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CURRENT TOPICS AND CASES.

The proposal to appoint colonial judges to the Judicial Committee of the Privy Council is a suggestion that has an attractive sound, and doubtless a good deal may be said in favor of it. But that there are drawbacks, and serious drawbacks, to such an arrangement, cannot be doubted. One of the strongest considerations in favor of maintaining the appeal to England is that there a board of highly trained jurists, wholly unaffected by colonial opinion or colonial criticism, acting solely as advisers of the Sovereign, take up the appeal and examine it from a point of view apart from all local considerations. Whatever errors the Judicial Committee may have made, we have yet to hear that any imputation has ever been cast upon the impartiality and independence of the tribunal. It must not be forgotten that appeals *ex gratia* from the Supreme Court of Canada are now considerably restricted, and are few in number, and if the direct appeals from this Province are as numerous as they are, it is because a preference is given to an appeal to the Privy Council rather than to the Supreme Court. This fact certainly does not suggest that the Committee would be greatly strengthened by the presence of a Canadian Judge. Then, again, assuming that a Canadian Judge were ap-

pointed, if the opinion of the Canadian member were adopted by the other members of the Privy Council board, would it not be to a considerable extent a one judge decision, overruling, perhaps, that of the Supreme Court; and if the Canadian member's opinion were overruled, would he consent to keep silence as to his own opinion? But the recommendation of the Judicial Committee to Her Majesty has never indicated a dissent. The bill introduced, it must be admitted, seems tolerably harmless, for it simply makes Colonial judges eligible to sit in certain cases, without remuneration. As our Canadian judges are seldom men of wealth, it is not probable that they will be eager to undertake such work unless provision be made for their remuneration. One might almost fancy that the bill is designed to show colonists the futility of the proposal which appears to have emanated from the colonies.

The May Term of the Court of Appeal in Montreal commenced with only thirty-eight cases on the printed list—a thing which has not occurred before for a quarter of a century. This is the result of the fact that the list was fully called over during the two previous terms, and that only those cases were continued in which the parties were unable or unwilling to proceed. The result was that the May list was disposed of within a week. Recent legislation excluding appeals from the Court of Review in cases under $200, and the provision made for appealing directly to the Supreme Court from the Court of Review, has had an important influence in clearing the roll of the Appeal Court, while it has considerably added to the task of the Court of Review.

The *London Law Journal* remarks that it is impossible to study the life of the Earl of Selborne in any of its varied aspects without being struck by the antithesis which it presents at every turn to the life of Lord Cairns. "As

advocates, as politicians, as judges and as men," says our contemporary, "they were 'opposites,' both in the literary and in the logical sense of the term. Of course they had points in common. Both possessed an intuitive insight into legal principles, a marvellous power of grasping and expounding facts, and the patient industry without which intuitions are deceitful and gifts of exposition vain. Both were 'great in counsel' (the phrase was, as everybody knows, applied by Disraeli to Cairns) and dexterous in debate. Both were men of flawless rectitude. Both were deeply smitten with the religious instinct. But these resemblances merely emphasise the far more numerous points of contrast between the two Lord Chancellors. In Cairns evangelical zeal burned like a consuming fire. In Selborne it burned, brightly enough it is true, but still mainly within the limits prescribed by a tolerably High Churchmanship. In the exercise of his judicial patronage Cairns was absolutely indifferent to public criticism. Selborne always did what he thought right, but was sensitive about public approval of his appointments. As a judge his mind was more subtle than that of Cairns, because its subtlety was less restrained. Many of his judgments are masterpieces of luminous reasoning and legal learning. But he carried his higher subtlety with him to the Bench, and it marred his supremacy."

It is with regret that we have to record the death of Mr. George Duval, chief reporter of the Supreme Court of Canada. Mr. Duval has held the position of reporter to the Supreme Court since the court was constituted in 1875, during which time twenty-three volumes of reports have appeared. In recent years he has had the assistance of Mr. C. H. Masters. The work has been carefully executed and reflects credit on the reporters.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, 23 February, 1895.

Present: The LORD CHANCELLOR, LORDS WATSON, HOBHOUSE, MACNAGHTEN, SHAND, and DAVEY, and SIR RICHARD COUCH.

SIMPSON et al. (plaintiffs *par reprise d'instance*), appellants, and THE MOLSONS BANK (defendant in court below), respondent.

Bank—Trust—Notice of.

The Statute incorporating the Bank respondent (18 *Vict., ch.* 202), *provides that "the Bank shall not be bound to see to the execution of any trust whether express, implied or constructive, to which any of the shares of the Bank may be subject."*

HELD: *The Bank were relieved by the clause in question of the duty of making inquiry, and could not be held responsible for registering a transfer of shares belonging to a substitution where the executors making the transfer were apparently vested with power to sell or transfer, unless it were shown that the Bank were at the time possessed of knowledge which made it improper for them to do so.*

LORD SHAND:—

The Honourable John Molson died on the 12th July, 1860, leaving a will dated the 20th April of that year, and this appeal from a judgment of the Court of Queen's Bench for Lower Canada relates to 640 shares in the Molsons Bank, Canada, which formed part of the residue of his estate. The complaint of the appellants is that the Bank, the respondents, wrongfully registered in the books of the Bank a transfer of these shares granted by William Molson and Alexander Molson, executors under the will, in favour of Alexander Molson the testator's son, to the loss and injury of the appellants, as having right to have the shares secured to them under a substitution in favour of Alexander Molson's children contained in the will of their grandfather John Molson. Their claim of damages has arisen in consequence of the insolvency of Alexander Molson who transferred the shares in question to third parties who cannot be affected by the substitution founded on.

By his will Alexander Molson made the following provisions relative to the residue of his estate:—

"Tenthly. And as to the residue of my estate real and "personal wheresoever the same may be and of whatsoever the

" same may consist of which I may die possessed or to which I " may then be entitled I give devise and bequeath the same " to my said brother William Molson of the said city of Mont- " real Esquire, Mary Ann Elizabeth Molson my beloved wife, and " Alexander Molson my youngest son now living, the survivors " and survivor of them and the heirs and assigns of the survivor " of them upon the several trusts hereinafter declared, that is to " say upon trust, firstly to hold administer and manage the said " residue of my estate to the best advantage during the full term " of ten years from and after the day of my decease....secondly " to sell and convey all such parts of my real estate as are not " herein-before specially devised and as they shall deem it " advantageous to my estate to sell and to grant deeds of sale " and conveyance of the same, to receive and grant receipts for " the purchase moneys, to invest the purchase moneys and all " other moneys arising from or accruing to my estate and not " already invested, on good and sufficient security either by way " of hypotheque or mortgage of or on real estate or by the " purchase of Government stocks or stocks of sound incorporated " banks so as to produce interest, dividends or profits to secure " the regular payment of the annuity payable to my said wife " under her said marriage contract and the additional annuity " herein-before bequeathed to her, and generally to comply with " and fulfil all other the requirements of this my will, and " thirdly at or so soon as practicable after the expiration of the " term of the said trust, to account for and give the said residue " as the same shall then be found to my residuary devisees and " legatees hereinafter named.

" In all questions touching the sale and disposition of any part " of my estate or the investment of moneys arising from my " estate or accruing thereto the concurrence of any two of my " said trustees of whom while living my said brother William " Molson shall be one shall be sufficient."

