspaper to trustees, to carry on the business, and pay one-fourth of the net profits to C. for life, and on his death to C.'s wife. The trustees were to have sole power and discretion as to carrying on the business and declaring profits. They were to draw up a balance-sheet every January, showing the profits for the year ending December 31. The trustees notified C. and the other beneficiaries that they would, in future, make a half-yearly division of profit on June 30 and December 31 of each year. C. was paid his portion of the half yearly profit June 30, 1877, and died December 23, 1877. *Held*, that the wife was entitled to the whole one-fourth of the profits declared December 31, for the half-year from June 30.—*In re Cox's Trust*, 9 Ch. D. 150.

11. E. died in 1860. By her will, dated in 1826, she gave all her real and personal property, subject to her debts and legacies, in trust, for her five sisters, M., S., C., H., and L., for life or until marriage, with survivorship contingent to be equally divided among all her "brothers and sisters then living, or their heirs." She had had six brothers and six sisters. Two brothers and one sister died before the date of the will. One brother died in infancy before the birth of E. The other brothers and sisters survived her, and the last survivor, H., died in 1877, a spinster. In a suit to have the rights of claimants determined, *held*, that all the property was effectually given in the will, since the word "or" in the remainder-clause was to be taken literally; that "heirs" meant statutory next of kin as to the personalty, and heirs-at-law as to the realty; that nobody could take through the infant who died before E. was born; that the heirs and next of kin of brothers and sisters who died before E. died were to be fixed as at the death of E; that the heirs and next of kin of the brothers and sisters who survived E. were to be taken as at the respective deaths of those through whom they claimed, and that as fixed by these rules all the heirs and next of kin of the brothers and sisters, except the infant, were entitled, (*De Beauvoir* v. *De Beauvoir*, 3 H. L. C. 524, considered.)—*Wingfield* v. *Wingfield*, 9 Ch. D. 658.

12. G., by will dated in 1840, devised his freehold to "William G., the eldest son of his" nephew, J. G. J. G. had two sons, John, aged ten years, and William, aged eight. The only land the testator had was gavelkind land. *Held*, that it was a devise to William. The devise was to him and the heirs of his body, with a devise over to the testator's right heirs. William died without heirs of his body. *Held*, that the property went according to the common law, and not according to the custom of gavelkind.—*Garland* v. *Beverley*, 9 Ch. D. 213.

See ADVANCES; ANNUITY; FIXTURES; SEISIN; SETTLEMENT, 2, 3; TRUST, 1.

LAW STUDENTS' DEPARTMENT.

LECTURES FOR LAW STUDENTS.

We are glad to see that Mr. Ewart has recommenced his useful Saturday evening lectures on Chancery Practice. There can be no doubt that these lectures are a great boon to students, the more so owing to the present crowded state of the various law offices. Text books on practice may teach you what to do, but what is quite as necessary is to be taught *how to do it*. As his lectures are, in a great measure, conducted in a conversational form, an opportunity is afforded to students to have the difficulties which occur to their minds removed then and there. We understand that Mr Delamere has kindly undertaken to commence before long a similar benevolent work in relation to Common Law practice.

EXAMINATION PAPERS.

We continue the Law Society examination papers :—

Second Intermediate.

Broom's Common Law and A. J. Acts.

1. Give a short historical sketch of the origin of the English Courts of Common Law.

2. Illustrate the proposition that *damnum et injuria* will sometimes fail to give a right of action.

3. What circumstances must combine in order to render an heir liable on his ancestor's specialty?

4. What is the effect of a sale of goods upon credit where nothing is agreed as to the time of delivery on the *right of possession* and *right of property*, respectively? Would it make any difference in this case if credit were not given? Answer fully.

5. Illustrate by examples the difference which exists between the kind of agency implied by law from the relation of partnership between individuals and that required to fix joint contractors, not being trading partners, with liabiiity.

Under what circumstances will the appropriation by the finder to his own use of goods found amount to larceny?

7. What change has been made in regard to equitable defences in ejectment? State shortly the former practice and that which now subsists.

