DIARY FOR OCTOBER.

1. Fri....Last Days for notice of Primary Examinations.

3. SUN..19th *Sunday after Trinity.*
4. Mon...County Court Term begins.
9. Sat....County Court Term ends.

10. SUN..20th *Sunday after Trinity.*
15. Fri....Law of England introduced into Upper Canada, 1792.

17. SUN..21st *Sunday after Trinity.*
21. Thur..Battle of Trafalgar, 1805.
23. Sat....San Juan Boundary Award made, 1872.

24. SUN..22nd *Sunday after Trinity.*
25. Mon...Charge of Balaklava, 1854.
8. Thur..*SS. Simon and Jude.*
0. Sat....Candidates for Attorney to leave Articles with Secretary of Law Society.

1. SUN..23rd *Sunday after Trinity.*

CONTENTS.

THE
Canada Law Journal.

Toronto, October, 1875.

VICE-CHANCELLOR HALL, sitting in chambers, has held that the solicitor of a vendor is not obliged to answer as to his own personal knowledge the usual requisition in the examination of title, whether the vendor or his solicitor is aware of any encumbrances affecting the land and not disclosed in the abstract: *Re Solomon and Davey:* 19 Sol. J. 715.

IN *Re Ratcliffe*, an appeal in Bankruptcy which came before the Lords Justices in England, it appears that the Registrar of the court below made an affidavit of the proceedings which took place before him. According to the note of what occurred, as published in the *Solicitors' Journal*, the Court of Appeal, without imputing any blame to him for so doing, said that they did not think it becoming that a judicial officer of the court should make himself a witness in the case. The Court would receive the statement of its own officer as to what took place without his making any affidavit on the subject. See also report of the case in 23 W. R. 670.

THE question arising under sec. 66 of the Ontario Election Act of 1868, as interpreted by 36 Vict. cap. 2, as to treating during the hours of polling, has been decided by the Court of Error and Appeal. In the North Wentworth case, Chief Justice Draper held that the acceptance by the respondent of a treat at the hand of a supporter, during the hours of polling, disqualified him. In the South Essex case, the Chancellor held that if an agent partake of a treat during

the same period the election is avoided. In the North Grey case, followed by the Lincoln case, Mr. Justice Gwynne, in very elaborate and ingenious judgments, endeavoured to confine the section to innkeepers, and suggested an interpretation of the statute which would not, under the facts of the North Grey and North Wentworth cases, require the disqualification of candidates. The Court of Appeal, however, in giving judgment in the North Wentworth case, thought these views could not be entertained without doing violence to the wording of sec. 3 sub-sec. 2 of 38 Vict. cap. 2, and upheld the decision of Chief Justice Draper; and, in the North Grey case reversed the judgment of Mr. Justice Gwynne. It is probable that some changes in the law on this subject will be made next session.

JUDICIAL APPOINTMENTS IN ONTARIO.

There was no dearth of excitement amongst the frequenters at Osgoode Hall during the last month. Every day some fresh name was suggested as a possible recipient of royal favour, and the merits and deficiencies of those likely to be appointed to the Bench of the Supreme Court and to the consequent vacant seats in our own courts were freely discussed.

We understand, however, that Robert Alexander Harrison, Q.C., succeeds Hon. William Buell Richards, as Chief Justice of Ontario, and that Thomas Moss, Q.C., is appointed one of the Justices of the Court of Error and Appeal for Ontario, in place of Hon. S. H. Strong. There will be nothing but kindly congratulation from their brethren to those who have been taken from amongst them to fill these offices.

The Government of the day has evidently followed the English practice that no judge has by virtue of his position any right to expect promotion on the Bench. We have consistently upheld the propriety of this rule, and we are therefore not called upon to speak of those already on the Bench who would have filled these positions with credit to themselves and benefit to the country.

Both Mr. Harrison and Mr. Moss have had a large experience at the Bar, especially Mr. Harrison, than whom probably no man in Canada has held as many briefs for the time he has been practising, and no one has been more successful. From the very first he took kindly to law, and having achieved the highest honours as a student, he rapidly rose to professional eminence. Painstaking and industrious to an extent never surpassed, he has made the most of his time and his talents. The prompt administration of justice is an incalculable boon to litigants. The new Chief Justice is in the prime of life, a quick and indefatigable worker, a sound lawyer and of varied experience in all the details of professional business. We are satisfied that the qualities which caused him to be so sought after at the Bar will make him a most satisfactory and useful judge.

We cannot take leave of him without expressing our especial gratification, that one who at one time was one of the editors, and for many years was a valued contributor to this journal, aiding largely in its success, a most genial and zealous fellow worker, should have received the high compliment which has now been paid him. Mr. Harrison is one of the few lawyers of Ontario who has attained a position as a legal writer; his numerous publications have been most useful to his brethren and to others; and we must look upon his appointment as in some sort a recognition of his worth and usefulness as a law writer.

Mr. Moss brings to his new position an intellect and attainments far above the average, and a knowledge of law pos-

sessed by few. It was desirable that the person to succeed Mr. Strong should be an equity lawyer; and Mr. Moss was at the time of the appointment, next to the Minister of Justice, admittedly the first man at the Equity Bar. He is one of those men who seem to be able to do everything well; and at school and at the University he was *facile princeps*. Immediately upon his call to the Bar, he took a high place, and his reputation has steadily increased ever since, whilst his kindly pleasant manner won him hosts of friends. It seems natural to couple the names of Mr. Harrison and Mr. Moss; they are both young, both are essentially self-made men, having raised themselves by their own talents, industry and energy to the highest positions in the land. They represented at different times the same constituency in Parliament; they were members of the same legal firm; each was a leader in his own Bar, and both highly successful. Both are eminently and deservedly popular in the profession, and they enter on their new spheres with the best wishes of their brethren.

JUDICIAL APPOINTMENTS TO THE SUPREME COURT.

THE constitution of the Supreme Court for the Dominion of Canada has at length, after much discussion and many false starts, been completed by the appointment of the six judges required by the Act. The names are William Buell Richards and Samuel Henry Strong, from Ontario; Jean Thomas Taschereau and Telesphore Fournier, from Quebec; William A. Henry, from Nova Scotia; and William Johnston Ritchie, from New Brunswick.

Two seats only have fallen to Ontario. We had hoped that three judges might have been taken from this province; but it is at least a satisfaction to know that the late Chief Justice of Ontario has been selected to preside over the Supreme Court. The other judge of that court from Ontario is Mr. Justice Strong. We strongly advocated both these appointments some time since; and now congratulate the Minister of Justice on his success in securing their services. Leaving out of the question the present Minister of Justice and Sir John A. Macdonald, neither of whom would, we presume, accept the position, it will scarcely be denied that the field to choose from as regards the head of the Court is somewhat limited, when we consider the many necessary qualifications for the office. Some years since the Chief Justice of the Court of Error and Appeal might have accepted it. The great and varied learning, the many attainments and the courteous manner of the talented and eloquent leader of the Bar of Ontario, the Hon. John Hillyard Cameron, would have adorned the high position, could he have severed his numerous professional and business ties. But we doubt if any of these men, though in many respects head and shoulders over most of their brethren, would inspire in the public mind a greater confidence in the new Court, or in the main be more suited for the position than the gentleman who has been chosen. As to those selected from the other provinces, we are not in a position to offer any very decided opinion; but we believe the appointments on the whole to be good.

Chief Justice Ritchie, from New Brunswick, is an able lawyer, and he had, at least until the appointment of Mr. Wetmore by Sir John A. Macdonald's Administration, more than his due share of authority in his own court. Of strong will and decided views, of large judicial experience, having been appointed to the Bench in 1855, and a sensible, well

read, and clear-headed man, he will be no mere cipher in the new court. At one time strongly opposed to confederation, his court has probably gone further than any of the provincial courts in limiting the jurisdiction of the local legislatures: *e.g.* the judgment given in *Reg.* v. *Justices of King's County* (reported in our last issue, and referred to by Mr. Justice Strong in his judgment in the *Queen* v. *Taylor*, recently decided on appeal from the Queen's Bench), as to the power of local legislatures to prohibit the manufacture or sale of spirituous liquors. This appointment is an excellent one, and probably the best that could have been made from the maritime provinces, though his brother, Mr. Justice Ritchie of Nova Scotia, would have been an equally good man for the place. Mr. Henry, from Nova Scotia, is said to be a fair lawyer.

There will probably be some dissatisfaction in the Montreal District, at both the representatives from Lower Canada being taken from the Quebec District. The Bars of these two districts are entirely distinct, and there is much jealousy between them. That of Montreal may naturally say they have at least an equal right to representation, especially as there is probably no doubt that the best field for selection is from the Montreal District. Both Mr. Fournier and Judge Taschereau are good French lawyers, but can give little help to the Court in commercial or criminal cases, which must be determined by reference to the English law, and which are almost exclusively conducted by lawyers of British origin. Whilst, however, expressing our present impression, it is a difficult matter to forecast the ultimate success of any man as a judge; and many of whom little was expected have proved to be able jurists and satisfactory judges.

Returning again to the gentlemen selected from Ontario, there is but one opinion as to their fitness. We have in Chief Justice Richards a man of powerful intellect, taking a wide grasp of a subject and looking at it "all round," so to speak; discussing it not only with reference to the abstract law therein involved, but also with reference to its relation to the wants and habits of a new country. No judge on the Bench has shown a more thorough and appreciative knowledge of the instincts and necessities of Canadian life; and few more liberal-minded men or far seeing minds have been called upon to express judicial opinions in Canada. As has been said of Baron Bramwell, Mr. Richards possesses that most valuable gift, "brilliant common sense." As the chief of a Court which is composed of men trained in different schools, having heretofore administered laws founded on entirely dissimilar systems, where prejudices acquired by different habits of thought and associations may, unknown to themselves, bias their minds, and where many legal disagreements and conflicts may, at least at first, be expected—his sterling good nature, kind heart, and imperturbable coolness and decision of character will be invaluable.

We have already stated our reasons for believing that Mr. Strong's appointment will be accepted by the Bar as an admirable one. As a judge of first instance, and in the marshalling of facts and dissection of evidence, it is probable that he is not equal to the gentleman who, on his appointment to the Court of Appeal, became, and now is, the senior Vice-Chancellor; but as a lawyer pure and simple, and in intellectual capacity, he has no superior on the Bench; and, owing to his knowledge of civil law and familiarity with the French language, his presence in the new court will, in appeals from Lower Canada, be of the greatest assistance to the judges from that province.

ASSIMILATION OF LAWS.

THERE is no more striking instance of the advance in enlightenment made by the present age, than the attempts now in process to assimilate the laws of civilised countries. To our sober notions the idea of a court of universal resort as the arbiter of international disputes whether of a public or private character, must seem chimerical; yet it must be admitted that a grander scheme has never engaged the thoughts of man. There is no doubt that of recent years progress, however slight, has been made towards such a consummation in the growth of arbitration as a means of settling national disputes; and even now the distinguished jurists who form the International Association are making direct endeavours to effectuate such a scheme. While the states of Europe are increasing instead of diminishing their standing armies, dreams of governing the world by reason instead of force may well be looked upon as impossible of realisation, and the enthusiasts who met on the 1st of September last at the Hague are compelled to admit that apparently insuperable difficulties beset such a project. But in the light of the dazzling objects of their highest ambition, they do not lose sight of humbler and more practicable reforms.

The association at the recent meeting of which we have spoken took up the subject of the Conflict Laws relating to Bills and Notes. A committee on this subject, appointed at the meeting a year ago at Geneva, reported that answers had been received to questions which had been put by circular and submitted to jurists, chambers of commerce, and bankers in all the countries of Europe, and that in substance these replies were as follows:—They approved the codification of the laws of bills of exchange, and recommended the abolition of days of grace and usances, the assimilation of the laws regarding endorsements—recommending that one rule should be followed—and the abolition of the difference between trader and non-trader, and also between inland and foreign bills. We are told by the *Times* correspondent, that an international committee has been nominated, who are to draught an Act, or *Projet de loi*, and place it before the members of the association before the next conference. It will thus be seen that a practical effort has been made to assimilate the laws relating to most important instruments in commercial transactions, and to abolish differences and uncertainties, which have ever been a source of vexation and injury to traders. It is a matter for congratulation that the eminent men who form the association have withdrawn a share of their attention from matters problematical in their realisation however vast in importance, and devoted it to an affair of great practical interest, in which there is every possibility of practical results.

ADMINISTRATION OF ASSETS.

THE way of executors is hard, so hard indeed that it is creditable to humanity that any persons are found to assume the office. Our Legislature, in passing enactments allowing them compensation for their services, have done something to ameliorate their condition; but these kind intentions seem to be neutralised by the increased responsibilities thrown upon them by s. 28 of 29 Vict. c. 28. This is the section of the Law of Property and Trusts Act, which directs that in a deficiency of assets, all debts of an intestate or testator shall be administered *pari passu*, and abolishes the priority of one class of debts over another. There are enough decisions in our reports upon this enactment to enable us to define with some

certainty the altered position of the personal representative under it. A brief consideration of these cases will shew that the act does not strew roses in his path.

The act does not, as has been contended, apply simply to administration by the Court of Chancery. It includes the ordinary course of administration *sine lite* (*Bank of B. N. A.* v. *Mallory*, 17 Grant 102), and it is at once obvious that the responsibilities of the person administering are increased; so much so, that the Chancellor in the case just cited said, "It would be the duty of the personal representative—it would at any rate be prudent in him for his own protection—except in a very simple case, to act under section 27," which is the section enabling the representative to protect himself by giving such notices to creditors as the Court of Chancery would give.