" Thirteenthly. I further will and direct that at the ex- " piration of the term hereinbefore limited for the continuance " of the said trust the said residue of my estate real and personal " as the same shall subsist shall under and subject to the con- " ditions and limitations hereinafter expressed fall to and become " and be for their respective lives only and in equal shares the " property of my said five sons and at the death of each of my " said sons or if any of them shall have died before the ex-

" piration of the said term the share of the one so dying or who " shall have died shall become and be for ever the property of " his lawful issue in the proportion of one share to each daugh- " ter and two shares to each son subject, however, to the right " of usufruct thereof on the part of his widow if living for so " long only as she shall remain his widow ; it is my will, however, " that it shall be and I hereby declare it to be competent to " each of my said five sons by his last will and testament or by " a codicil or codicils thereto but not otherwise to alter the " proportions in which by the foregoing bequest and devise a " share of the residue of my estate is bequeathed and devised to " his lawful issue and even to will and direct that one or more " of his said lawful issue shall not be entitled to any part or " portion of the said share of the residue of my estate anything " herein contained to the contrary notwithstanding."

" Sixteenthly. And I further will and direct that as soon as " it may be practicable after the expiration of the term herein- " before limited for the continuance of the said Trust the said " Trustees shall apportion and distribute the said residue of my " estate to and among the parties entitled thereto as herein- " before directed taking care in such apportionment and dis- " tribution to provide (as far as may be possible and in such " manner as the said Trustees may deem best) as well against " risk of the capital of any of the shares being lost in the hands " of any holder thereof under substitution or as usufructuary " thereof as against risk by reason of my said engagement under " the marriage contract above referred to of my sons John and " Alexander and if in making the apportionment and division " of the said residue the said Trustees shall deem it necessary or " advantageous to sell any part of the said residue and in lieu " thereof to apportion and divide the net proceeds of the sales " thereof it shall be competent for them so to do anything " hereinbefore to the contrary notwithstanding."

The widow of the testator died in 1862. By her husband's will she was entitled to appoint a trustee and executor to succeed to her and act in the trust in her stead after her death, and in May, 1861, professing to exercise this power, she executed a deed by which she nominated Joseph Dinham Molson, one of her sons, to be a trustee and executor. For some reason which does not appear his appointment was objected to by the testator's brother William Molson, one of the two executors named in the

will, and though on the 17th April, 1863, he served a notice of his appointment on the executors, he took no further steps to insist on his claim to act, and never did act as a trustee; so that William Molson, the testator's brother, and Alexander Molson, the testator's son, were in point of fact the only trustees and executors who acted in any way in the trust after the death of the testator's widow.

The shares in question were part of a larger number, viz., 3,200 shares of the Bank which belonged to the testator at his death. The dividends on all of these shares were paid as they fell due to the testator's trustees and executors, but it was not till the 11th May 1866, that the shares were transferred to them in the books of the Bank. On that date the transfer was made by a journal entry to this effect:—"Declaration number twelve "dated 11th of May 1866, Honourable John Molson" that is the name in which the stock stood) "debtor to executors viz. Wil- "liam Molson and Alexander Molson for transmission, three "thousand two hundred shares of stock of fifty dollars each, one "hundred and sixty thousand dollars."

The period of ten years for which the trustees were directed to hold and administer the residue of the estate expired on the 12th July 1870, and early in 1871 the executors prepared and submitted to the parties interested a statement of accounts, showing their receipts and expenditure in the execution of the trust, and a statement of the assets of the residuary estate, including the 3,200 shares in the Bank. Some time thereafter, viz., on the 5th April 1871 five transfers each for 640 shares granted by the executors were executed and duly registered in the Bank's register of transfers. The transfer now in question and acceptance thereof were in the following terms:—

"SCHEDULE No. 39.

"For value received from Alex. Molson of Montreal we do "hereby assign and transfer unto the said Alex. Molson six "hundred and forty shares on each of which has been paid fifty "dollars currency amounting to the sum of thirty-two thousand "dollars in the capital stock of the Molsons Bank subject to the "rules and regulations of said Bank.

"Witness our hands at the said Bank this fifth day of April "in the year one thousand eight hundred and seventy-one.

"(Signed) WILLIAM MOLSON } Executors late
"(Signed) ALEX. MOLSON } Hon. John Molson.

"I do hereby accept the foregoing assignment of six hundred "and forty shares in the stock of the Molsons Bank assigned to "me as above mentioned at the Bank this fifth day of April one "thousand eight hundred and seventy-one.

"(Signed) ALEX. MOLSON."

A transfer was made in favour of John Molson, another of the testator's sons, of 640 shares in the same terms, while in the case of the other three members of the testator's family the transfers were given in the name of a person or persons designed as "tutor," or as "tutor and curator," or trustee, with an acceptance of the stock signed by the transferee or transferees in that character, with the view of marking the stock in the hands of the transferee as being subject to a trust or substitution. There were thus two transfers in favour of the transferees, Alexander Molson and John Molson respectively, unqualified, and three transfers in favour of other members of the family, qualified in the way now stated. There have been produced in evidence certain deeds executed by the executors, by which a trust or substitution was created in regard to the shares included in each of the three last mentioned transfers, so as to preserve the shares for the testator's grand-children, subject to their respective parents' right to the dividends during their lives; but these deeds were not in any way communicated to the Bank.

The first ground on which it was maintained in the argument for the appellants, that the Bank had no right to register the transfer now in question in favour of Alexander Molson, was that the executors of John Molson had no power to grant any transfer of the shares in question after the lapse of ten years prescribed for administration. It was argued that the title of the trustees and executors was limited to administration, and was of a temporary nature only, expiring at the end of the ten years after the testator's death, during which they were directed to hold and administer and convert parts of the estate, and that the testator's sons, and their children respectively substituted to them, took their shares of the residue including the bank shares by direct gift and bequest from the testator under his will, which superseded and extinguished all title in the trustees and executors to grant any transfers. Their Lordships are clearly of opinion that there is no ground for this argument. It is true that the will provides under the head "thirteenthly," that after the lapse of ten years from the testator's death the residue of his

estate shall fall to and become the property of his respective sons and their families substituted to them. But the legal interest in the whole estate real and personal was vested by words of direct devise and bequest in the trustees and executors, who had to make up their title, as they did, to the Bank shares for an administration directed to be continued for ten years; and at the end of that time these gentlemen were directed to divest themselves by "giving," that is by conveying or transferring the respective shares to the sons and their families, after settling the particular allocation and distribution which was to be made of the different parts of the residue of the estate. The sons and their families, whilst having right to their respective shares under the will, were thus to acquire the legal title from the trustees in whom it had been vested for ten years. This appears clearly from the whole scheme of the will, and from nothing perhaps more clearly than the provision which was so strongly pressed upon their Lordships' notice, directing that the trustees and executors should take care to provide against the risk of the capital being lost in the hands of the testator's sons to the prejudice of their children, which they would do by a transfer of the legal interest in the different parts of the estate vested in them.

Assuming then that the title was to be granted by transfer from the trustees (and it is not easy to see how any title could otherwise be obtained after these gentlemen had been themselves registered as shareholders) it was maintained, not only that the trustees and executors were bound to execute transfers in such terms as would either give effect to the substitutions directed in the will in favour of Alexander Molson's grandchildren, or would at least give notice to any purchaser from Alexander Molson that the shares were affected by substitution, but further that the Bank were bound to refuse to register the transfer in question because of the absolute terms in which it was expressed. Their Lordships have not thought it necessary to call for any answer to the appellants' argument on this point, as they entertain no doubt that the decision of the Court of Queen's Bench on this question should be affirmed.