REVIEW.

The Law of Hotel Life, or the Wrongs and Rights of Host and Guest: By R. Vashon Rogers, Jr., of Osgoode Hall, Barrister-at-Law. San Francisco: Sumner, Whitney & Co.; Boston: Houghton, Osgood & Co.; The Riverside Press, Cambridge, 1879.

Some four years ago, the author of the work before us published a volume on a kindred subject. "The Wrongs and Rights of a Traveller," a review of which appeared in the pages of the Law Journal. We are glad that the reception of Mr. Rogers' first series of "Legal Recreations" has been so favourable as to suggest to his publishers the idea of a second—a sure criterion of success—and we are satisfied that all who have followed the traveller in his peregrinations by boat, stage and rail will wish to reap the fruits of his experience of hotel life. This subject, like the former, is happily chosen in a time like this, when the immensely increased facilities for travel, the variety and complexity of business affairs, and the increase of wealth have combined to make "mine host" and "mine inn" far more important elements than ever before in the life of men. And if this be true of the civilized world at large, it is especially true of a country like the United States or (though in a less degree) Canada, where in many cases the life of the home and the family hvae been exchanged for a more lazy and luxurious life in a suite of rooms at some "Windsor," or "Fifth Avenue Hotel." Let not our readers fear, however, that it is our intention to inflict a philosophical discussion on this or any other phase of modern life and manners, or suspect the existence of anything so dreary in the lively and practical pages of Mr. Roger's book. He has wisely preferred to look at things as they are, and not as they might or should have been; and the result is, that the attentive reader will find when he has finished the work that he has been instructed as well as entertained; and if non-professional he may still further solace himself with the thought that he has got a great deal of law at very little expense—rare and happy experience.

We need hardly say that "Hotel Life," albeit a story of married life, possesses no very complicated plot. We are introduced in the first chapter to a newly wedded pair, sitting hand-in-hand in the family carriage which carries them off from the bride's home to begin their wedding tour. In such a blissful situation we are not surprised to find that they took little note of the charming scenery around them, and that "the beauties of the other's face and disposition absorbed the contemplation of each of us." On approaching the village inn, however, which was to be their first resting place, Mr. and Mrs. Lawyer commence talking about hotels in general.

We feel tempted to quote a page from their discussion, though its interest is rather historical than legal:

"I wonder who kept the first hotel, and what it was like?" quoth my lady.

"History is silent on both points," I replied.

"But doubtless the early ones were little more

than sheds beside a spring or well, where the temporary lodger, worn and dirty, could draw forth his ham sandwich from an antediluvian carpet-bag, eat it at his leisure, wash it down with pure water, curl himself up in a corner and, undisturbed by the thought of having to rise before day-light to catch the express, sleep—while the other denizens of the cabin took their evening meal at his expense."

"But no one could make much out of such a place," urged Mrs. Lawyer.

"Quite correct. Boniface, in those days, contented himself with an iron coin, a piece of leather stamped with the image of a cow, or some such primitive representative of the circulating medium."

"Times are changed since then," remarked my companion.

"What else could you expect? Are you a total disbeliever in the Darwinian theory of development? Inns and hotels, in their history are excellent examples of the truth of that hypothesis. Protoplasm maturing into perfect humanity is as nothing to them. See how, through many gradations, the primeval well has become the well-stocked bar-room of to-day; the antique hotel is now the luxurious Windsor, the Resplendent Palace, the Grand Hôtel du Louvre; the uncouth barbarian, who shewed to each comer his own proper corner to lie in, has blossomed into the smiling and gentlemanly proprietor or clerk who greets you as a man and a brother; the simple charge of a piece of iron or brass for bed and board (then synonymous) has grown into an elaborate bill, which requires ducats, or sovereigns, or eagles to liquidate."

Well written and amusing as the above extract is, it is not in all respects a fair specimen of Mr. Rogers' book. Clever sketches of character, lively "bits" of repartèe, amusing incidents and anecdotes are common enough; but it is rarely, indeed, that they do not enforce or illustrate some important legal principle or decision with regard to the law of hotels.