The same case points out how the privileges of the representative are diminished by the destruction of the right of retainer, or at least the right to retain more than a proportionate part of his own debt, taking into consideration the claims of other creditors.

The dangers of inaccurate pleading are not lessened by the provision in question, and the mode of defence to be pursued in order to protect the representative from personal liability will apparently be even a more anxious matter than formerly. The question is touched upon in *Doner* v. *Ross*, 19 Grant 229, where the Court says: "Before the passing of the act, its effect (*i.e.* of judgment by default) was an admission of the debt, and that the executor had sufficient assets to satisfy the plaintiff's debt. Since the act it is of course still an admission of the debt; and if still an admission of assets to satisfy the plaintiff's debt, it must impliedly be an admission of more than was admitted in the former state of the law, for the executor has not sufficient assets to satisfy the plaintiff's debt since the passing of the act, unless he has sufficient to satisfy all the debts of the testator, inasmuch as all are to be paid *pro rata*. . . The act may make his position more difficult, for he might feel safe in allowing judgment to go by default before the act, as the payment of the debt of the particular creditor, if not out of its order, would acquit him of assets *pro tanto*, while its effect under the new act may fix him with liability for any excess beyond a rateable proportion. He may probably now have to plead a deficiency of assets to pay all debts, or come to this court for administration in cases where, before the act, he would have allowed judgment to go by default."

In this case a creditor was not restrained from proceeding on his writ *de bonis testatoris et si non*, &c., issued on judgment by default against the executor and returned *nulla bona*, although the executor had instituted administration proceedings in Chancery.

The latest case on the subject is *Taylor* v. *Brodie*, 21 Grant 607, where Vice-Chancellor Blake confirms the dictum in *Doner* v. *Ross* as to the proper plea of an executor when there is a deficiency of assets. "Since the 1st of January, 1874, and consequently at the time the action at law in question was commenced, the defendant, being sued, had only to lay before the Court in which the action was pending the true state of matters, when such an order would have been made as would have relieved her, and would have caused the distribution of the estate contemplated by the act to have been made." Here the executrix was held liable to the estate for the amount paid to judgment creditors by the sheriff over what would have been coming to them in an administration *pro rata*. But as the executrix herself obtained an order against the judgment creditors for the amount overpaid them, it will be seen that the

Court proved more lenient to the executrix, than to the executor in *Doner* v. *Ross*. Here the executrix was not left remediless on account of her error in permitting judgment to be entered against her for the full amount of the claims.

Willis v. *Willis*, 20 Grant 396, also shews the impropriety of paying off creditors in full, where there may be a deficiency. "All payments beyond *pro rata* payments are a misapplication of funds." Even if the representative advances funds of his own to meet pressing claims, he can only charge against the estate the amount which would have been properly paid on a *pro rata* distribution.

On the whole it would seem that the effect of the act will be to throw upon the Court of Chancery the burden of administering all estates of which the assets and liabilities are of any importance.

JUDICIAL COMMENTS ON JUDGES—Continued.

Hardwicke, Lord.—"I state *that* as the opinion of that great man, (for such he was both as a common lawyer and as judge in Equity), Lord Hardwicke," per *Lord Eldon, Princess of Wales* v. *Earl of Liverpool*, 1 Wilson's Ch. Ca. 124, and see *Ex p. Cridland* 2 Rose, 166. "I am old enough to remember that great judge, though but for a short time, before he left the Court of Chancery; and the knowledge of those who lived before me only fortified me in the opinion I formed of him, that his knowledge of the law was most extraordinary; he had been trained up very early in the pursuit; he had great industry and abilities, and was, in short, a consummate master of the profession," per *Lord Kenyon*, in *Goodtitle* v. *Harvey*, 7 T. R. p. 416.

Heath J. (C. P.)—A judge "eminently versed in the knowledge of conveyancing," per Lord Eldon, in *Maundrell* v. *Maundrell*, 10 Ves. 263. "He possessed great knowledge of this branch of the law." (*i.e.* real actions) per Park J., in *Wooley* v. *Blunt*, 9 Bing. 640. He was singled out (with Chambre J. and Lawrence J.) by Williams as a great lawyer; he combined the science of law with considerable common sense. Woolrych "Serjeants," p. 690.

Jeffries, Lord Chan.—Lord Langdale said of him, "that in all the decisions he pronounced he was considered as high authority as a lawyer. No one of his decisions had ever been overruled since." This, however, is rather over-stated. See 45 L. Mag. 291, 2.

Jekyll, Sir J.—Upon a question of testamentary law regarding a legacy, Sir R. P Arden, M. R., said "Sir Joseph Jekyll was a very great judge upon all questions of this nature." *Morley* v. *Bird*, 3 Ves. 630. "A man of consummate knowledge," per M. R., in *Milbourne* v. *Milbourne*, 1 Cox 248. "A high authority," per Cottenham, C., in *Barber* v. *Barber*, 2 Jur. 1030.

Kenyon, Lord.—"He was peculiarly versed in the law of real property," per Lord Eldon, in *Goodright* v. *Rigby*, 2 Dow. 257. "Lord Kenyon possessed great information on this subject," (*i.e.* protection of copyright from piracy) per Lord Eldon, in *Mawman* v. *Jegg*, 2 Russ. 399. As M. R., his decrees were sometimes overruled from an obstinate adherence to rigid rules of law and precedents. As C. J., his judgments are stamped indelibly on the laws of England. As a lawyer, equal to Lord Mansfield; 17 Law Mag. O. S. 265; 18 ib. 49.

King, Lord Chan.—"He was as willing to adhere to the common law as any judge that ever sat in Chancery," per Lord Hardwicke, in *Le Neve* v. *Le Neve*, 3 Atk. 654. More of his decrees were reversed than those of any other Chancellor during the same period of time; many of his judgments were impeached or qualified by later decisions. 13 Law Mag. O. S. 309, 328.

Langdale, Lord, M. R.—One of the best judicial authorities upon the practice of the court, per Spragge, V.C., in *Irving* v. *Boyd*, 15 Gr. 160.

Leach, Sir John, V. C. & M. R.—He was familiar with equity practice, but decided too rapidly, so that many appeals arose therefrom. He was unrivalled in dictating minutes of decrees, and disposed of cases of account in a masterly manner. 16 Law Mag O. S. 13, & 12 ib. 427. Sir S. Romilly says he was deficient in knowledge as a lawyer, and that all he knew was acquired by his daily practice; 24 Law Mag. 461. Lord Brougham records that Lord Eldon's court was called that of *Oyer sans Terminer*, and V. C. Leach's that of *Ter-*

miner sans Oyer. "Sketches of Statesman," 2nd series, p. 27.

Lee, C. J.—"As cautious and upright and painstaking a judge as ever sat in Westminster Hall," per Lord Kenyon, in *Shawe* v. *Felton*, 2 East. 117. "He was peculiarly conversant in session's law," per same judge, in *Rex.* v. *Chilverscotin*, 8 T. R. 181.

Littledale, J.—"That most accurate lawyer, whose mind was imbued with ancient learning," per Willes J., in *Tolcman* v. *Portpay*, 18 W. R. 582.

Macclesfield, Lord Chan.—"An able judge both in law and equity, as ever sat on the bench," per Lord Redesdale, in *Hovenden* v. *Annesley*, 2 Sch. & Lef. 632. "A great judge and a great master of evidence," per Willes C. J., in *Smith* v. *Richardson*, Willes 23. His decisions are second only to those of Hardwicke and Eldon. 12 Law Mag. O. S. 287, 299.

Manners, Lord Chan. (Ireland).—His knowledge of equity pleading and practice was small, and so of the principles of equity. 43 Law Mag. 137.

Mansfield, Lord.—"He may be truly said to be the founder of the commercial law of this country," per Buller J., in *Lickbarrow* v. *Mason*, 2 T. R. 73. "His masterly acquaintance with the law of nations was known and revered by every state of Europe," per Lawrence J., in *Lothian* v. *Henderson*, 3 Bos. & Pull. 527. "He will be remembered as long as the law of England or Scotland exists," per Lord Eldon, in *Heriot's Hospital* v. *Gibson*, 2 Dow. 311.

Maule, J.—Marine Insurance was his specialty. See 5 Law Mag. N. S. 1.

MacMahon, M. R. (Ireland).—He loved justice, but thought technicality was one of her maids of honour. 43 Law Mag. 138.

Napier, Lord Chan. (Ireland).—Had decided views as to the strict interpretation of wills according to their language. 9 Law Mag. N. S. 359.

Northington, Lord.—"He was a great lawyer, and very firm in delivering his opinion," per Lord Eldon, in *Watkins* v. *Lea*, 6 Ves. 640. "A very excellent equity judge," per Graham B., in *Heneage* v. *Andover*, 10 Pri. 278.

Nottingham, Lord.—"That great judge, styled the father of equity," per Sir R. P. Arden, in *Kemp* v. *Kemp*, 5 Ves. 858.

Park, Allan, J.—A person who knew so little and chattered so much; whose information was below par and his abilities not above it. 37 Law Mag. 149.

Parke, B.—Was probably the greatest lawyer of this century, per Blackburn J., in *Brinsmead* v. *Harrison*, 20 W. R. 785.

Parker, V. C.—Was on bench ten months; sound and trustworthy; no decision of his reversed. 48 Law Mag. 321.

Patteson, J.—Was excellent as a case and practice judge, but not equal to Bayley B. or Parke B. 47 Law Mag. 90, 96; 12 ib. N. S. 197.

Plumer, M. R.—"No man had more industry and research than Sir T. Plumer," per Alexander C. B., in *Holwell* v. *Blake*, McClel. 565. He was a common lawyer, and never had the confidence of the equity bar. The leaders did not frequent his court. His judgments were laboured, learned, and correct, but too diffuse, 16 Law Mag. 12.

Redesdale, Lord Chan. (Ireland).—"A judge who has presided with so much credit to himself and advantage to his country, and who, in addition to his knowledge of equity, was as good a common lawyer as any in the kingdom," per Lord Eldon, in *Watson* v. *Clark*, 1 Dow. 348.

Richard, C. B.—"Than whom an abler equity judge never sat here," per Hullock B., in *Lucton Free School* v. *Smith*, McClel. 24; and see S. P. 13 Pri. 73. Though not a quick man, he was a good equity lawyer. 16 Law Mag. O. S. 16.

Romilly, Lord, M. R.—"A judge of great experience in all matters relating to solicitor's costs," per Lord Selborne, C., in *Ward* v. *Lawson*, 21 W. R. 89. When at the bar, his arguments were cited with approval by Lord Brougham, in *Hodgson* v. *Shaw*, 3 M. & K. 181; and see *Davis* v. *Humphrics*, 6 M. & W. 168.

SELECTIONS.

THE SENTENCE ON COLONEL BAKER.

There are persons in the world with minds so constituted that it is a satisfaction to differ in opinion from them. The discovery that they take a view of any object exactly opposite to one's own lends assurance to the belief that one is in the right. The member for Stoke is an instance in point, and his latest exploit in this line is his theory that the sentence passed on Colonel Baker was not severe enough. Perhaps his notion is not unique. There are others besides him who are luckily neither judges nor jurymen, and in whose hands the fate neither of men nor things rests, bound to arrive at a perverse decision on any given case. Generally they manage to be as inaccurate in their facts as they are crooked in their judgments. For example, the member for Stokes deliberately averred that Sir Thomas Steele was in the dock on the trial of Colonel Baker, whereas the gallant General sat among the audience at a great distance from judge, jury, and prisoner.

Some of the errors which have arisen concerning the sentence on Colonel Baker are due to that confusion of immorality with illegality, wherewith weak men are much beset. Of course there are people who think that an aristocrat ought to be annihilated, if possible; but these are beyond argument. The former cause of mistake is apt to sway men of admirable nature, whose love of virtue and sympathy with the weak overmaster their cooler reason. From the evil consequences of such confusion juries are saved by such charges as that delivered by Mr. Justice Brett at the trial of Colonel Baker. Powerful as was that charge in its exposition of law, in its sharply defined line between vice and criminality, in its exhortation, even command, to the jury to obey their oaths and not their impulses, yet not one atom of its force could safely have been spared. When a man of the eloquence and authority of the learned counsel for the prosecution had instituted a comparison between rape and seduction, and declared his inability to distinguish between their relative enormity, it became the duty of the learned judge to exert his unrivalled powers to restore the balance of reason, and to eliminate passion from the counsels of the jury.

In criticising sentences malcontents owe something to the repute of the judge. We may fairly start with the presumption that Mr. Justice Brett, aided by the advice of the Lord Chief Baron, is more likely to interpret the law of punishments correctly than any man taken hap-hazard out of a crowd, even of educated persons. That consideration is not only lost sight of, but the critics rather assume their own probable superiority in judging of these matters.