It must be here observed that a question was raised in the Courts below, as to whether the substitutions provided for by the testator in his will, in so far as regards movable estate, including the shares in question, could be made effectual under the

law of Canada. Mr. Justice Taschereau, before whom the case came in the first instance, held that the substitution could not be made effectual. This judgment was reversed on appeal, the learned Judges holding that the substitution could be made and was directed in such terms as might have been carried into effect. The point is fully argued in the respondents' case, but the question has not been the subject of argument before this Board. For the purpose of the present appeal their Lordships will assume that it was the duty and in the power of the trustees and executors to see that either by transfers qualified as in the case of certain of the other children, or in some other way the substitution was provided for or declared.

The argument of the appellants involves the consideration of two questions; first, whether the Bank had any notice, and if so what notice, of the trust created by the testator's will, in so far as the testator directed substitutions to be made to affect the divided parts of the residue of his estate; and, secondly, whether if the Bank had notice it was such as to make it the duty of the Bank to refuse to register the transfer in question because of the absolute terms in which it was expressed.

The Statute incorporating the Molsons' Bank (18 Vict., c. 202) contains this provision in Section 36, viz.:—"The Bank shall "not be bound to see to the execution of any trust whether "express, implied or constructive to which any of the shares of "the Bank may be subject." This language is general and comprehensive. It cannot be construed as referring to trusts of which the Bank had not notice, for it would require no legislative provision to save the Bank from responsibility for not seeing to the execution of a trust, the existence of which had not in some way been brought to their knowledge. The provision seems to be directly applicable to trusts of which the Bank had knowledge or notice; and in regard to these the Bank, it is declared, are not to be bound to see to their execution.

Apart from the provision of the Statute it may be that notice to the Bank of the existence of a trust affecting the shares would have cast upon them the duty of ascertaining what were the terms of the trust; and that in any question with the beneficiaries, whose rights had been defeated by the absolute transfer in favour of Alexander Molson, the Bank, whether they had inquired or not, might have been held to have constructive knowledge of all the trust provisions. Assuming this point in

favour of the appellants, their Lordships, however, see no reason to doubt that by the clause in question the Bank are relieved of the duty of making inquiry, and that they cannot be held responsible for registering the transfer, unless it were shown that they were at the time possessed of actual knowledge which made it improper for them to do so until at least they had taken care to give the beneficiaries an opportunity of protecting their rights. In the present case their Lordships are satisfied that at the date of the transfer the Bank had not any notice which could warrant the inference that they were aware that a breach of trust was intended or was being committed. What amount of knowledge would be sufficient to imply that the Bank must know that a transfer is in breach of a trust is a question which must depend on the circumstances of each case. In the present case their Lordships do not find it necessary to consider what might be the legal effect of their having such knowledge, because they are satisfied that at the date of the transfer in favour of Alexander Molson the Bank had not any notice which was sufficient to bring to their knowledge, or to lead them to believe, that any breach of trust was being committed or intended by the trustees or executors under the will.

The Bank had notice that the shares in question were acquired and held by William Molson and Alexander Molson in the character of trustees and executors for the execution of trust purposes. The entry of the transfer of the shares by transmission was made in their names as executors in the Bank's books, and the will of the testator, in virtue of which the transfer entry was made, directly gave devised and bequeathed the shares to them as trustees and executors for the execution of trust purposes. But it was maintained by the appellants that the Bank had further notice, not only of the general trust created by the will, but of the terms of the particular trust in favour of Alexander Molson's children directed by the testator to be provided for by the trustees by way of substitution of them to their father Alexander Molson.

Their Lordships are, however, of opinion that it has not been proved that the Bank had any notice of this particular trust purpose, or at least any notice which could affect them with knowledge of the way in which it ought to have been executed by the trustees. The facts alleged and relied on by the appellants as proof of such notice were (1) that a copy of Alexander Molson's

will was in the possession of the Bank; (2) that in the case of the families of three of the testator's children notice of the substitution of grandchildren was contained in the transfers by the executors registered in the Bank's books in April 1871; and (3) that William Molson, the testator's brother and one of the executors, was President of the Bank, while Mr. Abbott, the law agent of the executors, was also the Bank's law agent, and as both of these gentlemen must be taken to have been fully aware of the detailed provisions of the testator's will, the Bank through them, as its officers, had full knowledge of the trust. It is clear, however, that these facts are quite insufficient to prove the alleged notice.

The evidence does not clearly show how the Bank came into possession of the copy of the testator's will, which was produced by Mr. Elliott, the local manager. It may have been left with the Bank, as evidence of the title of the executors to receive the dividends on the shares which were paid to them from the first after the testator's death, or it may have been given to the Bank six years afterwards when the executors desired to have their title as owners by transmission registered in the Bank's books. It appears that on this last occasion a notarial declaration of the executors' title, which has not been produced, was presented to the Bank, in compliance with the provisions of their Charter, and the probability is that the copy of the will was then given to the Bank as evidence of the executors' right to have the shares transferred to them. The production of the will or probate at that time would be in accordance with the usual practice, which entitles the Bank to require evidence by production of the title in virtue of which the entry of any transfer of shares in the Bank's books is asked. But the only question with which the Bank were concerned was that of legal title. They had to satisfy themselves only that the will gave a right to the shares which entitled the executors to be registered as owners. They were not called upon, on an application to enter a transfer by transmission of the Bank's shares, to examine the will with reference to an entirely different matter which did not concern them, viz. the testator's directions as to the ultimate destination and disposal of his estate; and there is no reason to suppose that anything more was done on this occasion than is usual in such cases. Again, the entries of transfers in favour of other members of the testator's family, in terms differing from that in favour of Alexander

Molson, was not a circumstance calling in any way for the notice or attention of the Bank, and even if observed these gave no notice to the Bank that the shares transferred to Alexander Molson and to his brother John were held under similar trusts, to which effect should be given. It might well be that in the allocation and distribution of the residue entirely different arrangements would be in compliance with the testator's directions. Nor can the knowledge of Mr. William Molson as a trustee and executor, and of Mr. Abbott as law agent in the execution of the testamentary directions of the deceased, and the execution of the transfer in question, be imputed to the Bank so as to affect them with liability. It is not proved that these gentlemen or either of them intervened in any way in reference to the registration of the transfer in favour of Alexander Molson. But, apart from this, their knowledge was not that of the directors or manager of the Bank. They were clearly not agents of the Bank, so that notice to them could be regarded as notice to the Bank.

Their Lordships will on these grounds humbly advise Her Majesty that the appeal ought to be dismissed, and the appellants must pay the costs.

Fullerton, Q. C., and *F. F. Daldy*, for appellants.

Edward Blake, Q. C., (of Canada), and *T. T. Paine*, for respondents.

FINAL REVISION OF VOTERS' LISTS.

MONTREAL, 23 January, 1895.

Before JAS. CRANKSHAW, ESQ., *Revising Barrister.*

ELECTORAL DISTRICT OF ST. LAWRENCE.

Electoral Franchise Act of Canada—Defective declaration—Supplementary proof—Notice of objection.

HELD:—1. *A declaration, made under sub-section* 5 *of section* 15 *of the Electoral Franchise Act of Canada, which does not conform to the provisions of the law, by reason of the declarant's omission to state the grounds of his belief, is not an absolute nullity, but the revising barrister may allow further proof of the qualification of the voter to be made.*

2. *A notice of objection to a voter, which merely alleges "absence" or "removal" as the ground of non-qualification, is*

insufficient, and the revising barrister has no power under such defective notice, to permit evidence to be adduced that the voter has actually ceased to be qualified.