The wedding journey of Mr. and Mrs. Lawyer, and their subsequent experience of life in a boarding-house, only supplies the thread on which are strung the pearls of legal precedent, and the pages are few, indeed, which are not enriched with foot-notes containing references to the most important cases, English, American and Canadian, which bear on the subject of the work.

We may here quote a short paragraph as a specimen of the ingenious way in which the humorous fancy of the auther is made use of to point a legal moral:

"As my wife was returning to her room after dinner, she met a poor woman, whose daily walk in life was from the wash-tub to the clothes-line, looking in vain for some miserable sinner who had departed, leaving his laundry bill unpaid. After endeavouring in vain to console the woman. Mrs. Lawyer (who had a Quixotic way of interfering in other people's troubles) came running back to me to ask if the hotel-keeper was not bound to pay for the washing.

"I told her of course not, unless he had been in the habit of paying the laundry bills of guests who had left; then an undertaking to that effect might be inferred, and it might be considered as evidence of an antecedent promise. With this small crumb of comfort, my wife returned to the user of soap and destroyer of buttons."

We do not often feel called upon to question the correctness of our author's law; but we think that in the light of the recent American case of *Hancock* v. *Rand* (17 Hun. 279; see *Albany Law Journal* for July 26, 1879), some doubt seems to be thrown on his statement that if when a person "first arrives at a hotel, he makes a special agreement as to board, or for the use of a room, he never becomes a guest, and the inn-keeper's liability is . . . only that of an ordinary bailee." In the case to which we have referred, it was held by the New York Supreme Court that "fixing in advance the price to be paid and the duration of the stay of a visitor at a hotel . . . does not necessarily have an effect to prevent the relation of inn-keeper and guest and the obligations which attach thereto." It should, however, be said that the author of the article in the *Albany Law Journal*, in which which this case is discussed, seems to incline to Mr. Rogers' view of the law.

A glance at the index will show what a variety of points have been taken up and illustrated within the limits of this little volume.

It is a difficult matter to relieve the dryness and solidity of pure law, but the author does this very effectually; some might say that the "yeast" is sometimes too highly spiced with the slang of the day and that a pruning of some of the many luxuriant periphrases and the engrafting of terse Anglo

Saxon words might be an improvement in style. But this is more a matter of individual taste than anything else.

We heartily recommend to our readers Mr. Rogers' second venture in that line of legal literature which he has made peculiarly his own.

CORRESPONDENCE.

The Bench and Bar.

To the Editor of The Law Journal.

Gentlemen,—The following letter signed Barrister, appeared in the *Mail* of the 16th instant.

"Sir,—Can you define the length and breadth, height and thickness of a County Judge? If he goes to the expense of a silk gown, a Q. C. coat and vest, and a green bag, does he then become raised above us commoner mortals, the *oi polloi* of the profession; and if so, is it not *infra dig.* in (so many of them) to be Masters and Deputy Registrars in Chancery? Is there not an incongruity in it, a savouring of American practices that has a tendency to narrow that gulf between Bench and Bar which is our pride in this country? I have seen a County Judge during the sittings of Assize sitting on the Bench beside the presiding Justice, wearing the air and dignity of a Judge, and I have seen him a week or two after at the Chancery sittings discharging the duties of a subordinate and, in the absence of a shorthand reporter, writing down the evidence. Why could he not as well practise in Chancery as be eligible for the office of Master and Deputy Registrar of the Court? Why should not the name 'Judge' carry with it all what it implies? What with the salary, surrogate fees, arbitrations, &c., very few of them fall short of $4,000 a year, so that they could well afford to put both feet on the Bench and stay there.

"Yours, &c.,

"Barrister.

Port Perry, 13th Nov."