When we analyse the complaint of undue leniency, what does it come to? Really this: that Colonel Baker was not sentenced to hard labour, and that for that reason he has been treated as if there were one law for the rich and another for the poor. An indulgence in the *tu quoque* argument would suggest that there is some ground for the second assertion, seeing that Colonel Baker will have to pay a fine of £500 and the costs of the prosecution, which penalty would assuredly not have been inflicted on a poor man. It is, however, absurd to say that equal justice is meted out by indiscriminate infliction of prison degradation and hard labour. Prison clothes, prison fare, and prison discipline, constitute a far more dreadful infliction on a man of luxurious habits, and of a profession which delights in appearances, than they do on the outcast, the vagabond, or even the labourer who lives by the sweat of his brow. Again, it is assumed that one year's detention of a man as a first-class misdemeanant is no punishment. When Monsignor Dupanloup was threatened with a prosecution under the Empire, the bishop treated the menace with contempt. A fine had for him no terror, because he had neither money, nor goods, nor land. Imprisonment offered charms to his imagination; "for," said he, "I have had no time these last ten years to read a book, and six months of uninterrupted study would be to me the rarest treat." But that confinement, which to the lover of books is hardly irksome, may be very painful to a man whose life has been one of incessant bodily activity, and who has spent his leisure either in exploring dis

tant countries or in watching the great campaigns of the German and French wars.

Colonel Baker has to suffer one year's imprisonment, to pay a fine of £500, and the costs of the prosecution; and, although in one sense he is a volunteer in this respect, yet, as a fact, he is mulcted also in the enormous costs of his own defence. Probably the total amount of the fine and costs of the prosecution and defence are not less than £1,500. If all this be too little, then we ask whether the judge was wrong in considering the services rendered by the offender to his country? Colonel Baker is not punished as a compensation to the injured lady. His punishment is a matter between him and the Crown as representing the public. Is it an absurdity to say that the Crown is to regard the merits of a man in the face of his demerits? Is no distinction to be drawn between a man who has rendered to his country brilliant service, and one who has devoted his energies to his own pleasure, to the gratification of self, and to the avoidance of all personal peril and discomfort? We do not desire to say one word in excuse of Colonel Baker, but we do protest against the baseless outcry raised against his sentence on the score of leniency.—*Law Journal.*

Curious Law Extracts. (*By Mr. F. F. Heard, of Boston.*)—We are gravely told by Bracton, and he is followed by Lord Coke, that the true reason why, by the common law, a father cannot inherit real estate by descent from his son, is, that inheritances are heavy, and descend as it were by the laws of gravitation, and cannot reascend. Co. Litt. 11. 2 Bl. Com. 212.

In the course of the argument in *Lincoln* v. *Wright*, 4 Beav., 171, Lord Langdale observed: "All interrogatories must, to some extent, make a suggestion to the witness. It would be perfectly nugatory to ask a witness if he knew anything about something."

"The sparks of all sciences in the world," says Sir Henry Finch, "are raked up in the ashes of the law." Law, p. 6.

A writer in the *Edinburgh Review*, No. 96, p. 491, thus speaks of the admirable reports of Saunders: "The example set by the special pleaders, of whom that tun of sottishness and quibbles, Chief Justice Saunders, is the delight," &c.

Shower reports a case of sharp practice, in which "the *attorney* and *counsel* both were checked for this mapping practice;" and they were told by Scroggs, Chief Justice, that "since you have gone so vigorously to work we will use the rigour of the law against you."—*Harwood* v. *Wheeler*, 2 Show., 79.

Serjeant Maynard, who died in the reign of William III., is said to have had "the ruling passion strong in death" to such a degree, that he left a will purposely worded so as to cause litigation, in order that sundry questions which had been "moot points" in his lifetime, might be settled for the benefit of posterity.

Baron Bramwell once observed: "Every person of any experience in courts of justice knows that a scintilla of evidence against a railway company is enough to secure a verdict for the plaintiff, and was once in a case before a most able judge, the late Chief Justice Jervis, in which I was beaten, and dare say rightly, in consequence of an observation of his: "Nothing is so easy as to be wise after the event."—*Cornman* v. *The Eastern Counties R. R. Co.*, 5 Jurist, N. S., 658.

In the "Table of Abbreviations" in that very excellent work, Bruton's "Compendium of the Law of Real Property," we find the following: "Bac. Tr. The Law Tracts of Lord *Byron.*"

"In some of the cases brought against Lord Bacon, implying corruption, the sums of money received by him were not gifts at all, but money borrowed, and recoverable as debts. Three of these cases gave rise, after Bacon's death, to a curious question. Being claimed by the leaders as *debts* due to them from the estate, the executors pleaded that they had been decided by the House of Lords to be *bribes.*" Bacon's Works, vol xiv. p. 264, note, ed. Spedding.

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

Welland Election Petition.

Buchner v. Currie.

(Reported by Mr. C. C. Robinson, Student-at-Law.)

36 Vict. c. 2, s. 3—Agency—Appointment of sub-agents.

[Welland, May 17, 1875.—Gwynne, J.]

In this case the respondent forwarded some books containing names of voters to one J. H., to put "into good hands to be selected by him for canvassing." Among others, J. H. gave one of the books to B., who was found guilty of corrupt practices, under 32 Vict. c. 21, s. 66.

James Miller, with him *P. McCarthy*, appeared for the petitioner.

J. G. Currie, the respondent, appeared in person, with him *Hardy* and *McClure*.

Gwynne, J., held, that J. H. was an agent of the respondent, specially authorised to appoint sub-agents, and that under such authority he appointed B. a sub-agent, and that the respondent was responsible for the corrupt practices of B., under the provisions of 36 Vict. c. 2, s. 3.

COURT OF ERROR AND APPEAL.

(Reported by Henry O'Brien, Esq., Barrister-at-Law.)

Halton Election Petition.

Harris, *Petitioner*, v. Barber, *Respondent*.

Before Richards, C. J., of Ontario, Strong, J., Burton, J., and Patterson, J.

Promise of a "nice present"—Bribery—Valuable consideration—Questions of fact in Appellate Courts.

The respondent said to the wife of a voter that if she would do what she could to prevent her husband from voting, he would give her a "nice present."

Held, That this was a promise of a *valuable consideration* within the meaning of 32 Vict. cap. 21, sec.

Appellate Courts will not, except under special circumstances, interfere with the finding of judges of court of first instance as to questions of fact depending on the veracity of witnesses and the credit to be given to them.

[September 20, 1875.]

The case was heard at Milton, on May 12th, and 13th, before the learned Chief Justice of the Court of Error and Appeal.

It appeared in evidence that the respondent and one McCraney called at the house of Nathan Robins to solicit his vote. There were present at the time Mr. and Mrs. Robins and their son.

The effect of Mrs. Robins' evidence was that respondent said to her if she would keep her husband at home from going to vote for Beaty, he would do something for her and give her a nice present. Mrs. Robins said she would do what she could. Respondent put his hand on her shoulder and said, "Do what you can and keep your husband from the election, and I will make you a nice present." Nathan Robins said, "Mr. Barber asked my missus whether she would try to get me not to go to the election, or to get me to vote for him, and he would do something for her."

The son, Nathan Henry Robins, said, "I heard Mr. Barber say if she would keep father at home or get him to vote for him (Barber), that he would do something nice for her, or make her a nice present, or get her something nice, I am not sure which; there was something nice about it, any way."

The respondent in his examination denied that he had offered Mrs. Robins anything. McCraney said he was present at the time of this conversation, but that he had heard nothing of any promise being made to Mrs. Robins.

Draper, C.J., E. & A., in giving judgment, considered that, in addition to these statements on oath, all the circumstances lead conclusively to the opinion that the story told by Mr. and Mrs. Robins and their son, and in which they all agreed, was substantially true, notwithstanding the denial by the respondent, and he gave judgment in favour of the petitioner: the effect being to disqualify the respondent.

From this decision the respondent appealed to the Court of Error and Appeal, when

Blake, Q.C. (Attorney-General for Dominion), and *Bethune* appeared for appellant,

James Beaty, Q.C., for petitioner.

Richards, C.J. We do not think we can properly interfere with the decision of the learned Chief Justice as to the facts found by him, the general rule being that the finding of the Judge who hears the witnesses when there is conflicting evidence, and the decision turns on the credibility of the witnesses, should prevail. He sees the witnesses, hears their testimony, observes the way in which they answer questions, and is in a much better position to decide on conflicting evidence than those who merely read the statements of the witnesses as they have been taken down. We are all of opinion that we ought not to interfere with the finding of the learned Chief Justice asto the matters of fact.

It was not urged before the learned Chief Justice that if he came to the conclusion that the respondent had offered to make Mrs. Robins a nice present if she would keep her husband from voting against him, that this was not bribery within the meaning of the statute of this province, 32 Vict., cap. 21, sec. 67.

The question is raised before this court for the first time; and it is contended that there must be something named as the present to be given, or it will not be a promise or offer of a *valuable consideration* (within the meaning of the act) to Mrs. Robins to induce her husband to vote or refrain from voting at the election.

It is not in terms an offer of money. Does it imply that something *of value* is to be given if the promise or offer is carried out? and if so, is that not what is meant by a promise of money or a valuable consideration? Not a promise of something which has no appreciable value, such, for instance, as to make a lady one of the patronesses of some exhibition, where no one was to receive any pecuniary benefit, but all were to pay money or buying a ticket to admit a person to grounds on which a picnic was being held, where each person attending paid for or furnished his own lunch; or to make an elector a member of an election committee, where he would receive no emolument, and would probably be compelled to labour, and might be subject to loss.

When this offer was made was it a mere pretence? Are we to presume the respondent wished Mrs. Robins to understand, as she appears to have understood, that she was to receive a present of some value, when he intended to give her something of no value or no appreciable value. This would be presuming a certain kind of fraud on his part, and in his favour to relieve him from what would be the consequence of his act, which I do not think that judges or courts usually do.

One of the earlier statutes on the subject of bribery, 7 & 8 Wm. 3, cap. 4, provided that no person to be elected to serve in Parliament "shall directly or indirectly make any promise to give any money, meat, drink, provision, *present, reward*, or entertainment to and for any person having a voice in the election, or for the use, advantage, benefit, employment, profit or preferment of any such person in order to be elected to serve in Parliament."

Our own Con. Stat. Canada, 22 Vict., cap. 6, sec. 82, provided that no candidate should directly or indirectly employ any means of corruption by giving any sum of money, office, place, *gratuity, reward*, or any bond, bill or note, or conveyance of land, *or any promise* of the same; nor shall he threaten any elector with losing any office, &c., with intent to corrupt or bribe any elector to vote for such candidate, *or to keep back* any elector from voting. Nor shall he support or open any house of public entertainment for the accommodation of the electors. And if any representative returned to Parliament is proven guilty of using any of the above means to procure his election, his election shall be declared void, and he shall be incapable of being a candidate or being elected during that Parliament.

The above provisions were repealed, and the Legislature of Canada passed the statute 23 Vict., cap. 17. The first three sub-sections of section 1 of that act define bribery in the same way as it is defined by the Imp. Stat. 17 & 18 Vict., cap. 102, and by sub-sections 1, 2 & 3 of sec. 67 of the Stat. of Ontario, 32 Vict., cap. 21. These provisions were in force when *Cooper* v. *Slade*, 27 L. T. Rep., O. S. 137, was decided in England, and I suppose are still in force there.

The words of Baron Alderson, after giving the judgment in *Cooper* v. *Slade*, as reported in 27 L. T. Rep., O. S., at p. 139, are: "I entertain this opinion also, whether the rest of the Court agree in it or not, that the words 'money or other valuable consideration' ought to be expounded, money or other valuable consideration estimable."

In construing this statute we must consider what was the intention of the Legislature? and there is no doubt the primary object was that votes should be given from the conviction in the mind of the voter and those who supported a candidate that he was the best person for the situation, and that the public interests would be best served by electing him. The evil to

be corrected was the supporting a candidate, not because he was the proper person, but for "*causa lucri.*" The supporting of the candidate because of personal benefit to himself; the exercise of the franchise not for the public good, but for personal gain in money or money's worth to the voter or the person inducing the elector to vote or not to vote, was what the Legislature wished to guard against.

Then what was the motive presented to the mind of Mrs. Robins in the case under consideration to induce her husband not to vote against respondent. It was that she was to receive some substantial advantage from it either in money or property; something of value. She was to have a *nice present*. The evidence shewed she considered it would be something of value, not of mere fanciful or imaginary value, but of real value that would be *appreciable*. What occurred would well justify her in supposing that the respondent intended to give her something of value, and that he intended to give her, in the language of the statute, a valuable (not a fanciful) consideration for inducing her husband not to vote; and she, entertaining that belief, tried to induce her husband to abstain from voting.

So that in fact the evil which the Legislature intended to prevent actually existed in this case. This woman was *corrupted* by the offer, and she endeavoured to exercise an influence over her husband from the desire to get the *present* which had been promised her.

I understand when a corrupt promise has not been carried out that the election judges in England, to use the language of Mr. Justice Willes in the *Lichfield case*, 1 O'M. & H. 27, "require as good *evidence* of that promise illegally made, as would be required if the promise were a legal one to sustain an action by (Barlow) the person to whom the promise was made against the respondent, upon Barlow voting for him, for not procuring or trying to procure him a place in the hospital."

But I do not understand that the promise must be one for which, were it not prohibited by the Corrupt Practices Act, an action would lie for the breach of it. The *evidence* of the promise requires to be satisfactory, and as far as we are concerned, that question has already been disposed of.

My brother Patterson has given me a note of some cases not referred to on the argument; the older ones shew that as a matter of pleading it was necessary to shew *what* was offered, and in that view would seem to go a long way in sustaining the view pressed upon us by the respondent, but the modern cases under this very statute are, I think, the other way.