3. *A single notice served on the Revising Officer, with a schedule containing several names of persons objected to, and the grounds of objection, is a sufficient compliance with section* 19 *of the Franchise Act as regards notice to the Revising barrister.*

At the final revision of the voters' list, Mr *A. W. Atwater* and Mr. *F. S. Maclennan*, as counsel for the conservative objector, Amiot, applied for the striking from the list, of the names of Edouard Lapierre and a number of other voters, on the ground of the alleged insufficiency in law of the statutory declarations, (of Mr. James Cochrane and Mr. Joseph Monette) by means of which they were enrolled at the preliminary revision.

The authorities cited by Messrs. Atwater and Maclennan upon the Amiot objections to Lapierre and others were as follows :—

Pickard v. *Baylis*, 5 C. P. D. 235, in which, a lodger's claim under the English Act was rejected because it omitted to state the amount (as required by the Act) of the rent paid by the lodger, claimant, and, in which, the Revising Barrister's decision rejecting the claim and refusing to allow an amendment, was upheld by the Common Pleas Division, although evidence was given before the Revising Barrister of the amount of rent actually paid.

Daking v. *Fraser*, 16 Q. B. D. 252; 55 L. J. Q. B. 11, in which it was decided that a Revising Barrister had no power to receive what is called, under the English Acts, a voter's declaration of misdescription, unless such declaration is sent in within the delay fixed by statute.

Hersant v. *Halse*, 18 Q. B. D. 416; 56 L. J. Q. B. 44, *Jones* v. *Kent*, L. R. 22 Q. B. D. 204, in both of which cases it was held that, in revising the old lodger lists, in England, the Revising Barrister is bound to be satisfied—with regard to every person objected to, whose name is upon such list—that such person's claim to be registered as such, has been *duly* made, and, that the assertion by the claimant of his statutory right by means of a declaration of residence and attestation in the form required by the statute is a condition precedent to his right to be registered.

Smith v. *Chandler*, L. R. 22 Q. B. D. 208, in which it was held that a lodger claimant's notice or application was invalid because

it differed from the form laid down by the statute in that it *omitted the date* of the attestation.

The Revising Barrister gave judgment as follows:

In the course of the preliminary revision of the voters' lists for the electoral district of St. Lawrence (Montreal), one Edouard Lapierre, described as a constable, residing at no. 12 Sanguinet street, was entered as an "income voter" on the supplementary list of names proposed to be added in polling district no. 1 of St. Louis ward. An application of which due notice in writing is proved to have been given to the party objected to, and to myself as revising officer, is now made at the final revision by one Joseph Amiot to have the name of the said Edouard Lapierre struck from the said list on the ground that he is not qualified as stated therein, and that no sufficient evidence or declaration exists or has been produced to me as revising officer by the said Edouard Lapierre or on his behalf entitling him to be placed on the said list.

In support of this application, Mr. F. S. Maclennan and Mr. A. W. Atwater appeared as counsel for Mr. Amiot, and contended that the statutory declaration, by virtue of which Lapierre's name has been placed upon the list, is illegal and insufficient, because, being made by a third party, to wit, Mr. James Cochrane, it should have stated, but omits to state, "the grounds of the declarant's belief" that Lapierre possesses the qualifications therein alleged as entitling him to be registered on the list; and in support of their contention, the learned counsel cited and relied, in particular, upon section 15, sub-section 5, of the Electoral Franchise Act, which requires that the solemn declaration of a person claiming the right of registration on behalf of some other person shall, besides distinctly setting forth the person's qualification, also state, either that it is to the declarant's "personal knowledge," or that "according to his information and belief, the grounds of which belief shall be stated," the person in respect of whom the declaration is made is entitled to registration. The learned counsel also cited some English authorities, more especially those in connection with lodger claims under the English Franchise Act and our own law with regard to capias, in order to show that a defect of the kind in question is one which rendered the declaration absolutely null and void from the beginning.

On the other hand it was contended by Mr. W. Mercier and Mr. E. Guerin, acting as counsel for the voter objected to, and by Mr. I. Tarte, who also appeared for him, that the declaration sufficiently complies with the requirements of section 15, subsection 5, because after stating therein that the declarant is credibly informed and verily believes that the persons thereinafter mentioned are entitled to be registered "for the reasons following," it goes on in the next paragraph to state that each of the said persons is a subject of Her Majesty, aged twenty-one, and possessing the other qualifications thereinafter particularized.

It appears to me that instead of the reasons of belief being here stated, there is a mere statement of the nature of the qualification of the person proposed to be added to the list.

The point raised is of such great importance that I have been strongly inclined to decide in favor of the objection in order that a decision might be obtained from a Superior Court judge to serve as a precedent in the future; or, if there had been anything in the Act to allow me to state a case for the opinion of the Superior Court upon the point, I certainly should have done so; but, after careful thought, I felt unable to decide against my own opinion on the subject for the mere purpose of forcing the matter to a decision on an appeal, especially as the same end may be attained by an appeal which I suggest should be taken by the objector in this particular case of Edouard Lapierre against the decision which I am about to render.

As I have already had occasion to remark, our system of revision, although based upon the English system, differs from the latter in the manner and mode of operation in this respect. Here the revising barrister prepares the lists himself by means of the assessment rolls and local official lists, and by means of solemn declarations as directed by section 15 of the Franchise Act; and, although in afterwards hearing and determining claims and objections at the final revision, he acts in a judicial capacity, his duties and functions are not wholly and entirely judicial, as they seem to be in England, where his functions are confined to the holding of courts for the revision of lists prepared by the overseers; and on that account, as well as by virtue of the express provisions of our Franchise Act, the Revising barrister has a wider discretion and is less bound by the rules of law in Canada than in England.

It has been said by Mr. Atwater and by Mr. Maclennan that,

although under section 26 I am not bound by strict rules of evidence or by the forms of procedure in force in any court of record, and that although I am directed by that section to hear and determine all matters coming before me as revising officer in a summary manner, so as in my judgment to do justice to all parties concerned, this does not mean that I have the power to ignore the express provisions of the Franchise Act itself, but, that where there is in the Act an express provision requiring a certain thing to be done and prescribing certain formalities, the formalities so prescribed must be strictly adhered to and complied with. The question raised on the present objection to Edouard Lapierre is one which, I understand, is to be raised in connection with some 300 other persons whose names have been placed on the preliminary lists by virtue of similar declarations made by Mr. James Cochrane and Mr. Jos Monette. It would, therefore, be a very serious thing to hold that the statutory declaration is an absolute nullity, and to decide that a voter placed on the preliminary lists on the strength of it, must be struck off without an opportunity of proving that he is qualified to be registered as a voter, but, if I were bound by the strict rules of law, I should be compelled, unwillingly, to so hold, and I have no doubt that such a decision would, in that case, be upheld on appeal.

But, after carefully weighing the provisions of the Franchise Act and feeling, as I do, that the general spirit and tenor of the law is against the maintenance of mere technicalities and in favor of the exercise of a broad and equitable discretion so as to do justice to all parties concerned, I have come to the conclusion that, although the statutory declaration in question does not comply with requirements of section 15, sub-section 5, it is not on that account an absolute nullity. I hold that, instead of its being (as it would have been if it had complied with that sub-section), *prima facie* evidence of the qualifications of the persons mentioned therein, it is imperfect, but may be supplemented by further proof; and that if such further proof be furnished as satisfies me of the qualifications of the persons mentioned therein I shall be justified in retaining their names on the list.