I am sure you will agree with me that the writer is guilty of extremely bad taste in thus attacking a County Judge, whose position prevents him from defending himself. I think I know the Judge the writer alludes to, and have upon several occasions had the honour of appearing before him as counsel, when acting as Judge and Master. He has always been courteous and painstaking, while his ability as jurist is universally acknowledged. It is rather difficult to understand what "Barrister" is driving at. The position of Master in Chancery is not, I think, inferior to that of a County Judge. Matters of very great importance, and involving nice questions of law have to decided by the Master. His duties are judicial, and the mere fact of his assisting the Chancellor to take the evidence at the hearing, does not, to my mind, in any sense lower his position. County Judges are the proper persons to be Masters in Chancery because they do not practise, and are therefore in a position to devote a large portion of their time to that branch of their duties. People have confidence in a man—or tribunal—who from his position has no interest whatever in any cause that he may try, and no persons could be obtained better qualified for the position than the County Judges. One improvement, I would suggest, and that is to pay the Masters a salary and abolish all fees. Not that I believe many Masters prolong the reference, simply to increase their fees; but it would place them in a disinterested position, and it is desirable they should be altogether free from suspicion. We are proud of our judiciary, and would keep them free from every appearance of evil. The Deputy Registrar's work could be done by the Deputy Clerks of the Crown and Pleas, leaving the Master only the judicial work to do.

I remain yours faithfully,

Another Barrister.

Lindsay, Nov. 18th, 1879.

[That the profession has amongst its members some few who have mistaken their vocation in joining what ought to be a body of gentlemen, is only too apparent, if from nothing else than the occurrences to which we have been compelled to allude last month, and again this month, in another place, and now from this letter signed "Barrister." It is to be regretted also, that a leading and widely read journal should have published a letter, couched in language which cannot but tend to a greater or less extent to bring the administration of justice into disrepute. It would have been quite possible for "Barrister" to have made his point in appropriate language. What he says as to County Judges holding the position spoken of is of course open to argument, though we agree with our correspondent in thinking that County Judges are, as a rule, the proper persons to hold the office of Masters in Chancery, in

the different County Towns; whilst at the same time there is much force in what he says as to payment by fees. We are indebted to "Another Barrister" for calling attention to this matter.—Ed. L. J.]

Insolvency—Composition and Discharge.

To the Editor of the LAW JOURNAL.

SIR,—The last number of the LAW JOURNAL contains a communication from a Barrister, on the above subject; and, in your notice of his letter, you invite discussion upon the point raised which you say is one of practical importance,

The matter of *Howard* v. *Evans & Co.*, which I presume is the case your correspondent refers to, is not, I think, the first decision upon the question, as to the right of an assignee in insolvency, under the Act of 1875, to transfer the estate to the insolvent, after the execution of a deed of composition by a majority in number and value of the creditors.

In 1 Legal News, 532, 22 L. C. Jurist, is reported a decision of the Court of Review, in the case of *Re Hatchette* taken from the S. C. Montreal, wherein it was held "That so soon as a deed of composition and discharge has been executed in accordance with the provisions of sec. 52 of the Insolvent Act, 1875, the assignee is bound, under sec. 60 of the Act, to reconvey the estate to the insolvent, without waiting for the confirmation of the deed by the Court or Judge."

This authority seems to prove the correctness of the view of your correspondent when he enquires why, if it is intended that the assignee shall not transfer the estate until the deed be confirmed, does not the statute say so?—in place of saying (see sec. 60) that "it shall be the duty of the assignee to reconvey the estate as soon as the deed of composition and discharge shall have been executed," as required by sec 52.