I quote at some length the language of the learned judge who tried the Launceston Election Petition, in which Col. Deakin was respondent. In that case, as reported in 30 L. T. N. S., at p. 832, Mellor, J., said: In relation to the privilege granted by Col. Deakin to his tenants to shoot rabbits on the farms leased by them, "I cannot help thinking that it was to those tenants a valuable consideration, and *that the effect on the mind of these tenants* was that they had acquired by that concession a *valuable consideration*, capable of being represented by some money value. Of course I cannot estimate what money value, nor is it necessary that I should do so; it is only necessary that I should arrive at the conclusion that it was money or *money's worth*, and that the respondent considered that he was parting with something which was or might be in his hands a source of great enjoyment or pleasure, or otherwise, which he gives up to a tenant, and thereby destroys the effect of the reservation under which the tenant was formerly holding. I cannot help thinking, therefore, that it was a concession which had an appreciable value * * * I must see that in construing the act of Parliament intended to put down all corrupt practices and influences at an election, I am not narrowing by any construction of mine the effect of it, but am giving all proper effect to it. * * * The conclusion at which I have arrived is, that the giving of this concession to the tenants, under the circumstances, was either a promise or a grant; *it was not a legal grant*, because that would require something more than a parol expression; *but when we are dealing with an election question, we must deal with the motives which are apparent*, and which appear from the act itself. I cannot go into any intention of Col. Deakin. I must be governed by what he said, and by the inferences I ought to draw from *what he did and what he said;* and *by the inferences drawn* by those persons who were present, and who heard *what he did and what he said.*"

Here, it will be observed, that even had it not been for the Corrupt Practices Act, Col. Deakin could not have been by law compelled to make a legal grant of the right of killing the rabbits, and could not have been sued for any more than the promise made in this case; but nevertheless, the promise was considered as equally corrupt. Other expressions, I think, warrant the con-

clusion that the apparent motives of the party and the inference from the act itself, should influence our decision.

My brother Patterson has also drawn my attention to the case of *Simpson* v. *Yeend*, 4 L. R. Q. B., at p. 628. That was an action to recover a penalty for bribery, and it was virtually decided under the Imp. Stat. 17 & 18 Vict., cap. 102, sec. 2, sub-sec. 1, as I have already mentioned, similar to the section of the provincial statute under which we are called on to decide the case before us. The promise to the voter was, "I said he would be *remunerated* for his loss of time." The learned Judge who gave the judgment, Mr. Justice Mellor, said: "We delayed giving our judgment at the close of the argument, not because of any doubt existing in our minds as to the answer which we ought to return to the question put by the judge of the county court, but because we were assured by the counsel for the defendant that the election judges had in their decisions upon the section taken a view differing from that which we were disposed to take. Had the fact been as suggested, we should not have felt ourselves bound by the opinion of the election judges, unless upon consideration we had agreed with it, but we thought it desirable to ascertain what opinion had in fact been expressed by them with reference to a subject with which their duties had necessarily made them familiar. Upon inquiry, we find, as we anticipated, that those learned judges have expressed no opinion adverse to the conclusion at which we have arrived. Their observations upon this section, so far as it refers to an *offer* or *promise not accepted*, merely expressed a rule of prudence and caution as to the quantity and character of the evidence by which such an offer or promise should be considered as proved. * * *

We cannot doubt the words used, "that the voter would be remunerated for what loss of time might occur," did, under the circumstances, amount to an offer or promise to procure, or to endeavour to procure, "money or valuable consideration to a voter" in order to induce him to vote at the election in question. The expression remuneration for loss of time would necessarily convey to the apprehension of the voter that if he would vote for a particular candidate he should receive, either directly from the person offering or by his procurement, *money* or valuable consideration which he would not otherwise obtain; and any assurance of that kind which can *only* be so understood, is calculated to operate upon the mind of the elector as a direct inducement to vote for such candidate.

After referring to *Cooper* v. *Slade*, 6 H. L. C. 746, the learned Judge proceeds: "It is so important to the public interest that electors should be left free to vote without any disturbing influence of any kind, that we feel ourselves bound, in construing the statute in question, to give full effect to the plain meaning of the words used, and to apply them to the substantial facts of the case *without raising subtle distinctions or refinements as to the precise words or expressions in which the promise or offer may be conveyed.*"

Here we have no doubt that the words used did substantially convey to the mind of Mrs. Robins that if she used her influence, as the respondent wished her to, she would, in the language just quoted, receive money or valuable consideration which she would not otherwise obtain, and this was calculated to operate on her mind as a direct inducement to do that which respondent wished her to do.

Our duty, then, is to give effect to this statute, though the consequences of our judgment to the respondent will be so very serious. We are not at liberty to fritter away by subtle distinctions an act of Parliament. The same learned Judge, whose language I have quoted above, Mr. Justice Mellor, in one of our recent cases, decided last year, the *Bolton case*, reported in 31 L. T. N. S., at p. 196, uses the following language on this subject: "I take it to be the duty of a judge to take care that he does not fritter away the meaning of acts of Parliament by any subtle construction, but to give a bold but at the same time cautious decision, which shall further rather than defeat the object of any act of Parliament of this character which he has to construe."

We are all of opinion that the judgment of the learned Chief Justice should be affirmed: that the clerk of this court should certify to the clerk of the Legislative Assembly that the said respondent was not duly elected: that the said respondent was proved to have been guilty of a corrupt practice at such election, and that such corrupt practice was by promising to Christina Robins, the wife of Nathan Robins, if she would keep her husband from voting for Mr. Beaty at the said election, he would give her a nice present.

There is no reason to believe that corrupt practices prevailed extensively at said election.

We direct the respondent to pay the costs of the trial, of the petition, and of this appeal.

Strong, J. The question of fact argued on this appeal must, I am of opinion, be held to be concluded by the determination of the learned Judge

who tried the petition. It depended altogether on the credit to be given to witnesses who were examined before the Judge in open court; and there was therefore afforded to him opportunities of observing the demeanour of the witnesses, and of forming a judgment as to their truthfulness, which this court does not possess. It is a principle well established in the procedure of appellate tribunals, including the highest court of the empire—the House of Lords—that questions of fact depending on the veracity of witnesses, and the credit to be given to them, are concluded by the finding of the judge of the court of first instance, in whose presence the testimony is given.

This rule was acted on in this court in the case of *Sanderson* v. *Burdett*, 18 Gr. 417; and in addition to that case and the authorities there referred to, I may mention the cases of *Penn* v. *Bibby*, L. R. 2 Ch. App. 127; and *Ball* v. *Ray*, 28 L. T. Rep., 346 (per Selborne, C.), and I would also refer to the judgment of Coleridge, J., in the case of *R.* v. *Bertrand*, L. R. 1 P. C. 535, who speaks of written as compared with oral evidence, as "the dead body of evidence without its spirit; which is supplied when given openly and orally by the eye and ear of those who receive it."

Taking the promise to be proved, as found by the Chief Justice, the case of *Simpson* v. *Veend*, L. R. 4 Q. B. 626, discovered by the research of my brother Patterson, clearly shows that we must hold it to have been a promise or offer of "valuable consideration," within section 67, sub-section 1 of 32 Vict. cap. 21, a conclusion to which, for reasons which I do not think it necessary to give at length, as they have been already stated in the judgment of the Chief Justice, I should have come, even if we had not had the satisfaction of knowing that our view was supported by the high authority of the English Court of Queen's Bench.

In my judgment the appeal must be dismissed with costs, and the certificate should be as already indicated by the Chief Justice.

BURTON, J. I fully concur in the judgments which have just been pronounced. The only difficulty I have felt is as to whether the words alleged to have been used come within the 67th section, but when one regards the mischief which the Legislature intended to deal with, and the words of our own Interpretation Act, which declares that every act shall receive such fair, large and liberal interpretation as will best ensure the attainment of the object of the act according to its true intent, meaning and spirit, it is impossible, I think, to come to any other conclusion than that this promise comes within it. To hold otherwise would open the door to every kind of ingenious evasion of the act.

The Legislature has endeavoured to put down an evil which prevailed to an alarming extent throughout the Province, and to meet every possible case of bribery or other corrupt practices; and we are bound, I think, to give full effect to the meaning of the language they have employed without, as expressed in one of the cases, raising subtle distinctions or refinements as to the precise words or expressions in which the offer or promise may be conveyed. A "nice present" must have been understood by both parties as something of value, and would convey to the mind of the party to whom it was made, that if the elector would vote for the candidate he would receive something, and could only be so understood.

I agree, therefore, that the appeal should be dismissed.

PATTERSON, J. The finding of his lordship, the Chief Justice of this court, that the respondent promised Christina Robins a nice present if she would procure her husband to vote for the respondent or to refrain from voting, is clearly supported by the evidence. After hearing the witnesses, and seeing their demeanour, and testing the value of their evidence by a consideration of the circumstances which tended to give probability to the statement on the one side, as against the opposing evidence of the respondent, his lordship arrives at the conclusion that the charge is proved.

We are, it is true, to sit in appeal from decisions upon questions of fact as well as upon questions of law; but this does not necessarily mean that we are to criticise the opinion formed of the witnesses by the judge who sees and hears them. In many cases the finding of a fact depends not so much upon the credit to be attached to one statement as against another, or to the credit to be accorded to individual witnesses, as upon the proper deduction from facts which are not seriously disputed. On questions depending on such considerations, appellate courts frequently reverse the finding of courts below. Even where there is conflicting evidence, and where much may depend on the credit given to particular witnesses, the appellate court may, by the report of the judge who hears the witnesses, be enabled to review his finding; as noticed by Lord O'Hagan in the case of *Symington* v. *Symington*, L. R. 2 Sc. App.

424, where he says: "On the first question we have been fairly pressed by the argument, that the Lord Ordinary, who had the advantage of seeing the witnesses and judging of their veracity from their demeanour before himself, should not have his decision lightly set aside; and undoubtedly the value of *viva voce* testimony can be much better ascertained by those who hear it than by those who know it only by report. But there is this peculiarity in the present case, that the Lord Ordinary has put us somewhat in his own position, and enabled us, so to speak, to see with his own eyes, when he states the impression produced upon him by the principal witness, and describes her as 'a girl of modest appearance, who gave her testimony generally with an air of truthfulness,' and he speaks favourably of her aunt, another witness, whose part in the transactions is of great importance. Besides we are concerned directly, not with the judgment of the Lord Ordinary, but with that which overruled it, and the latter we ought to affirm, unless we are satisfied of its error." In the present case I can see no ground for arriving at a conclusion different from that of his lordship the Chief Justice, who gives credit to the Robins' family after carefully balancing the reasons for preferring their account of the transaction.

I have, however, had strong doubts whether the promise to make a "*nice present*" was an offer of "money or valuable consideration" within the meaning of section 67 of the statute. This point was taken by Mr. Blake in his argument before us, though not taken before the Chief Justice at the trial, and we were referred to a dictum of Alderson B., in *Cooper* v. *Slade*, which is noted in the report of that case, in 27 L. T. 139, and 2 Jur. N.S. 1016, though not in the report in 6 E. & B. 447. The report in the Jurist is, "Alderson B. added: I entertain this opinion also, that the words 'money or other valuable consideration' ought to be construed to mean 'money or other valuable consideration to be estimated by money.'"

I have not seen any case in which any Judge or court has actually decided that any offer or promise which came in question, was not an offer of money or valuable consideration, except the decision in the Exchequer Chamber, in *Cooper* v. *Slade*, where it was held that giving money to a voter to pay his railway fare in going to vote was not giving money to induce him to vote. That decision was, however, reversed in the House of Lords, 6 H. L. Cas. 746. In the *Launceston case*, 2 O'M. & H. 129; 30 L. J. N. S. 823, Mr. Justice Mellor held, that an offer by a landlord to his tenants of the privilege of shooting rabbits on their farms was bribery, because it was a valuable consideration, capable of being represented by some money value. If the question had been merely whether an offer of a nice present was an offer of something having some money value, I should not have hesitated much as to the correct decision; because I think there can be no doubt that such an offer would convey to the mind of the person to whom it was addressed, that something which was either money or money's worth was to be given. My doubt has been not as to *some value* being implied, but as to whether the words "valuable consideration," which are technical words, should not, in construing this statute, receive the same construction as they would receive with reference to contracts.

The present statute takes the place of one in which the words were apparently of a more general character, viz., Con. Stat. Can. c. 6, s. 82, where the words used were "sum of money, office, place, employment, *gratuity*, *reward*, or any bond, bill or note, or conveyance of land." Having regard to this change in phraseology, as well as to the fact that the words "valuable consideration" have a recognised meaning in law, it seemed to me that we ought to construe the clause as requiring such a consideration as would ordinarily support a promise; and that the offer now in question was too indefinite in its character to fulfil that condition.

The adequacy of the consideration for which a promise is made, is usually not a material inquiry, because parties may agree for what consideration they please; but where there is no agreement—where there is merely an unaccepted offer, and the adequacy is not, therefore, settled by consent—it would seem that a consideration which is entirely indefinite is not one which can be called a "valuable consideration," as we are accustomed to use the term. Thus a promise to forbear "*for a little time*," or for "*some time*" is too indefinite to constitute a good consideration for a guaranty (Ch. Cont. 29, citing 1 Roll. Abr. 23, pl. 25) which doctrine is approved by Bramwell, B., in giving the judgment of himself and Watson, B., in *Oldershaw* v. *King*, 2 H. & N. 399, and in the same case in the Exchequer Chamber by Cockburn, C.J., at p. 519 of the same volume, and it does not seem to be disputed by any of the Judges who gave judgment in that case; and in *Davy* v. *Baker*, 4 Burr. 2471, a declaration in debt on 2 Geo. 2, c. 24, which alleged in the words of the statute that the defendant did receive "a gift or reward," was

held bad in arrest of judgment, for not specifying what particular species of reward was given. This case is cited by Patterson, J., in *Baker* v. *Rusk*, 15 Q. B. 870, as establishing the position that the declaration must state the means by which the voter was corrupted.