Sub-section 6 of section 15 says:—"If the revising officer has reason to believe that a mistake has been made in any declaration, and that thereby a person not qualified has been entered on the list, he may, by reasonable notice, require the declarant to

give further proof of the qualification of such person at the final revision, and if further proof is not then given the revising officer may strike from the list the name of such person."

And sub-section 4 of section 20 says :—" If it appears, on the hearing of an objection to any name on the original or supplementary list of a polling district, that the name or qualification of the person whose name is objected to is incorrectly entered on such list, but that he possesses such qualification as entitles him to be registered thereon, the revising officer shall retain such person's name thereon, making the necessary corrections; or if it appears that the person whose name is objected to is not entitled to be retained on such list, but possesses such qualification as would entitle him, if he has given the necessary notice, to be placed on the list for any other polling district within the electoral district, the revising officer shall add such person's name to the list for the polling district where he possesses such qualification, but may adjudge against him such costs as he thinks just."

In view of these provisions and of the wide discretion which is given to me under section 26 to ignore strict rules of procedure and of evidence, and to decide all matters coming before me in such a manner as will, in my judgment, do justice to all parties concerned, I hold that there is such a mistake as places the person objected to in the same position as if, instead of having filed with me a proper declaration, he had merely given notice to have his name added to the list at the final revision, and inasmuch as it was a mistake to have put him on the list in virtue of this defective declaration, I now notify the declarant, Mr. James Cochrane, that he is required on Monday next, the 28th day of January instant, at 10 a.m., to give further proof before me of the qualification of the said Edouard Lapierre to be registered as a voter, and that if such proof be not then given the said Edouard Lapierre will be struck from the list.

Among other matters of interest discussed at the final revision of the St. Lawrence lists, were the following:—

The Franchise Act provides by section 19, that a person desiring to object to a voter, shall give notice to the Revising Barrister in the form given in the schedule to the Act, and this form requires that the ground of the objection shall be stated in such

notice, and section 19 requires, further, that a notice in the same form as the notice sent to the Revisor shall be served upon the party objected to.

With regard to the notices of objection given by Mr. M. E. Mercier, acting for the Liberal party, a separate notice stating the grounds of objection was served upon each person objected to, but a single notice with a schedule containing several names of persons objected to, and the grounds of objection was served upon the Revising Officer; and it was, on that account, contended, that these notices were not in accordance with the Act and that the objections should be dismissed for want of proper notice. In support of this contention, Messrs. Atwater and Maclennan cited the cases of *Freeman* v. *Newman*, (County) 12 Q. B. D. 373, and *Barton* v. *Ashley*, (Borough), 2 C. B. 4, where it was held to be a condition precedent to the right to insist upon an objection to any person upon the list that proper notices of objection should have been given in proper time both to the overseers and to the person objected to, and, that in the case of a notice of objection to be given to one of the overseers, the person objected to has a right to see that the conditions of the Act have been fulfilled.

The Revising Barrister decided — that the notices were good, on the ground that, although the notices to himself, as revisor, were not duplicates of or identical in wording with those served upon the parties objected to, they contained the same information, in effect, as the separate notices to the persons objected to; and he also based his decision upon the case of *Smith* v. *Holloway*, L. R., 1 C. P. 145, where separate notices of objection were proven to have been served on each of the persons objected to, and where the notice of objection given to the overseers was held good although it was a single notice in which the names of 29 persons objected to appeared in a schedule thereto.

Another matter of interest discussed at the final revision, was the following:—

Some of the notices of objection given by Mr. M. E. Mercier, acting for the Liberal party, were attacked by Mr. F. S. Maclennan as defective and void for not stating sufficient grounds of objection.

For instance, in some of these notices of objection to tenant voters, they were objected to on the ground of being "absent," and in others, on the ground of having "removed."

It was contended that "absence" or "removal" did not necessarily imply that the tenant's qualification had ceased to exist, or that the tenancy had terminated, inasmuch as a voter entered on the lists as a tenant might be absent say, temporarily) without losing his qualification of tenant, or, he might have "removed" (say, to another part of the electoral division) without losing his qualification of tenant, and, it was further contended that, in these cases where simple absence or simple removal was alleged, no proof could be made to show that the party objected to was actually without the qualification of tenant. In other words, that the simple allegation of absence of removal was not an allegation of non-qualification, and, that it was incompetent to make evidence of what was not alleged in the notice of objection.

In support of these contentions, the following authorities were cited :—

Smith v. *Woolston*, L. R., 4 C. P. D. 73, where it was held that a Revising Officer had not power to hear any objection to a voter upon the list, except for the specific cause stated in the notice of objection, and that it was not the duty of the Revising Barrister to allow another objection than that mentioned in the notice to be taken before him, inasmuch as the voter might come prepared to meet one objection and be surprised by another, for which he had not come prepared.

Bridges v. *Miller*, L. R., 20 Q. B. D. 287. In this case the notice of objection served on the party objected to, stated as the ground "that you do not reside at 12 Clifton street, Norwich." The Revising Barrister held that the notice was not sufficient, but amended it by substituting in it the words "that you have not resided at 12 Clifton street, Norwich, for the six months next preceding the 15th July last past, etc.," so as to comply with the requirements of the English statute. *Held*, by Lord Coleridge, C. J., Pollock, B., and Hawkins, J., that the notice was bad, and that the defect was not a mistake which the Revising Barrister had power to amend.

On the strength of these authorities, the Revising Barrister dismissed the notice of objection in every case in which the ground of objection was simple "removal" or "absence," and refused to receive evidence tendered to show that there was not only an absence or removal, but that the party objected to had ceased to be qualified as tenant.

SIR OLIVER MOWAT, Q.C.

In this brief sketch of a busy professional life, we have nothing to do with the successful politician, with the famous statesman, but only with the lawyer. The beginnings of Sir Oliver's, the lawyer's, career belong to the traditional past. An equity lawyer, he remembers the days when equity jurisprudence was unhonored in his native province. He has practised before that maimed, peripatetic Court of Chancery, *sans* Chancellor, sitting at one time in Toronto, then again at Kingston, a despised handmaid to a roving government. He has known and used the cumbrous procedure of archaic pleading—with its long drawn out bills and answers, interrogatories and cross-interrogatories. He has chafed at the vexatious delays and inefficiency of the first Vice-Chancellor, who is remembered now, scarce as a jurist, but because he had given his name to the lively Anna Jameson. Sir Oliver had seen his chosen jurisprudence become the predominating influence in all the courts of the province. At the time he was called to the Bar, and for years after, the cry for law reform was loud in the land, and in this, the closing decade of the century, he is aroused by the same clamor to devise measures of relief for burdened suitors. What changes he has seen in the organization and personnel of the courts! In his junior days the Court of Appeal consisted indifferently of the Lieutenant-Governor, or Chief Justice, of the province, and two or three members of his Executive Council. We can hardly imagine, now-a-days, a deliberate appeal from the Courts upon matters of law to the current phantom of royalty sitting with his political advisers. Such organization of the judiciary is immeasurably distant from the complex machinery introduced by the Judicature Act. Concerning these momentous changes, Sir Oliver can, without boasting, say of his public career, *quorum pars magna fui.*

From the public point of view, then, what a career, as honorable as useful! Yet for Sir Oliver, the lawyer, how uneventful in its prosperous progress. Everything seems to have gone well with him; he met no reverses of fortune; there is nothing for the biographer to lay hold of to excite our sympathy with the early struggles of the rising barrister; there is no store of anecdote or picturesque incident to afford light and shadow to the picture; from the outset, all is smooth, monotonous success.