If the *Monetary Times* of July 4th reports the decision correctly, then the judgment of the County Court at Halifax, in *Howard* v. *Evans & Co.* is directly opposed to that of the Court of Review in the earlier case of *Re Hatchette.*

This latter case was relied upon, by the counsel for the insolvent, in the late case of *Re Beattie*, reported in 2 Legal News 302. In this case the petition was dismissed, not however because the Court held, that the deed, when executed, required to be confirmed by the Court before the estate could be transferred to the insolvent, but because the petition was premature in this, that there was a proceeding to be observed (which had not been observed) before the order could go. This proceeding was, that the deed had, under sec. 49, of Insolvent Act, 1875, to be submitted to a meeting of the creditors called by the assignee in the manner provided by that section. In this case the question was, whether the insolvent could, as soon as the deed was executed, but before it was confirmed by his creditors, demand his estate from the assignee; and the Court held that he could not. In the case of *Re Hachette* the question was, whether the insolvent could, as soon as the deed was executed, but before it was confirmed by the Court or Judge, demand his estate from the assignee, and the Court held that he could. The soundness of this latter decision was not doubted, in the case of *Re Beattie*; but recognised and approved of, Mackay, J, saying "There is a procedure to be observed," (referring to the requirements of section 49, alone) "before the order can go." If, as is said, the language of the Honourable the Chief-Justice of the Court of Appeal for Ontario is understood to refer to confirmation by the creditors, then the above authorities of *Re Hachette* and *Re Beattie* are supported by that of *McLaren* v. *Chambers*, and there then exists unquestionable authority against the correctness of the County Court judgment in *Re Howard* v. *Evans & Co.* The case referred to, then establish, that an assignee cannot transfer the estate to the insolvent until after the deed has been confirmed by the creditors at a meeting called for that purpose; but that, after confirmation by the creditors, an insolvent can require the assignee to transfer to him the estate, without waiting for the confirmation of the deed by the Court or Judge.

Any question upon the point arises upon the first portion of section 60, which ap-

pears to be new matter; and which was introduced into the Act of 1875 (there can be no doubt), for the benefit of the insolvent, to enable him to regain his former estate, as speedily as possible, after all parties in any way interested have had an opportunity of pronouncing upon the deed without the delay, trouble and expense that would be unnecessarily incurred in awaiting the confirmation by the Court.

Yours, &c,

Lindsay. B.

Composition and Discharge.

To the Editor of The Law Journal.

Sir,—I agree with you that the point raised by the letter of "Barrister" in your last issue is one of practical importance. "Barrister" takes exception to the ruling of the County Court Judge at Halifax, that transfer of his estate to an insolvent, under a deed of composition and discharge should not be made until the confirmation of the deed by the Court. The language of Chief Justice Moss, in *Re McLaren* and *Chambers*, 1 Ap. Rep. 68, has been often understood as applying to confirmation by the creditors, but if that is his Lordship's meaning, the language is unfortunate, as the Act nowhere refers to "confirmation" by creditors. The meeting is directed to be called for the "confirmation" of the deed, and the creditors present may "express their *approval* thereof, or dissent therefrom."

Section 66 of the Act of 1875, provides "in no case shall a discharge have any effect unless, and until it is confirmed by the Court or a Judge." The insolvents property is by the writ of attachment or deed of assignment vested in his assignee. Clearly it cannot be re-vested in the insolvent by a discharge. while that discharge is of no "effect." And why should the insolvent be entitled to the possession of effects not vested in him—not yet his? If the right of possession before confirmation exists at all, it is by virtue of section 60, which enacts that "so soon as a deed of composition and discharge shall have been executed as aforesaid, it shall be the duty of the assignee to re-convey the estate to the insolvent." What is meant by "executed as

It deciding this point it is material to observe that the sections of the Act which deal with confirmation precede sec. 60. I think a deed is "executed as aforesaid," when it is completed, *i. e.*, signed by the requisite proportions in number and value of creditors, approved of by creditors at a meeting called for its consideration and confirmed by the Court.

If this is not the correct interpretation of the law, will "Barrister," or some one else explain what the position of an assignee would be in case of the Court refusing confirmation of a deed under which the assets had been handed over to the insolvent? Suppose the insolvent to have in the meantime bought and sold, incurred new liabilities, changed the character of assets, or to have sold the whole estate and pocketed the proceeds. What would be the position of the assignee? Surely he would be held strictly to account for effects which the law had vested in him as trustee for creditors, and of which he had never been divested.