The rule of construction stated in *Lord Huntingtower* v. *Gardiner*, 1 B. & C. 297, viz., that "it is not for us to say what might be politically desirable, but what is the provision of the Legislature, and that in order to answer that question we must resort to established rules for construing acts of this nature," seemed to me to make it proper to treat the section as I have indicated; and I do not now say that that view is incorrect. But the judgment of the English Court of Queen's Bench, in *Simpson* v. *Yeend*, L. R. 4 Q. B. 626, is so very much in point upon the construction of the English statute, with which ours corresponds, as in my opinion to govern the present case. The promise in that case was that the voter would be remunerated for any loss of time in going to vote, and there was no acceptance of the offer on the part of the voter. It was argued that the promise must be of something tangible, and that there was no promise which, if accepted, would, putting aside the illegality, have supported an action. The judgment of the Court was given by Mellor, J., who said, "We cannot doubt that the words admitted to have been used by the defendant, viz., 'that the voter would be remunerated for what loss of time might occur,' did, under the circumstances, amount to an 'offer or promise' to procure, or endeavour to procure, money or valuable consideration to a voter in order to induce him to vote (at the election in question). The expression 'remuneration for loss of time' would necessarily convey to the apprehension of the voter, that if he would vote for a particular candidate he should receive, either directly from the person offering, or by his procurement, money or valuable consideration which he would not otherwise obtain; and any assurance of that kind, which can *only* be so understood, is calculated to operate on the mind of the elector as a direct inducement to vote for such candidate. If any authority were required to induce us to adopt this view of the transaction in the present case, it is supplied by that of *Cooper* v. *Slade*, 6 H. L. Cas. 746, which upon this point is not distinguishable in principle from the present case. It is so important to the public interest that electors should be left free to vote without any disturbing influence of any kind, that we feel ourselves bound, in construing the statute in question, to give full effect to the plain meaning of the words used, and to apply them to the substantial facts of the case without raising subtle distinctions or refinements as to the precise words or expressions in which the promise or offer may be conveyed."

I agree that the judgment should be affirmed.

Appeal dismissed with costs.

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS

FOR FEBRUARY, MARCH AND APRIL, 1875.

From the American Law Review.

ABANDONMENT.—*See* FREIGHT.

ACTION.—*See* ESTOPPEL; INJUNCTION, 2.

ADMINISTRATION.—*See* EXECUTORS AND ADMINISTRATORS.

ADVANCEMENT.

Bequest in trust for L. for life, and after his death as he should by will appoint, and in default of appointment to L.'s children. The testator empowered his trustees at any time during L.'s life to apply a moiety of the trust fund "in or towards the preferment or advancement of L. or otherwise for his benefit, in such manner as the trustees should in their discretion think fit." *Held*, that the trustees might apply half the trust fund in payment of debts incurred by L. which absorbed nearly the whole of his income, and which L. could not pay from his own resources.—*Lowther* v. *Bentinck*, L. R. 19 Eq. 166.

AGENCY.—*See* PRINCIPAL AND AGENT.

AGREEMENT.—*See* VENDOR AND PURCHASER.

AMBIGUITY.—*See* LEGACY, 2.

ANNUITY.

An annuity was charged upon land with power of distress and entry; but the quarterly payments of the annuity fell due about three weeks after rent day. *Held*, that the annuitant must wait for payment until the rent day, and that no portion of the prior rent was to be kept in hand for the purpose of paying the annuity.—*Hasluck* v. *Pedley*, L. R. 19 Eq. 271.

APPLICATION OF SECURITIES.—*See* BANKRUPTCY, 4.

ASSENT.—*See* LEGACY, 4.

ASSIGNMENT.—*See* BOND; CHECK, 1.

BAILMENT.—*See* NEGLIGENCE, 3.

BANK.

The directors of a bank passed resolutions to increase the capital by the issue of 20,000

new shares of £50 each, to be allotted to the proprietors of the bank in the proportion of one new for every old share; £25 premium and £5 call to be paid on each new share. Shares not taken by proprietors were to be disposed of at £30 premium. The directors agreed to deliver all the untaken shares to S. Finding that he could not dispose of all the shares so allotted him, S. applied to the defendants, who were four directors of the bank, to relieve him; and accordingly they took a large number of S.'s shares, and afterwards disposed of them at a profit. *Held*, that the defendants must account to the bank for the profits they had so received.—*Parker* v. *McKenna*, L. R. 10 Ch. 96.

Bankruptcy.

1. J. executed a bill of sale to H. to secure repayment of a sum composed of one amount due other parties upon two bills of sale, which amount H. paid off, and of an advance made to J. by H. At the time of the bill of sale to H. he was aware that J. had committed an act of bankruptcy, upon which J. was subsequently adjudged bankrupt. *Held*, that the bill of sale to H. was valid against the trustee in bankruptcy to the extent of the two bills of sale which H. had paid off.—*Ex parte Harris. In re James*, L. R. 19 Eq. 253.

2. At a creditors' meeting in liquidation proceedings the solicitor of a creditor asked the debtor whether a certain letter was in his handwriting, and the debtor replied that it was not. The solicitor then asked the debtor whether the letter was written by his authority; and the debtor's solicitor thereupon asked to see the letter, but this was refused. The debtor's solicitor then advised him not to answer the question, and the examination proceeded no further. Resolutions accepting a composition were passed. *Held*, that the debtor's refusal to answer said question did not render said resolution invalid,—*Ex parte Mackenzie. In re Helliwell*, L. R. 10 Ch. 88.

3. The proprietor of a phosphate mine who gets the phosphate out of the ground, makes it marketable and sells it, is not a trader under the English Bankrupt Act.—*Ex parte Schomberg*, L. R. 10 Ch. 172.

4. The drawer, acceptor, and indorser of a bill of exchange became insolvent, and the holder realised a portion of the bill from certain securities. Before the holder had realised his security, he proved for the full amount of the bill against the indorser, who was in liquidation, and received a dividend. *Held*, that the proof must be reduced by the amount the holder received from the security, and that any excess of dividend must be repaid to the liquidator.—*In re Barned's Banking Co. Ex parte Joint Stock Discount Co.*, L. R. 10 Ch. 198; s. c. L. R. 19 Eq. 1; 9 Am. Law Rev. 470.

5. The discharge in bankruptcy of the acceptor of a bill of exchange does not discharge the liability of the drawer to the holder; otherwise if the holder agrees to accept a composition from the acceptor.—*Ex parte Jacobs*, L. R. 10 Ch. 211.

See Bill in Equity, 2; Receiver.

Bequest.—*See* Advancement; Legacy; Residue; Vested Interest.

Bill in Equity.

1. An administratrix, who had exercised the option of becoming a partner in respect of the intestate's share, in a partnership business in which he was partner, assigned her share to trustees in trust to pay the intestate's debts, and then in trust for her. She subsequently assigned her interest in said share to trustees upon certain trusts. The next of kin, who were also coheiresses of the intestate, and interested under his marriage settlement, filed a bill against the administratrix, her assignees in trust, and the trustees of the marriage settlement, praying administration of the real and personal estate of the intestate. The assignees in trust demurred for multifariousness. *Held*, that, as the various rights and interests of the plaintiffs could be most conveniently ascertained in one suit, the demurrer must be overruled.—*Coates* v. *Legard*, L. R. 19 Eq. 56.

2. A bankrupt should not be joined as defendant in a bill in equity brought by his trustee in bankruptcy, charging that the bankrupt has conveyed away his property so as to defeat creditors. A party to a fraud may be made a defendant in a bill in equity for the purpose of obtaining discovery when he is an agent (under which term is included the case of his being an attorney or solicitor) or an arbitrator.—See *Weise* v. *Wardle*, L. R. 19 Eq. 171.

Bill of Lading.—*See* Sale.

Bill of Sale.—*See* Bankruptcy.

Bills and Notes.—*See* Bankruptcy, 4, 5; Check, 1; Frauds, Statute of, 2; Sale.

Bond.

A company issued a bond to A., who assigned it to B., who gave the company notice of the assignment, and the company accepted the notice. *Held*, that the company had precluded itself from setting up against B. equities between itself and A.—*In re Hercules Insurance Co., Brinton's Claims*, L. R. 19 Eq. 302.

Broker.

The owner of freehold property gave a real estate agent written instructions, requesting him to procure a purchaser for the property which he described, and stating the price. *Held*, that the agent had no authority to enter into a contract for the sale of the property.—*Hamer* v. *Sharp*, L. R. 19 Eq. 108.

Burden of Proof.—*See* Seaworthiness.

Calls.—*See* Trust, 1.

Cargo.—*See* Insurance, 1.

Carrier.—*See* Damages, 1, 3.

Charter-party.—*See* Insurance, 2.

Check.

1. A check is not an assignment of money in the hands of a banker: it is a bill of exchange payable at a banker's.—*Hopkinson* v. *Forster*, L. R. 19 Eq. 74.

2. The prisoner was indicted for obtaining goods under false pretences, that he had £5 in a certain bank, that he had authority to draw a check on the bank for that sum, and that a check which he had given was a good and valid order for the payment of said sum; by means of which pretences he obtained certain goods. The prisoner had opened an account with a bank, and had drawn out all his deposit but 5s. He went to the prosecutors and took said goods, saying that he wished to pay ready money for them, and gave a check for £5 on said bank. The prisoner knew the check would not be paid, and he did not intend to meet it when he gave it. *Held*, that there was evidence that the prisoner falsely pretended that the check was a good and valid order for the payment of £5. *It seems*, that there was evidence that the prisoner falsely pretended that he had authority to draw said check, but that there was no evidence that he pretended he had £5 in the bank.—*Queen* v. *Hazelton*, L. R. 2 C. C. 134.

COLLISION.

The steamship A., towing the disabled steamship B., which belonged to the owners of the A., ran into a sailing vessel, and injured her so that she foundered. Before the sailing-vessel sunk, the B. ranged up and slightly injured her. The A. was to blame for the collision. *Held*, that the B. was not also to blame, as she was not, in intendment of law, one vessel with the A.—*Union Steamship Co.* v. *Owners of the Aracan, the American, and the Syria*, L. R. 6 P. C. 127; s. c. L. R. 4 Ad. & Ec. 226; Am. Law Rev. 473.

COMMON CARRIER.—*See* DAMAGES, 1, 3.

CONSEQUENTIAL DAMAGES.—*See* DAMAGES.

CONSTRUCTION. — *See* ADVANCEMENT; INSURANCE, 1; LEGACY; RESIDUE; SALE]; SETTLEMENT, 1.

CONTRACT.

Certain trucks in the possession of the plaintiffs were claimed by the K. P. Company and the defendant. The defendant demanded the trucks, and the plaintiffs wrote to the defendant asking for an indemnity if they gave them up. The defendant replied giving no answer as to the indemnity, and demanding the trucks forthwith. The plaintiffs then sent them to the defendant. The K. P. Company brought trover against the plaintiffs, and recovered. *Held*, that there was evidence of an implied promise by the defendant to indemnify the plaintiffs.—*Dugdale* v. *Lovering*, L. R. 10 C. P. 196.

See DAMAGES, 3; FRAUDS, STATUTE OF, 3; FREIGHT; INSURANCE, 1; LICENSE; NEGLIGENCE, 3; NOTICE TO TREAT; PLEADING; SALE; VENDOR AND PURCHASER; VESTED INTEREST.

CONTRIBUTION.—*See* MARSHALLING ASSETS.

CONVERSION.

1. In an administration suit wherein partition was asked, a sale was ordered. After the decree, but before the sale, one of the parties entitled to a share of the real estate died. *Held*, that the real estate had been converted into personal, and passed to the personal representatives of said deceased beneficiary.—*Arnold* v. *Dixon*, 19 Eq. 113.

2. A., B., and C. were tenants in common of land. C. became of unsound mind, but was not found so by inquisition. A. and B. leased a portion of the land, and sold another portion, with covenants that C. should convey her share, and for quiet enjoyment; and with a proviso that they would stand possessed of one-fourth of the rent and purchase-money in trust for C. B. became of unsound mind, and A. leased and conveyed other portions of said land on like terms with the above. C. died, and afterwards B. died. The leases and sales were subsequently confirmed under the Lunacy Regulation Act. *Held*, That the proceeds of the lease and sale effected after B. became of unsound mind were real estate as between B.'s real and personal representatives, and that the proceeds of the sale and lease in which B. concurred were, so far as B. and C.'s shares were concerned, personalty. —*In re Mary Smith*, L. R. 10 Ch. 79.

COPYRIGHT.

The plaintiffs purchased the copyright in "Beeton's Annual," and Beeton agreed to give his whole time to the plaintiffs' bookselling business, and not to engage in any other enterprise without their consent, and the plaintiffs were to have the use of Beeton's name for present or future publications, and Beeton was not to use his name in any publication without the plaintiffs' consent. Beeton was restrained from advertising a notice that he had no connection with the annual published by the plaintiffs and called "Beeton's Annual," and that he had devised his usual annual for the coming season, to be issued by a firm other than the plaintiffs.—*Ward* v. *Beeton*, L. R. 19 Eq. 207.