Even Sir Oliver, if one applies to him personally, can add nothing of interest to what is already known. So, it results that all the biographers have done for their subject is to show to us the prominent facts in his life, and with general phrase leave us to fill in the woof with what material may be gleaned from dry narratives of reported cases, and reminiscences of the few survivors of his own generation of lawyers.

From the meagre accounts of the biographers, we learn that Sir Oliver was born at Kingston, on the 22nd of July, 1820. He comes of a Scotch, Presbyterian stock—a strain of blood which, in theology, makes one take kindly to doctrine and metaphysics, in law, to the deduction of principles, and a certain flexibility in their application, coupled, however, with reverence for the decided case. In Kingston, the Rev. John Cruikshank conducted a seminary of good local repute. Among others who passed beneath his birch, and whose early days are interesting to Canadians, by reason of their after greatness, were Sir John A. Macdonald, and the Hon. John Hillyard Cameron. To this school the young Mowat resorted. As is customary to relate of those who afterwards become celebrated, we are told that as a child, Mowat was precocious. His father, a well-to-do general merchant, could give his boy all the limited educational advantages of the period. He seems early to have destined him for the law. The rebellion of 1837 found him a student-at-law, in the office of John A. Macdonald, then known merely as a prosperous lawyer. It is a queer coincidence, that the first relations of Sir Oliver and Sir John should be as student to principal, not that in those days, any more than in our own, did the principal do more than allow the student to learn what he could in his office. The proof of the matter that Sir John did not exert a profound legal influence over his young pupil, is the fact that the student selected the Equity Bar and Sir John was a common law lawyer. The study of law in Sir Oliver's student days was not made easy by texts written for students. The law had to be gleaned from collections of cases, and from ponderous works like Coke upon Lyttleton. By delving in his principal's books and picking up what he could from the business of the office, the young student doubtless bit by bit acquired a working knowledge of law and equity. The rebellion interrupted his studies for a few brief months, when, a lad scarce full 17, Sir Oliver served as a volunteer. His military experience did not

include actual warfare, and when the immediate excitement was over he returned to his studies. Four years were thus spent in Sir John's office, when young Mowat removed to Toronto to obtain in the law capital the wider information to be gained as a student in a leading office. He was fortunate in his choice of a new principal—Mr. Robert Burns; and his choice, it will be seen, had an important influence on his after career. Mr. Burns, besides enjoying a large practice, was judge of the Home District, which included the Counties of York, Ontario, and Peel. There was nothing incongruous then in the County Judge practising in other courts. In the early days, the emoluments of a County Judgeship would not attract a barrister in decent practice.

Upon the completion of his finishing course in Mr. Burns' office, Sir Oliver was, during Michaelmas term, 1841, admitted as attorney and solicitor, and in the same term was called to the Bar. He commenced practice in the City of Kingston. We can conjecture what determined him to start his professional life in his native town. The Court of Chancery, which had been organized in 1837, by its newness would attract one whose student days were contemporary with its history. There could be no well recognized leaders of the Equity Bar at this early period: all candidates for public favor would meet upon fairly equal terms before the Vice-Chancellor. Besides these considerations, in 1841 the Court of Chancery located itself in Kingston, for it was the theory of that day, that as the Chancellorship remained vested in the Crown, the Vice-Chancellor's Court must be held at the seat of Government. In 1844, however, the wandering government removed to Montreal, and as the Court of Chancery was for Upper Canada only, the bond was broken and the court returned to Toronto. Sir Oliver also removed to Toronto, to be in attendance upon the court. Of the Kingston sittings of the court but few memorials remain. We know that Turner, Maddock, and Esten, practised there before the court. We know also that the Vice-Chancellor was of Lord Eldon's school, and that an outcry was made from one end of the province to the other for the abolition of the Court. We know also that Sir Oliver got a fair proportion of the business done; causes were few, but the contests were Herculean, making full use of all the vast machinery of the contemporary English system. Modern aids to office work, too, were wanting, and the interminable proceedings had to be slowly engrossed by clerks.

In 1844, at Toronto, Sir Oliver formed a partnership with Mr. Burns, his former principal, under the style of Burns & Mowat. Mr. P. M. M. S. Vankoughnet was subsequently admitted to the firm, which then changed its style to Burns, Mowat & Vankoughnet. Their offices were on the south side of King Street, upon the site of the present Romaine buildings. McDonald's Hotel adjoined the office; here Sir Oliver lived, and it was a common sight to see him return in the evening to his office, and work late into the night. He almost exclusively took Chancery briefs and rapidly engrossed this branch of his former principal's practice. In 1848, the Legislature interfered by statute to prevent County Judges from practising as barristers, and Mr. Burns withdrew from the firm. Mowat & Vankoughnet retained the large practice of the older firm. In 1849, came the sweeping changes in the Court of Chancery, effected by William Hume Blake, then Solicitor-General. The court was entirely remodelled, with a Chancellor and two Vice-Chancellors. Mr. Blake himself joined the court as Chancellor, and Mr. Esten was appointed one of the Vice-Chancellors. The court at once won the confidence both of the public and of the Bar. Now that the Court of Chancery became efficient, and its usefulness increased, Sir Oliver reaped the advantage of his early loyalty to Equity Jurisprudence. He took at once a foremost place at the Equity Bar, and was engaged in a majority of the causes. A casual inspection of 1 Grant's Chancery Reports, covering the period of the first year of the new court, shows him in one case out of every two reported. It is interesting to note who were his compeers. Robert Baldwin was Attorney-General; John Sandfield Macdonald, Solicitor-General; Adam Wilson, Haggarty, Eccles, Galt, Morrison, Cameron, together with forgotten leaders like Hector, Crickmore and Brough, made a strong Bar. Nor were picturesque figures wanting; conspicuous among his brethren was Dr. Connor, Q.C., formerly partner in the 'flourishing concern' with William Hume Blake and Joseph C. Morrison—tall, cadaverous, prematurely white—'Old Mortality' as Judge Sullivan dubbed him. Not all of these confined themselves to equity business, as did Sir Oliver, but it is evident that to be a leader among such men was standing not to be lightly won. In practice, as in later life, the keynote of Sir Oliver's success was his untiring industry and pertinacity. Not as brilliant as some of his rivals, he was unmatched in his industry. In the days of

Vice-Chancellor Jameson, the Bar, with Blake and Esten as leaders, had been too strong for the Bench. A strong Bench calls out the best powers of counsel practising before it, and, year by year, practi ing before Blake and Esten, Sir Oliver's knowledge and breadth grew greater, until in his own sphere he was admitted leader of the Bar. His industry alone could allow him to undertake, as he did, the largest equity practice in Upper Canada. His partnerships were numerous. After the dissolution of the firm of Mowat and Vankoughnet, he formed a partnership under the style of Mowat, Ewart & Helliwell, with Mr. John Ewart and Mr. John Helliwell. Next, we find him as head of the firm of Mowat, Roaf & Davis. For a time after the dissolution of this firm, he practised alone, and then entered into partnership with Mr. James Maclennan. His business followed him from firm to firm, showing that it was to Sir Oliver that the business came and not to the firm. Many of the cases he argued, reported in Grant's reports, are to-day living authorities on topics of Equity-jurisprudence. In 1856, he put on silk as Queen's Counsel, and in the following year made his first essay in politics, contesting South Ontario. Sir Oliver was elected, and took his seat in 1858. Until his elevation to the Bench, in 1864, he engaged actively in politics, but never neglected his practice. He was Provincial Secretary in the four-day Brown-Dorion cabinet which preceded the famous double shuffle. In 1863, he was Postmaster-General in the Sandfield Macdonald-Dorion administration, and still held this portfolio when, upon Vice-Chancellor Esten's death, he became Vice-Chancellor.