Again, there is no means provided by the Act whereby dissenting creditors can compel an insolvent to bring his deed before the Court for confirmation. If as a matter of law he is entitled to have his assets back that he may deal with them as owner, before making his application to the Court, why make that application at all?

The Act of 1869 contained a provision permitting creditors to direct what disposition should be made of assets pending confirmation of the deed. The Act of 1875 contains no such provision, and though the form of composition deed ordinarily in use directs the assignee to transfer the estate upon execution of the deed by the required proportions of creditors, it is quite clear that such a provision is entirely ineffectual and owes its origin to the former statute.

This omission in the Act of 1875 furnishes, I think, a strong additional argument, if any were needed, of the intention of the Legislature, that the estate should remain in the custody and control of the assignee, until after confirmation of the deed.

Yours, &c.,

D. E. T.

Law Society of Upper Canada.

OSGOODE HALL,

TRINITY TERM, 43rd VICTORIÆ.

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

Henry Theophilus Waring Ellis.
Peter L. Palmer.
George Tate Blackstock.
Alexander Jackson.
James Alexander Williamson.
George R. Webster.
Duncan Arthur McIntyre.
Thomas W. Crothers.
Charles W. Mortimer.
Frank Egerton Hodgins.
James Morrison Glenn.
Charles Wesley Colter.
George Claxton.
Hubert L. Ebbels.
Angus John McColl.

The names are given in the order in which they appear on the Roll, and not in the order of merit.

The following gentlemen were admitted as Students and Clerks.

Graduates.

John Young Cruickshank.
Thomas Arthur Elliott,
John Campbell Ferrie Brown.
Richard Scougall Cassels.
John Walter Delaney.
Frederick William Aplin G. Haultain.
Charles Coursolles McCaul.
John D. Cameron.
Thomas P. Corcoran.
John Carruthers.
James Chisholm.
Ghent Davis.
Joseph Alexander Culham.

Matriculants of Universities.

John Franklin Palmer.
James Duncan S. C. Robertson.
William Street Servos.

Graduate.

Henry James Campbell.

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

A Graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such Degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his diploma or a proper certificate of his having received his degree.

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

Articled Clerks.

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

Students-at-Law.

Classics.

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

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

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

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

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

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

Translation from English into Latin Prose.

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

Mathematics.

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

ENGLISH.

A paper on English Grammar.
Composition.
Critical analysis of a selected poem :—
1879.—Paradise Lost, Bb. I. and II.
1880.—Elegy in a Country Churchyard and The Traveller.
1881.—Lady of the Lake, with special reference to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek.

FRENCH.

A Paper on Grammar.
Translation from English into French Prose—
1878 and 1880 } Souvestre, Un philosophe sous les toits.
1879 and 1881 } Emile de Bonnechose, Lazare Hoche.

or GERMAN.

A Paper on Grammar.
Musaeus, Stumme Liebe.
1878 and 1880 } Schiller, Die Bürgschaft, der Taucher.
1879 and 1881 } Schiller { Der Gang nach dem Eisenhammer. Die Kraniche des Ibycus.

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

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination, to be passed in the third year before the Final Examination, shall be :—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C.S.U.C. c. 12), C. S. U. C. caps. 42 and 44, and Amending Acts.

The Subjects and Books for the Second Intermediate Examination to be passed in the second year before the Final Examination, shall be as follows :—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancin (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law, C. S. U. C. c. 88, and Ontario Act 38 Vic, c. 16, Statutes of Canada, 29 Vic. c. 28, Administration of Justice Acts 1873 and 1874.

FINAL EXAMINATIONS.

FOR CALL.

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

FOR CALL, WITH HONOURS.

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

FOR CERTIFICATE OF FITNESS.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Smith on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

Candidates for the Final Examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

SCHOLARSHIPS.

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

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

3rd Year.—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Taylor's Equity Jurisprudence, Fisher on Mortgages, Vol. I. and chaps. 10, 11, and 12 of Vol. II.

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

The Law Society Matriculation Examinations for the admission of students-at-law in the Junior Class and articled clerks will be held in January and November of each year *only*.

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