CORPORATION.—*See* BANK.

COSTS.

The costs of a suit for administration of the trusts of the testator's will, which concerned real and personal estate, must be borne first by the residuary personal estate; and the specifically bequeathed personalty and realty and the residuary devised realty must contribute rateably to make up the deficiency. —*Jackson* v. *Pease*, L. R. 19 Eq. 66.

See DAMAGES, 1.

CRIMINAL INTENT.—*See* FABRICATING VOTES.

DAMAGES.

1. H. employed the plaintiffs, common carriers, to carry his pictures. The plaintiffs employed the defendants to carry them part of the way. The pictures were damaged by the defendants' negligence, and H. sued the plaintiffs and recovered damages with costs.

The defendants refused to defend the above action. *Held*, that the plaintiffs were entitled to recover the amount of damages which H. had recovered of them, but not the costs they had paid H.—*Baxendale* v. *London, Chatham, & Dover Railway Co.*, L. R 10 Ex. (Ex. Ch.) 35.

2. A passenger on a railway was injured by an accident, and died in consequence. His executrix brought an action for expenses of medical attendance, and the loss occasioned to his estate from his being unable to attend to his business previous to his death. *Held*, that the executrix was entitled to recover for expenses and loss to business.—*Bradshaw* v. *Lancashire & Yorkshire Railway Co.*, L. R. 10 C. P. 189.

3. The plaintiff took tickets for himself, his wife, and two children aged respectively five and seven years, to go by the midnight train on the defendants' railway from A to B. The train did not go to B., and the plaintiff and his family were obliged to get out at C. and walk to B., a distance of five miles. It was a wet night, and the plaintiff's wife caught cold, and was unable to assist her husband in his business for some time in consequence, and expenses were incurred for medical attendance. The jury found a verdict of £8 damages for the plaintiff's inconvenience in being obliged to walk home, and £20 in respect of the wife's illness and its consequence. *Held*, that the verdict for the £8 must stand; but the damages compensated by the £20 were too remote, and that the verdict must be reduced by this sum. Cockburn, C.J.: "I think that the nearest approach to anything like a fixed rule is this: that to entitle a person to damages by reason of a breach of contract, the injury for which compensation is asked should be one that may be fairly taken to have been contemplated by the parties as the possible result of the breach of contract."—*Hobbs* v. *London & South Western Railway Co.*, L. R. 10 Q. B. 111.

See Negligence, 1; Pilot.

Decree.—*See* Conversion.

Demurrer.—*See* Bill in Equity, 1.

Devise.—*See* Advancement; Construction; Legacy; Residue; Vested Interest.

Director.—*See* Bank.

Disaffirmance.—*See* Pleading.

Divorce.—*See* Settlement, 2.

Documents, Production of.

Petition for winding up the Emma Mining Company. The secretary filed an affidavit denying the allegations in the petition; and he was cross-examined upon the affidavit, and served with a notice to produce the books of the company, which he refused to do. *Held*, that the petitioner was entitled to the production of the books for the purpose of testing the secretary's memory.—*In re Emma Silver Mining Co.*, L. R. 10 Ch. 194.

Domicile.—*See* Settlement, 2.

Easement.

A stream was divided immemorially, but by artificial means, into two branches at E., one branch flowing on into the river Irwell, and the second branch to a farm where it supplied a trough, the overflow percolating by no defined course into said river. In 1847, W., who owned said farm and thence to the Irwell, collected said overflow and carried it by a drain to a mill on the banks of the Irwell. In 1865, W. purchased the land through which said second branch flowed from E. to said farm. In 1867, W. sold said mill with all water rights to the plaintiff. *Held*, that the plaintiff could maintain an action against a riparian owner above E. for obstructing the flow of the water.—*Holker* v. *Porritt*, L. R. 10 Ex. 59; s. c. 8 Ex. 107; 7 Am. Law Rev. 684.

Election.—*See* Insurance, 1.

Eminent Domain.

In August, 1864, the plaintiffs were served by a railway company with notice to treat. In November, 1864, the company entered into possession of the plaintiffs' land. On the 20th of August, 1869, the verdict of a jury assessed the plaintiffs' compensation at £2,000. *Held*, that the company must pay the plaintiffs' interest on said £2,000 from November, 1864, when the company took possession.—*Rhys* v. *Dare Valley Railway Co.*, L. R. 19 Eq. 93.

See Notice to Treat.

Equity.—*See* Bill in Equity; Bond; Frauds, Statute of, 1; Libel; Mine; Notice to Treat.

Estoppel.

Declaration by indorsee of a bill to exchange against the acceptor. Plea by way of estoppel, setting out the proceedings in a former action by the plaintiff, wherein the defendant had pleaded a composition deed to which the plaintiff was a party, whereby the defendant was to be discharged from his debts, including said bill, on payment of a composition in two instalments, in default of payment the deed to be void; the plaintiff had replied non-payment of the first instalment, and the defendant had rejoined a mistake in non-payment on the proper day, and a subsequent tender; whereupon the plaintiff confessed the plea and paid costs. To this plea the plaintiff replied that another instalment had become payable, and that the defendant had made default whereby the composition deed became void. Demurrer. *Held*, that the replication was good.—*Hall* v. *Levy*, L. R. 10 C. P. 154.

Evidence.—*See* Bankruptcy, 2; Check, 2; Documents, Production of; Marriage; Negligence, 2; Seaworthiness.

Executors and Administrators.

1. An administrator of C. obtained judgment in Calcutta against N., who subsequently died in England. *Held*, that the

administrator was entitled to receive payment of his claim without taking out administration to C. in England.—*In re Macnichol*, L. R. 19 Eq. 81.

2. A testator appointed his partner and another person his executors. It was held that the partner executor had a right to retain in his hands a sum of money in satisfaction of a balance due from the testator to the firm, although the amount of such balance had not been determined, and the partnership accounts had not been taken.—*In re Morris's Estate. Morris* v. *Morris*, L. R. 10 Ch. 68.

3. A testator was a partner in a firm under an agreement whereby on the death of a partner his share was to be determined and taken from the firm in two years. The testator's will directed that his personal estate should be sold and divided among his children on their arriving at the age of twenty-five; and he appointed three executors, of whom one was his partner. The testator's share was not withdrawn after his death, but interest was allowed upon it. All the legatees to whom such share belonged acquiesced in this arrangement, except the plaintiff, who filed a bill demanding an account and a share in the profits which had arisen from the employment of said share in the business. *Held*, that the bill must be dismissed.—*Vyse* v. *Foster*, L. R. 7 H. L. 318; s. c. L. R. 8 Ch. 808; 7 Am. Law Rev. 677.

See Costs; Legacy, 4; Partnership.

Fabricating Votes.

"Fabricating" a vote means an act done with criminal intention, *mens rea*.—*Aberdare Local Board* v. *Hammett*, L. R. 10 Q. B. 162.

False Pretences.—*See* Check, 2.

Foreign Law.—*See* Settlement, 2.

Fraud.—*See* Bill in Equity, 2; Pleading.

Frauds, Statute of.

1. C. promised the plaintiff to give her a leasehold house for use as a lodging-house during her life if she would pay ground rent and taxes; and on the faith of C.'s promise the plaintiff gave up entering into business and entered into possession of the house, where she supported herself by letting lodgings. C. died, and her sole legatee and executor brought ejectment against the plaintiff, who thereupon filed a bill in equity to restrain the action and for a declaration that she was entitled to the house for her life. *Held*, that the Statute of Frauds was not a bar to the bill; and the declaration and injunction prayed were granted.—*Coles* v. *Pilkington*, L. R. 19 Eq. 174.

2. A. requested B. to join in a promissory note with C., and promised to indemnify B. if he would do so. *Held*, that A.'s promise was not within the Statute of Frauds; and that B., who became A.'s executor, was entitled to retain the amount he had been obliged to pay on said note.—*Wildes* v. *Dudlow*, L. R. 19 Eq. 198.

3. The defendant's son H. ordered three cases of leather cloth of the plaintiffs in London. H. was then informed that Rotterdam was blockaded, and the plaintiffs asked how the cloth was to be sent. H. directed them to send it through G. at Ostend. Before the order could be executed Rotterdam was open, and G. had ceased to receive goods to forward to Rotterdam. The plaintiffs thereupon forwarded the cloth by the customary route to Rotterdam, and wrote the defendant a letter enclosing an invoice and stating the above facts. A few days later the ship containing the cloth was stranded, and the cloth spoiled. About four months later the plaintiffs wrote another letter, requesting payment of a balance, including therein the value of the cloth. The defendant replied, "In looking over your statement I find that you have charged me for the goods, which have been entirely lost by the sunk ship, being sent *via* Rotterdam. You state in your letter that H. instructed you to send the goods through G. *via* Ostend; but, on account of G.'s having given up the Ostend route, you sent, without any instruction, the goods *via* Rotterdam..... I learn that G. would not have refused the goods... ..I expected you would have informed H. about it, and asked him how you were to send it in that case." During said four months the defendant had given further orders, which were executed by the plaintiffs, and the goods sent *via* Rotterdam. The jury found that the defendant had assented to the change of route from Ostend to Rotterdam before the loss of the cloth. *Held*, that said letters contained a sufficient memorandum in writing to satisfy the Statute of Frauds.—*Leather Cloth Co.* v. *Hieronimus*, L. R. 10 Q. B. 140.

See Vendor and Purchaser.

Freight.

The *Kathleen*, without fault of her own, was run into and abandoned; and she was afterwards brought into an intermediate port by salvors. At the request of its owners, the cargo was sold reserving all questions of freight. Before the sale the ship-owners offered to carry the cargo to its place of destination. The ship-owners requested payment of full freight from the proceeds of the cargo after payment of salvage. *Held*, that by the abandonment the contract between the ship-owners and the shippers was determined, and that the ship-owners were not entitled to freight.—*The Kathleen*, L. R. 4 Ad. & Eq. 269.

See Insurance, 2.

Gift.—*See* Trust, Declaration of.

Highway.—*See* License.

Implied Contract.—*See* Contract.

Indemnity.—*See* Contract.

Indictment.—*See* Check, 2.

Injunction.

1. An injunction was granted to restrain proceedings by the heir-at law and next of kin for obtaining administration and opposing probate to a draft will, the dispositions in which the defendants had by deed confirmed.—*Wilcocks* v. *Carter*, L. R. Eq. 327.

2. The plaintiff brought a bill against her copartners, alleging that they had formed a scheme for transferring the business so as to

injure the plaintiff; and praying for a sale and accounts, &c. Shortly afterward the plaintiff obtained a summons from a police court against the same parties for conspiring to defraud her of her just share in the partnership business. Motion to dismiss proceedings on the summons refused.—*Saull* v. *Browne*, L. R. 10 Ch. 64.

See Copyright; Libel; Mine.

Inspection.—*See* Patent, 1.

Insurable Interest.—*See* Insurance, 1.

Insurance.

1. The plaintiff contracted for the purchase of rice from A. in the following terms. "Feb. 2, 1871. Bought for account of (the plaintiff), of A., the cargo of Rangoon rice per *Sunbeam*, 707 tons register, at 9s. 1½d. per cwt., cost and freight, expected to be March shipment; but contract to be void should vessel not arrive at Rangoon before April, 1871. Payment by sellers' draft on purchasers at six months' sight, with documents attached." The *Sunbeam* was chartered by the sellers' agents. On Feb. 3, 1871, the plaintiff effected insurance with the defendants "at and from Rangoon to any port, &c., by the *Sunbeam*, warranted to sail from Rangoon on or before the 1st of April, on rice, as interest may appear: amount of invoice to be deemed value: average payable on every 500 bags: the said merchandises, &c., are and shall be valued at £5,500, part of £6,000." On the 30th March there were 8,878 bags of rice on board, and 400 more in lighters alongside would have completed the cargo; but the ship sunk at her anchors, and was totally lost with her cargo on this day. After the loss of ship and cargo, and in order to enable the plaintiff to claim on his policy, the captain signed bills of lading for the cargo which had been shipped; and A., the seller, drew bills of exchange for the price of such cargo, which were accepted and met by the plaintiff. The bills of lading were indorsed to the plaintiff. All this was made known to the defendants when the claim was made for insurance. *Held*, that the plaintiff had the option of electing to treat said quantity of rice on the *Sunbeam* as a cargo; and that after the loss he had the same option as before; and that having so elected, the property in the rice passed to him from the moment it was put on board, and the rice was at his risk. Also that the plaintiff had an insurable interest in the rice even if the property did not pass, because h had an existing contract with regard to it from the time of its being on board, by virtue of which he had an expectancy of advantage depending on the safe arrival of the rice. Also, that the policy was a valued policy, the valuation being the amount of the proper invoice, according to contract between the plaintiff and A.—*Anderson* v. *Rice*, L. R. 10 C. P. 68.