For eight years Sir Oliver was Vice-Chancellor. His appointment was grateful, both to the public and the bar. As a judge, Sir Oliver's notable characteristic was his fairmindedness. His reported decisions are clear and logical, and have always been held of high authority in our courts. The education of a lawyer is not favorable to breadth of view, but with Sir Oliver, his natural fairmindedness saved him from narrowness. He was an ideal Equity Judge—learned in the jurisprudence, skilled in its technique, familiar with precedent, but withal master of his reason. He might not always be able, as judge, to deny a decree to a dishonest suitor, but he was a difficult judge to apply to under such circumstances. He resigned the bench to re-enter public life in 1872, with the fame of an upright judge. Since

then Sir Oliver's career as law reformer and as administrator of a great province is known to all. He has left his mark upon our institutions.—*W. H. H. in "The Barrister."*

THE LATE EARL OF SELBORNE.

It is with deep regret that we record the death of the EARL OF SELBORNE, which took place at his country residence, Blackmoor, Petersfield, at eight o'clock last Saturday night, May 4th. Roundell Palmer was born on November 27, 1812, in the rectory of Mixbury, in Oxfordshire. He was the second son of the Rev. William Jocelyn Palmer, who married Dorothea Richardson Roundell. The Palmers came from Yorkshire, and among the ancestors of the future lawyer was Sir John Bramston, Chief Justice of the Court of Common Pleas in the reign of Charles I. The father of the deceased peer was for a time Gresham Professor of Civil Law. In July, 1825, he was an unsuccessful candidate at Winchester, but in the following autumn, when only about thirteen, he went into commoners. Dr. Gabell was then head-master, and amongst young Palmer's school-fellows were Cardwell, Ward and Lowe. In 1830 he was elected to an open scholarship at Trinity College, Oxford, and then began a brilliant academic career, though there is a tradition that he was ploughed for 'smalls.' In 1832 he took the Ireland scholarship—which Mr. Gladstone had failed to win the year before—and in the same year won the Newdigate with his poem 'Staffa.' In 1834 he won the Eldon scholarship, and in the same year he took a first class in classics. The Chancellor's prize for a Latin essay, 'De Jure Clientelæ apud Romanos,' fell to him the next year; and he was elected a Fellow of Magdalen. He found time to distinguish himself elsewhere than in the schools, and especially in the Union. For many years Palmer kept in close touch with his university, of which in due time he became counsel. Palmer entered the chambers of Mr. Booth, a well known conveyancer and Parliamentary draftsman, and in 1837 he was called to the Bar at Lincoln's Inn. He had not long to wait for briefs. It is still a moot point what solicitors first took him in hand; there are several claimants for the honour of first discerning his aptitude. By 1840 several large firms were among his clients. Never was the equity Bar stronger than it was from 1840 to 1860. Bethell, Cairns, Rolt, Selwyn, James, Giffard, not to mention many others

scarcely inferior as advocates and lawyers, were among Palmer's competitors. But he quickly came to the front, and the volume of his business steadily increased. His name begins to appear in the early volumes of Beavan. It is to be found in every case of importance in the later volumes. Whether his legal knowledge and soundness of judgment were greater than his persuasiveness as an advocate had become a question when he took silk, as he did in 1849. To have his opinion was to have one esteemed second to none, and his skill in pleading before an equity tribunal solicitors pronounced incomparable. 'If Palmer could get rid of the habit of pursuing a fine train of reasoning on a matter collateral to the main point of his argument, he would be perfect.' That was the judgment of his contemporary Bethell, and it touched nearly the only flaw in an almost matchless forensic style. He left Oxford as a Conservative. As a moderate Conservative, he stood for Plymouth in 1847, and was returned to Parliament and held the seat for ten years. From 1857 till his appointment as Solicitor-General in 1861 he devoted himself with even greater ardour to the practice of his profession, and with ever-increasing success. When Bethell became Chancellor, Palmer was appointed Solicitor-General, Sir William Atherton being Attorney-General. A seat, and, as it proved, a very safe one, was found for him at Richmond, and he re-entered Parliament as a moderate Liberal. Atherton died in the Long Vacation of 1863, and Palmer became Attorney-General. His position in the House of Commons, and indeed in the country, was almost unique. Inferior in brilliancy to Copley and Bethell, he was more persuasive than either. The elevation and gravity of his character, his professional reputation, the facility and suavity of his speech, and a voice monotonous but melodious, gave him great weight in the House. It fell to him, as Attorney-General in 1864, to welcome in the name of the Bar of England M. Berryer, the representative of French advocacy. Not even Cairns was more prized in legal arguments. His studied humility in expression was compatible with lofty coldness towards juniors who presumed to differ. Solicitors might complain of Palmer's frigid demeanour towards them, and it was a moot point, never decided, with some of them whether Palmer sitting on a sofa in frosty majesty as they entered and waving them to a corner was more unpleasant than Bethell's studied disregard of their presence and existence—but they flocked to him. In all cases of importance he was retained on one side. Often

clients left no option. 'Retain Palmer' was a common form of telegram. Like Cairns, he did not read his papers on Sunday; but late on Saturday night he was at work, and early on Monday it was renewed. Only great abstemiousness could have enabled him to toil as he did. 'How contend with Palmer, who can day after day lunch on a bun?' said, one day, in the robing-room at the Judicial Committee, a professional rival with less simple tastes. The life-long friend of Mr. Gladstone, at the head of the equity Bar, and possessed of great influence in the country, he was long marked out as a future Chancellor. His promotion was retarded by an event perhaps the most honourable in his career. Sir Roundell Palmer was an ardent son of the Church of England. In the discussion of Mr. Gladstone's resolutions on the Irish Church Sir Roundell Palmer took no part, though his hostility to the proposed measure was well known. When Mr. Gladstone returned to power, with the determination to carry into effect his famous resolutions, Sir Roundell Palmer, who would, in the natural course of things, have become Lord Chancellor, declined to serve. Though he declined to join the Ministry, his friends in office made subsequently severe strains upon his services. Thus he was called upon to support—and unfortunately did support—the extraordinary appointment of Sir Robert Collier to a judgeship in the Court of Common Pleas in order to qualify him, within the letter of the statute, for a position as paid member of the Judicial Committee. Not the least remarkable episode in his career was his appearance before the Tribunal at Geneva as counsel for the English Government. For this service, it is reported, he was offered a fee of £30,000, which, it is understood, he declined to accept. In October, 1872, he succeeded Lord Hatherley as Lord Chancellor, an office which he held until February, 1874. In the history of English law that date will always be memorable. In no single century were changes accomplished comparable to those carried out under Lord Selborne's guidance in those two years. He had already made known his extreme dissatisfaction with the state of the English judicature. His speech in the House of Commons on February 22nd, 1867, may be said to be the high-water mark reached in English legal reform. Certain guiding principles he postulated. 'There are, in my opinion, two principles which ought to be aimed at in any reform which we may accept—that we should, if possible, constitute a single Court of final appeal, and that we should at all events, permit only one