2. On the 22nd November, 1871, the plaintiff entered into a charter-party with R., by which the vessel was to proceed from Liverpool to Newport, and there ship a cargo of iron rails for San Francisco, ordinary perils excepted, &c. On the 9th December, the plaintiff effected insurance with the defendants "on chartered freight valued at £2,900, at and from Liverpool to Newport, in tow, while there, and thence to San Francisco," &c. The ship sailed Jan. 2, 1872; and on Jan. 4 took the rocks before arriving at Newport. On Feb. 18, she was got into a place of safety and was got off the rocks March 21. The time necessary for the completion of repairs extended to the end of August. Due notice of abandonment was given, but was not accepted. On the 16th February, 1872, R., without the consent of the plaintiff, chartered another vessel by which he forwarded the rails to San Francisco. The jury found that the time necessary for getting the ship off and repairing her was so long as to make it unreasonable for the charterers to supply the agreed cargo at the end of such time; and that such time was so long as to put an end, in a commercial sense, to the commercial speculation entered upon by the ship-owner and charterer. *Held* (by Bramwell, B.; Blackburn, Mellor, and Lush, JJ., and Amphlett, B.; Cleasby, B., dissenting), that the charterer was absolved from his contract, and that there was, therefore, a loss of the chartered freight by perils of the sea.—*Jackson* v. *Union Marine Insurance Co.*, L. R. 10 C. P. (Ex. Ch.) 125; s. c. L. R. 8 C. P. 572; 8 Am. Law Rev. 288.

3 A proposal for insurance on a vessel was accepted by an insurance company on March 11. On March 17, the plaintiffs learned that the vessel was lost, and the same day sent to the company for a policy in pursuance of the terms of said proposal. The company then for the first time asked the amount of insurance, and inserted in the policy which was accepted by the plaintiffs the warranty, "Hull warranted not insured for more than £2,700 after the 20th March." The vessel was then insured for an additional £500 in an insurance club, by the rules of which ships belonging to members were insured from the 20th March one year to the 20th March the next year, "and so on from year to year, unless ten days' notice to the contrary be given;" and in the absence of notice the managers of the club were to renew each policy on its expiration. *Held*, that the warranty was complied with; and also that the plaintiffs were not bound to communicate information received after March 11th.—*Lishman* v. *Northern Maritime Insurance Co.*, L. R. 10 C. P. (Ex. Ch.) 179; s. c. L. R. 8 C. P. 216; 8 Am. Law Rev. 101.

See Seaworthiness.

Interest.—*See* Eminent Domain.

Joint Ownership.—*See* Trust, 2.

Judgment.—*See* Estoppel.

Jurisdiction,—*See* Libel.

Leasehold.—*See* Legacy, 4.

Legacy.

1. A testatrix, who had money at her banker's on deposit notes which stated that the money was "received to account for on demand," bequeathed "all bonds, promissory

notes, and other securities for money in my hands at the time of my decease, and all moneys thereon." *Held*, that the money at the banker's did not pass under the bequest.—*Hopkins* v. *Abbott*, L. R. 19 Eq. 222.

2. Testator bequeathed an annuity to "my housekeeper, M. R., whether living in my service at the time of my death or not." Some years prior to his death, and for a considerable period, M. R. was the testator's housekeeper; but she quitted his service in 1867, and married in 1871. E. R., the sister of M. R., was, at the dates of the testator's will and death, in his service as his housekeeper, having entered it in 1870. *Held*, that E. R. was entitled to the annuity.—*In re Nunn's Trusts*, L. R. 19 Eq. 331.

3. A testator who owned stock in the public funds, and stock and partly paid up shares in a railway company, bequeathed "all such stocks in the public funds or shares in any railway" of which he might die possessed. *Held*, that the railway stock passed under the bequest.—*Morrice* v. *Aylmer*, L. R. 10 Ch. 148.

4. The lessee of a house held upon ground rent bequeathed the rental of the house to his wife for life to be paid to her monthly, and after her decease gave the house to his son R. subject to the lease, but directed that R. should have no power to sell the same, and that the rents should be received by, and that all matters appertaining to the property should be under the management of the testator's executors. The testator further directed that upon the death of R. without issue, his share should be divided between the surviving children of M. The executors paid the rents to the widow during her life, and after her death to R. for life. R. died without issue. *Held*, that the assent of the executors to the life estates in the rents bequeathed to the widow and R. was assent to the bequest in remainder, and that the legal estate in the leasehold vested in the executors as trustees, but that upon the death of R. without issue their trust ceased, and the legal estate vested in the surviving children of M. —*Stevenson* v. *Mayor of Liverpool*, L. R. 10 Q. B. 81.

See Advancement; Residue; Vested Interest.

Letters.—*See* Frauds, Statute of, 3.

Libel.

The Court of Chancery has no jurisdiction to restrain the publication of a libel, even though it will injure property.—*Prudential Assurance Co.* v. *Knott*, L. R. 10 Ch. 142.

License.

A license from a highway board to a gas company to open the road to lay gas-pipes is not a license to commit a nuisance: and an agreement by the gas company to restore the road to its original condition and pay 1s. per yard of road opened, is a contract upon good consideration.—*Edgeware Highway Board* v. *Harrow Gas Co.*, L. R. 10 Q. B. 92.

Lien.—*See* Sale; Trust, 1.

Liquidation.—*See* Receiver.

Lunacy.—*See* Conversion, 2.

Marriage.

A marriage may be established upon the preponderance of repute, although there is repute against the reputed marriage as well as for it.—*Lyle* v. *Ellwood*, L. R. 19 Eq. 98.

See Settlement.

Marshalling Assets.

Specific devisees of real estate must contribute rateably with a residuary devisee, if the personalty is insufficient for payment of the testator's debts.—*Lancefield* v. *Iggulden*, L. R. 10 Ch. 136.

Master and Servant.

The owners of a mine appointed a manager of their mine, as required by statute. From the negligence of the manager an explosion occurred, and a miner was killed. *Held*, that the manager, although appointed in pursuance of a statute, was a fellow-servant of the miner, and that the owners were therefore not responsible for the miner's death.—*Howells* v. *Landore Steel Co.*, L. R. 10 Q. B. 62.

See Negligence, 1; Pilot.

Mill.—*See* Easement.

Mine.

Bill praying an injunction to restrain the working of a mine which, it was alleged, could not be worked without letting a river and flooding the defendant's mine and through that the plaintiff's mine. Demurrer overruled.—*Crompton* v. *Lea*, L. R. 19 Eq. 115.

See Master and Servant.

Mortgage.—*See* Bankruptcy, 1.

Multifariousness.—*See* Bill in Equity.

Negligence.

1. The plaintiff, one of the travelling inspectors of the carriage and waggon department on the A. railway, while travelling under a pass from the A. railway, was injured while the train was passing over the road of the B. railway, over which the A. railway had running powers. The injury was caused by the negligence of the A. railway, with, it seems, some contributory negligence on the part of the B. railway. *Held*, that the plaintiff was not entitled to recover.—*Armstrong* v. *Lancashire and Yorkshire Railway Co.*, L. R. 10 Ex. 47.

2. The plaintiff was travelling on the defendants' railway in a car containing its full complement of passengers. On the arrival of the train at a station other passengers got in, notwithstanding the plaintiff's remonstrance, and to his great inconvenience. On the train's arrival at another station several more passengers attempted to get in, but were prevented by the plaintiff and the other passengers, and the carriage door was opened by some one after the train was in motion. A porter closed the door hastily just as the carriage was entering the tunnel, and the plaintiff in the struggle going on got his thumb crushed in the door. The jury found

for the plaintiff, and found that the accident was caused by the presence of the three extra persons in the carriage, and that they were there through the default of the company's servants. *Held*, that there was evidence to go to the jury of negligence on the part of the railway company which was the cause of the injury to the plaintiff.—*Jackson* v. *Metropolitan Railway Co.*, L. R. 10 C. P. 49.

3. A cab driver obtained from a cab proprietor a cab and horse, upon the terms that the driver was to pay the owner 18s. per day and retain earnings above that sum; that the owner was to supply food for the horse; and that the driver was not to be under the owner's control. The horse overturned the cab and injured the driver. The jury found that the horse was not reasonably fit to be driven in a cab; that the owner did not take reasonable precautions to supply a reasonably fit horse; that the driver did not take upon himself the risk of the horse being reasonably fit to be driven in a cab; and that the horse and cab were intrusted to the driver as bailee, and not as servant. A verdict was directed for the driver. *Held*, that as the second finding of the jury amounted to a finding of negligence, a rule for a new trial must be discharged.—*Fowler* v. *Lock*, L. R. 10 C. P. 90.

See Damages, 2; Master and Servant.

Notice to Treat.

A railway company served the plaintiffs with notice to treat for a portion of their lands. The plaintiffs served the company with a counter notice to treat for the whole of their land. The company then gave the plaintiffs notice of their intention to apply to the Board of Trade for a surveyor to determine the value of the whole of the plaintiffs' land. The plaintiffs filed a bill praying an injunction to restrain the company from using part of their land without taking the whole. The company gave the plaintiffs notice that it withdrew its notice to treat, and offered to pay costs; and then filed an answer to said bill, insisting on its right to withdraw its notice to treat. The plaintiffs amended their bill and prayed a declaration that the company was bound to take the whole of their land. *Held*, that the company had not contracted to take the plaintiffs' land.—*Grierson* v. *Cheshire Lines' Committee*, L. R. 19 Eq. 83.

Nuisance.—*See* License.

Partnership.

By partnership articles it was provided that upon the death of a partner his share should be taken by the surviving partners according to its value at the last stock-taking, and the amount found due paid to his executors by fourteen instalments, with interest until payment. A partner died, and his executors allowed his share to remain in the business. Six years afterward the surviving partners filed a liquidation petition. The executors claimed to prove for the value of their testator's share. There were still unpaid some debts contracted by the firm when the deceased partner was a member of it. *Held*, that the executors were not entitled to prove.—*In re Dixon. Ex parte Gordon*, L. R. 10 Ch. 160.

See Executors and Administrators, 2, 3.

Parties.—*See* Bill in Equity, 2.

Patent.

1. Inspection of the defendants' machinery in a patent suit will not be granted unless it is necessary to enable the plaintiff to make out his case.—*Batley* v. *Kynock*, L. R. 19 Eq. 90.

2. The defendants, in performance of a contract with the Secretary of State for War, manufactured and delivered to the secretary certain rifles which were infringements of the plaintiff's patent. *Held*, that as the defendants did not manufacture the rifles as servants to the Crown, they were liable for infringement.—*Dixon* v. *London Small Arm Co.*, L. R. 10 Q. B. 130.

Perils of the Sea.—*See* Insurance, 2; Seaworthiness.

Personalty.—*See* Conversion, 2.

Pilot.

A boat upon a vessel fell upon a pilot and injured him, in consequence of its having been negligently slung by the seamen who were in the defendants' employ. *Held*, that the defendants were liable for the damage, as there is no implied contract between owners and the pilot whom they are compelled to employ that the pilot shall take the risk of injury from the owners' servants.—*Smith* v. *Steele*, L. R. 10 Q. B. 125.

Place.

The tenant of a house together with a piece of inclosed ground adjoining used for cricket, foot-racing, and other games and sports, permitted betting to go on on said ground. *Held*, that said inclosed ground was a "place" within a statute forbidding keeping a "house, office, room, or other place," for betting.—*Haigh* v. *Town Council of Sheffield*, L. R. 10 Q. B. 102.

Pleading.

Declaration on a check. Plea, that the defendant was induced to sign by the fraud of the plaintiff. Issue. The jury found that the defendant had not disaffirmed the contract. The defendant urged that the plaintiff should have filed a replication, if he relied on the defendant's having affirmed the contract. *Held*, that the defendant's plea must be looked upon as an allegation of fraud, and that the defendant in consequence determined the contract; and that in such case a replication was unnecessary.—*Dawes* v. *Harness*, L. R. 10 C. P. 166.

See Bill in Equity, 2; Estoppel.

Possession.—*See* Frauds, Statute of, 1; Sale.

Power.—*See* Advancement.

Preference.—*See* Advancement.

Principal and Agent.—*See* Broker; Master and Servant; Negligence, 1; Receiver.

Probate.—*See* Injunction, 1.

Production of Documents. *See* Documents, Production of.

Promissory Note.—*See* Bills and Notes.

Property.—*See* Lien.

Railway.—*See* Damages, 2, 3; Eminent Domain; Legacy, 3; Negligence; Notice to Treat.

Ratification.—*See* Frauds, Statute of, 3.

Realty.—*See* Conversion, 2.

Receiver.

A debtor who had mortgaged his brewery, fixtures, and stock in trade filed a petition for liquidation and a receiver and manager of his property and business. The mortgagee was ordered not to interfere with the debtor's assets, and the receiver and the debtor gave an undertaking to pay any damages the court should be of opinion that the mortgagee had sustained, and the debtor or receiver ought to pay. The brewery, &c., were subsequently declared to be the property of the mortgagee. *Held*, that the receiver was not the agent of the mortgagee; and that he must pay the damages sustained by the mortgagee from deterioration of the property, and a fair rent for use and occupation of the fixtures and stock in trade.—*Ex parte Warren. In re Joyce*, L. R. 10 Ch. 222.

Rent.—*See* Annuity.

Residuary Gift.—*See* Marshalling Assets.

Residue.

Bequest in the following words: "I give and bequeath to my niece H., subject to all legacies and bequests, the residue of my estate up to the end of the year 1855. I give and bequeath all accumulations from that date in equal shares to the sons of my late niece G." H. died before the testatrix. *Held*, that the gift to the sons of the niece G. was a pecuniary legacy, and not a gift of residue, and the residuary gift to H. was liable for all debts and expenses.—*Gowan* v. *Broughton*, L. R. 19 Eq. 77.

Resulting Trust.—*See* Trust, 2.

Retainer.—*See* Executors and Administrators, 2.

Riparian Rights.—*See* Easement.

River.—*See* Easement.

Sale.

A vendor contracted to sell to the plaintiffs twenty tons of potatoes "deliverable free on board" of a ship at Dunkirk, payment to be made by cash against bill of lading. The plaintiffs made a part payment, and the potatoes were shipped in sacks supplied by the plaintiffs, under a bill of lading making them deliverable to the vendor's order. The vendor indorsed the bill of lading to the defendant, with instructions to present to the plaintiffs a draft for the balance of the purchase money against the bill of lading. On the arrival of the potatoes at London, the plaintiffs erroneously supposed the shipment to be sixteen sacks short, and therefore declined to accept said draft, but offered either to pay the purchase money due after deducting the value of the sixteen sacks, or to wait until the vessel was discharged, and then, if there should prove to be a full cargo, to immediately accept said draft. The defendant insisted upon immediate acceptance of the draft, and, the plaintiffs not accepting, sold the potatoes forthwith. The plaintiffs brought trover. *Held*, that the right of property and possession had passed to the plaintiffs, and that they could maintain the action.—*Ogg* v. *Shuter*, L. R. 10 C. P. 159.

See Bankruptcy, 1; Conversion; Frauds, Statute of, 3; Insurance, 1; Vendor and Purchaser.

Seaworthiness.

The sinking of a vessel in smooth water while at anchor would, if unexplained, be evidence from which the jury would be directed to find the vessel unseaworthy. But if other evidence is offered as to the condition of the ship, or the cause of the loss, then such sinking becomes one of several facts, all of which must be left to the jury, from all of which the jury may find that the vessel was seaworthy, and lost by a peril of the sea.—*Anderson* v. *Morice*, L. R. 10 C. P. 58.

Settlement.

1. The word "survivor" may be read "other" in a clause in a settlement, although in other clauses it must be read "survivor."—*In re Palmer's Settlement Trusts*, L. R. 19 Eq. 320.

2. An Ottoman subject domiciled in Turkey married a woman in England under the inducement of his promise to reside permanently in England, and a settlement was executed before the marriage. The husband returned to Turkey, and there obtained a divorce. By Turkish law a divorce deprived a wife of her rights under a settlement. *Held*, that said settlement must be governed by English law; and said Turkish law was disregarded.—*Colliss* v. *Hector*, L. R. 19, Eq. 334.

Shares.—*See* Legacy, 3; Trust, 1.

Ship.—*See* Collision; Freight; Insurance, 2, 3; Seaworthiness.

Specific Gift.—*See* Marshalling Assets.

Specific Performance.—*See* Notice to Treat.

Statute.—*See* Fabricating Votes; Place.

Statute of Frauds.—*See* Frauds, Statute of; Vendor and Purchaser.

Stocks.—*See* Legacy, 3; Trust, 1.

Tenant for Life.—*See* Trust, 1.

Tenant in Common.—*See* Conversion, 2.

Tow.—*See* Collision.

Trover.—*See* Sale.

Trust.

A tenant for life under a settlement made advances to the trustees for the purpose of paying calls upon shares held by them. The trustees might have raised money to pay the calls in other ways. *Held*, that the tenant for life had a lien upon the shares for the repayment of her advances with interest thereon.—*Todd* v. *Moorhouse*, L. R. 19 Eq. 69.

2. A lady transferred stock from her own name to the joint names of herself, her daughter and her son-in-law. The daughter died, and afterward the mother. The son-in-law managed the property during the last seven years of the mother's life, and paid her the whole of the income. *Held*, that there was no resulting trust for the residuary legatees of the mother's will, and that the son-in-law was entitled to the stock.—*Batstone* v. *Salter*, L. R. 19 Eq. 250.

3. Trustees who were directed by a testator to convert all his real and personal estate and distribute in a certain manner, built a villa on a part of the real estate in the belief that they could thereby improve the value of the rest. The trustees were allowed to take the villa themselves, repaying the amount they had expended upon it.—*Vyse* v. *Foster*, L. R. 7 H. L. 318; s. c. L. R. 8 Ch. 308; 7 Am. Law Rev. 686.

See Advancement; Bank; Legacy, 4.

Trust, Declaration of.

What will amount to a declaration of trust, See *Heartley* v. *Nicholson*, L. R. 19 Eq. 233.

Unseaworthiness.—*See* Seaworthiness.

Vendor and Purchaser.

Letter to the defendant from the agents of the plaintiff who held the lease of a house: "Nov. 13, 1873. We have been requested by Mrs. D. to find her a lodging-house in this neighbourhood; and we forward for your approval particulars of two which we think most likely to suit." Inclosed were particulars of the plaintiff's house, the terms of which were stated to be premium 250 guineas, rent £80. On November 14 the defendant wrote to the plaintiff's agents as follows: "I have decided on taking (said house) and have spoken to my agent C., who will arrange matters with you, if you will put yourselves in communication with him. I leave town this afternoon; so, if you have occasion to write to me, please address, as before, to Cirencester." *Held*, that the letters did not constitute a binding agreement.—*Stanley* v. *Dowdeswell*, L. R. 10 C. P. 102.

See Broker; Sale.

Vested Interest.

A testator directed his trustees to divide a certain fund equally among the children of F. when they should respectively attain the age of twenty-five, applying from time to time the income of the presumptive share of each child, or so much thereof respectively as the trustees might think proper, for his or her maintenance until such share should become payable; but, if the children should all die before attaining twenty-five, then to pay said fund over. *Held*, that the children of F. took a vested interest.—*Fox* v. *Fox*, L. R. 19 Eq. 286.

See Legacy, 4.

Vote.—*See* Fabricating Votes.

Warranty.—*See* Insurance, 3; Negligence, 3.

Watercourse.—*See* Easement.

Will.—*See* Advancement; Injunction, 1; Legacy; Residue; Vested Interest.

Words.

"*Fabricating Votes.*"—*See* Fabricating Votes.

"*Place.*"—*See* Place.

"*Survivor.*"—*See* Settlement.

"*Trader.*"—*See* Bankruptcy, 3.

CORRESPONDENCE.

Meaning of "Pounds"—Attachment of Debts.

To the Editor of the Law Journal.

Dear Sir,—Can you tell me whether there has been any decision with regard to the meaning given to the word "pounds" in Canadian courts when it occurs in an English statute in force here? Is it taken to mean pounds sterling or pounds currency?

C. S. U. C. cap. 44, sec. 11, which enlarges the provisions of the Statute of Frauds, in respect to sales of goods for £10 and upwards, makes mention of "Forty Dollars." It would therefore appear that the Legislature have taken the word "pound" to mean $4.

I have been unable to find any case which positively decides this point.

There is also another point upon which I have been unable to find any information: Can Government salaries be garnished? I have heard it said that they can not.—I am, &c.,

Law Student.

September 27, 1875.

[1. We do not remember any decision on this point; but doubtless it would be taken to mean pounds sterling. 2. Salaries due by the Crown cannot be garnished.—Ed. L. J.]

FLOTSAM AND JETSAM.

MOOT CASES IN CRIMINAL LAW.—The following is translated from a collection of moot cases in criminal law, just published by Dr. Bar, a very eminent German lecturer and jurist:

A., with the intention of shooting his mistress, Maria H., entered, armed with a loaded pistol, the house in which Maria H. lived. Not finding her alone, he waited until she left the chamber where she was. When she came out he addressed her, and, after a short conversation, pointed the pistol at her breast. His intention was to kill her; but the firing of the pistol was not his immediate act, but was caused by the pistol being struck by her. Is he responsible for murder? Can it be charged that the pistol was fired by *him*, when it was really fired by *her*?

A. saw a hawk hovering over his house, and, after shooting it, leaned the gun, one barrel still undischarged, against a neighbouring wall. Two persons soon passed by this wall. B., one of them, a day labourer, took the gun, and playing with it negligently, shot and killed his companion. Is B. indictable for negligent homicide? Is A. indictable for the same offence?

M. left on a table of his chamber a loaded pistol. Two sons of A.'s landlord, who were sometimes accustomed to visit M.—one of them, W., being eleven years old, and the other, H., eight years old—entered the chamber in his absence. In playing with the pistol, H. shot his brother W. Is M. indictable for negligent homicide.

A servant is working at the closet in which our guns are placed. Are we bound, in order to relieve ourselves from negligent homicide, in case he carelessly shoots himself, to notify him that the guns are loaded? If a person, who is not a good horseman, is determined to mount one of our horses, are we bound to advise him if the horse is skittish? Suppose that A., knowing B. not to be an experienced rider, and also knowing the restiveness of the horse, on being asked by B. what kind of a horse it was, should answer: "You tell me you are an experienced rider; why should you hesitate to try the horse?" Is A. responsible in case of B. being thrown and injured? Would responsibility, in such a case, be modified by the circumstance that the unfortunate rider was met by an angry dog, or an organ grinder; or that a crowd of idlers, struck by B.'s ludicrous appearance, greeted him with noises which disturbed the horse?

At a convivial party a large goblet was filled with grog. It was agreed that each person should take a drink, and that the last person reached should finish what remained. By an understanding in the party, this duty uniformly fell to G.; and it so happened that he had occasion sometimes to drink half the goblet. G., at the outset, discovered the trick; but confiding in his own powers of endurance, he went on drinking. He was soon so much affected that he fell into a condition in which he mechanically drained the cup whenever it was presented to him. G. became mad with drink; and when in this condition, inflicted on an innocent stranger visiting the place a serious wound. Is G. exclusively responsible, or are those who had stimulated G's. drunkenness jointly responsible? Would it make any difference if G. had not perceived the trick played on him, but had been its unconscious victim?

On a summer's afternoon a great crowd pressed into a ferry-boat crossing the river at the town of X. As the boat came near a steamboat, which was navigating the river, and was caught in the swell, an old lady in the ferry-boat called out: "Good Lord, the boat is upsetting." In consequence of this alarm, a number of persons, sitting on one side of the ferry-boat, rushed to the other side, upsetting the boat, so that several were drowned. Was the old lady responsible for the homicide, which, but for her rashness, would not have taken place?

The parents of trusts were *fraud and fear*, and a court of conscience was the *nurse.—Attorney-General* v. *Sands*, Hard. 491, quoted in Perry on Trusts, I. 3, note.

Scroggs, Chief Justice—"As anger does not become a judge, so neither doth pity, for one is the mark of a foolish woman, as the other is of a passionate man."—*The King.* v *Johnson*, 2. Show. 4.

The old English lawyers occasionally rejected the evidence of women on the ground that they are *frail.* Best Ev. I. 64, citing Fitzh. Abr. Villenage, pl. 37, Bro. Abr. Testmoignes, pl. 30.

"Judgment was given against a man of 40 years of age, and he brought a writ of error, and he assigned infancy for error, and the attorney was punished by the Court." Per Holt, C.J., in *Pierce* v. *Blake*, 2 Salk. 515.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Easter Term, 38th Victoria.

DURING this Term, the following gentlemen were called to the Degree of Barrister-at-Law, (the names are given in the order in which the Candidates entered the Society, and not in the order of merit):

o. 1321—Alfred Howell.
Henry Carscallen.
John Butterfield.
John Alexander Macdonnell.
William F. Ellis.
Mortimer Augustus Ball.
John Turnbull Small
Oliver Aiken Howland.
Alexander Mansel Greig.
Adam Rutherford Creelman.
John Gunn Robinson.
J. Stewart Tupper.
John Highett Thom.
John Davison Lawson.
Charles James Fuller, under special act.
. 1336—Edward Stonehouse, " " "

The following gentlemen received Certificates of Fitness, (the names are given in order of merit):

John Turnbull Small.
Alexander Mansel Greig.
Harry Symons.
Hugh O'Leary.
Edwin Hamilton Dickson.
John Highett Thom.
Oliver A. Howland.
Michael Kew.
J. Stewart Tupper.
George A. Radenhurst.
John D. Lawson.
J. Boomer Walkem.
Snelling Roper Crickmore.
Henry Auber Mackelcan.
John A. Macdonnell.
William Hall Kingston.
Edward Ellis Wade.
John Boultbee.
George Bruce Jackson.

And the following gentlemen were admitted into the Society as Students-at-Law, and Articled Clerks:

Junior Class.

No. 2537—William Hodgins Biggar.
George Anderson Somerville.
William Barton Northrop.
Arthur Oheir.
Robert Hodge.
William H. Pope Clement.
Elgin Shoff.
Horace Edgar Crawford.
Earnest Joseph Beaumont.
John Philpott Curran.
James Henderson Scott.
William Berry.
Eugene de Beauvoir Carey.
Gideon Delahey.
Skeffington Connor Elliott.
Gerald Francis Brophy.
John Lawrence Dowlin.
Wm. J. McKay.
William Henry Deacon.
John Woodcock Gibson.
John Baptiste O'Flynn.
Allan McNab.
Ivor David Evans.
Reginald Boultbee
George W. Baker.
James Craigie Boyd.
Archibald Stewart.

No. 2563—Charles Henry Cogan, as an Articled Clerk.

A change has been made in some of the books contained in the list published with this notice, which will come into effect for the first time at the examinations held immediately before Hilary Term, 1876. Circulars can be obtained from the Secretary containing a list of the changed books.

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

That a graduate in the Faculty of Arts in any University in Her Majesty's 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. HILLYARD CAMERON,
Treasurer.