'appeal in any case decided by a superior Court.' As a judge he, on the whole, realized the high expectations formed by his friends. He was patient, attentive, courteous, and dignified. No counsel pleading before him could complain that he had been unheard. Perhaps, in consulting Lord Selborne's judgments, one is embarrassed by the absence of proportion—by the prominence given to matters of minor importance, redundancy in the statement of facts, and trains of reasoning running off into collateral matters. But his statements of legal proposition are cautiously worded, with a far-seeing regard to cases not actually before the Court; and probably from no other judge's reported decisions could be culled fewer hasty, ill-considered *obiter dicta*. In 1874 he was succeeded as Lord Chancellor by his friend and opponent Lord Cairns, and for a time he took little part in public affairs, though one episode in this part of his career will not be forgotten—the brilliant forensic duel in the House of Lords between him and Lord Cairns, the subject of dispute being the legality of employing Indian troops in Europe by the mere authority of the Crown and without the consent of Parliament. When Mr. Gladstone returned to office in 1880, Lord Selborne went back to the woolsack, and held the Great Seal till the fall of the Ministry in 1885. The new Law Courts were opened during his tenure of office, and he was raised to an earldom in connection with this historic event. Even when not engaged in Parliamentary or judicial duties, Lord Selborne was not idle. He was a frequent contributor to the *British Critic* in days when that periodical was the mouthpiece of Newman, Mozley, and Ward. The 'Book of Praise,' published in 1863, was the first English hymnal collected in a catholic spirit and with discernment and taste. To Professor Bell's edition of 'White's Selborne,' from which Lord Selborne took his title, he contributed a chapter on the antiquities of the parish—a chapter profoundly interesting to archæologists because it was his good fortune to find in digging on his estate a number of Roman coins. In 1886 he wrote a defence of the Church of England against Disestablishment—a defence in which he again put forward the arguments which he had employed in his famous speech on the Irish Church. He took a warm interest in the foundation of the Legal Association, of which he was the first president, and in Parliament and out of doors he strove to raise the plane of education at the Bar. His private life was stately, dignified, and rich in good deeds, and he was seen at his best in the company

of his old friends Dr. Harold Browne and W. G. Ward. Nowhere was he held in more esteem and respect than in his own parish. In 1865 he purchased the Temple and Blackmoor estates in the parish of Selborne, and built for himself a house on the spot occupied by Blackmoor Farmhouse. His position in the parish brought, he thought, responsibilities. He proposed to Magdalen College to form a new ecclesiastical district, including Blackmoor, Eveley, Oakwood, and Oakhanger, and to build and endow at his expense a church and parsonage. This scheme was realized. A new parish of Blackmoor was formed; a noble church was endowed; and large schools, also his gifts, will long commemorate his munificence. At the outset of his public life he was a moderate Conservative. As years went on he became more closely associated with the Liberal party, to some extent under the influence of his friend Mr. Gladstone. Of late years, however, they parted company; and Mr. Gladstone's policy in regard to Irish affairs had no more rigorous and acute critic than Lord Selborne. Until the session of 1894 he took an active part in the discussions of the House of Lords. One of his last speeches of importance in Parliament was that which he delivered in June of 1894 against the Deceased Wife's Sister Bill—a measure which he had always opposed. Remarkable as coming from one of his years, the speech was all the more surprising because he had mislaid his notes, and had to trust to his memory for his copious references and authorities. Lord Selborne married, in 1848, Lady Laura Waldegrave, the second daughter of the eighth Earl Waldegrave, and was left a widower in 1885. His son, William Waldegrave, Viscount Wolmer, who succeeds to the earldom, was born on October 17, 1859, and sits as a Liberal Unionist for Edinburgh (West).—*Law Journal* (London).

NEW PUBLICATIONS.

A PRACTICAL GUIDE TO POLICE MAGISTRATES AND JUSTICES OF THE PEACE, with an Alphabetical Synopsis of the Criminal Law, and an Analytical Index; by James Crankshaw, Esq., B. C. L., Advocate, Montreal. — Publishers, Whiteford & Theoret, Montreal.

Mr. Crankshaw, whose elaborate work on the Criminal Code was published not long ago, and very favorably received by the

profession, has now, with remarkable assiduity, completed and issued a second work on the criminal law, intended more particularly for the guidance of justices of the Peace, and magistrates' clerks, as well as legal practitioners. This work also, is very comprehensive, including four principal parts. The first treats of the modes of, and the formalities attending the appointment of justices of the Peace and police magistrates, their respective powers, duties and responsibilities. The second treats of the parties to the commission of crimes, and of the extent of the criminal law as to time, persons and place. The third division deals with the prosecution of criminal offenders, the jurisdiction of the criminal courts, and of magistrates and justices of the Peace, of summary arrest of criminal offenders, the modes of prosecuting indictable offences, the procedure before and at the preliminary enquiry into charges triable by indictment, the procedure in summary trials of indictable offences, speedy trials, and trials of juvenile offenders, and the procedure in connection with the summary trial and conviction of persons charged with non indictable offences, including subsequent proceedings by way of appeal, reserved case, *certiorari*, and *habeas corpus*. The last division, which in itself comprises 246 pages, consists of an alphabetical synopsis of the criminal law of Canada, with references to decisions. This gives ready reference to the whole work.

With the Criminal Code, expanded and illustrated by works like these of Mr. Crankshaw, the magistrate as well as the practitioner is saved many a tedious search for the law; his path is cleared for him, and rendered comparatively easy. The arrangement of the work seems to leave nothing to be desired; the book is well printed and bound, and the Practical Guide will doubtless take its place as an aid indispensable to those for whose use it has been prepared.

GENERAL NOTES.

THE POSITION OF LAW OFFICERS IN ENGLAND.—The *Law Journal* says:—"The prediction made in these columns at the time of the change in the position of the law officers, that it would involve an additional expense to the country, has been warranted by the supplementary estimate which engaged the attention of the House of Commons on Tuesday night. No less than £16,570 was voted.

But the cost of the change is by no means the only ground on which it is to be condemned; and we are glad than Sir Edward Clarke availed himself of the opportunity to emphasise the objections that have been urged against prohibiting the law officers from practising privately in the Courts. One effect of the change has been to increase the political character of the offices of Attorney and Solicitor General, and to weaken their connection with the Bar. The law officers are seldom seen in the Courts, and must eventually lose touch with the interests of the profession. In this way the Attorney-General will cease to be recognised as the leader of the Bar, and the office will no longer attract the most eminent men in the profession. Mr. Darling, Q.C., thinks that a salary of £10,000 a year, which is as large as that of the Lord Chancellor and twice as large as that of the Chancellor of the Exchequer, will secure the services of a 'a very adequate barrister to advise the Crown.' We do not doubt it. The question is whether the services of the best man could be procured on the terms, and, so far as this question is concerned, the reference to the Lord Chancellor and the Chancellor of the Exchequer is wholly beside the mark. The Lord Chancellor is entitled to a handsome pension, and remains a judicial officer after he has vacated the woolsack, and the Chancellor of the Exchequer is invariably a politician whose whole time is devoted to politics, and who gives up nothing on accepting the office. The case of a law officer is different. He has to abandon his private practice for an office the tenure of which will probably be more uncertain in the future than it has been in the past, with the knowledge that whenever the Government of which he is a member is defeated he may find it extremely difficult, if not impossible, to resume his former place in the Courts."

MISUNDERSTOOD.—Condensed reports of the Solicitor-General's speech at Sheffield omit (says the *Daily News*) an aside that much delighted the audience. "I hope," said the ex-Recorder of Sheffield, "that during the ten years I was connected with this city I have given satisfaction——" (here the company broke into a loud cheer). "I was about to add," continued Sir Frank Lockwood gravely, "to those gentlemen who came before me in my judicial capacity. I did not realize till I heard the applause that there were so many present here to-night.'