DIARY FOR DECEMBER.

1. Fri....Last day for delivering appeal books in Court of Error and Appeal.
3. SUN..*Advent Sunday.*
7. Thur..Rehearing term in Chancery begins.
9. Sat ...Michaelmas term ends. Last day for notice for call.
10. SUN..*2nd Sunday in Advent.*
12. Tues..Gen. Sess. and Co. Court sittings in every county. Last day for J. P.s to return convictions to Clerk of Peace.
15. Fri....Court of Appeal sits.
17. SUN..*3rd. Sunday in Advent.*
20. Wed..Trinity College Michaelmas term ends.
21. Thur..University College Michaelmas term ends. Shortest day.
24. SUN..*4th Sunday in Advent.* Chris. vac. in Chy. and vac. for Judges Q.B. and C. P. sitting singly begin.
25. Mon..Christmas Day. Nom. of Mayors, Aldermen, Councillors, Reeves, &c.
26. Tues..Upper Canada erected into a province,1791.
31. SUN..*1st Sunday after Christmas.*

CONTENTS.

THE
Canada Law Journal.
Toronto, December, 1876.

DEATH OF HON. JOHN HILLYARD CAMERON.

With feelings of the deepest sorrow we record the death of the Honorable John Hillyard Cameron, D.C.L., Q.C., Treasurer of the Law Society of Ontario.

Few men could be so ill spared from the country at large, whilst to the profession the loss seems to be irreparable, and it will be more apparent day by day for many days to come. To those who had the pleasure of his friendship there will be a want which only time can supply, whilst many a business man will be at a loss where to turn for that ripened experience, sound judgment and heart-inspiring counsel and prompt action which has enabled many to weather the storm which seemed ready to overwhelm them. To hear his eloquence, to observe his high intellect, his undaunted courage, his unflagging industry, his force of character, his tact, his universal courtesy, was to admire him; to be in his society was a great and increasing pleasure, and the charm of his manner few could resist. As yet it seems impossible to realise that one whose presence and counsel seemed so necessary in almost every undertaking or institution of any importance in Ontario, will be seen and heard no more. What concerns us most is, that the leader of our Bar, the staunch supporter of his order, the friendly counsellor of the youngest student, as well as the trusted and confidential adviser in matters of the utmost magnitude; the universal referee in matters professional, whose spoken word was accepted without a shade of suspicion alike by his opponents and the Bench; against whose professional honor no whisper was ever heard—is gone from us, at a time when a

man of that stamp seemed so necessary to the welfare of our profession.

The history of Mr. Cameron's life will be the history of Canada for the last thirty-five years; and if it is written as it should be, it will show that, though for the last twenty years he carried a burden of misfortune and financial embarrassment, resulting from a too sanguine temperament, which would have crushed most men to the earth, and which prevented even him from properly asserting himself among his fellows, he bore it so bravely and so uncomplainingly that few knew how it galled his proud nature and sapped his energies, and at last broke down a constitution which seemed to defy the ravages of trouble and fatigue. It will be long before we shall look upon his like again.

The public press has given to the general reader the leading incidents of Mr. Cameron's career. We shall endeavour to supplement this at an early day by some further information interesting to those who now mourn his loss to a profession of which he was one of the brightest ornaments.

Mr. Cameron died at his residence in Toronto, on Tuesday, November 14th, in his sixtieth year, after a brief illness. His funeral, which was attended by all the public bodies and an immense concourse of citizens from various parts of the Province, was, next to that of Sir John Robinson, the largest ever seen in Toronto.

We are indebted to Mr. Cassels, the very efficient Registrar of the Supreme Court, for the report of a case in the Exchequer Court, (*Wood* v. *The Queen*), in which the following points have been decided as to security for costs:

Held, 1. Where by a letter addressed to the suppliant the Secretary of the Public Works department stated that he was desired by the Minister of Public Works to offer the sum of $3,950 in full settlement of the suppliant's claim against the department, an application on behalf of the crown for security for costs was refused on the ground that the crown could suffer no inconvenience from not getting security, as well as on the ground of delay in making the application.

2. Application for security for costs in this Court must be made within the time allowed for filing statement in defence, except under special circumstances.

The report was received too late for insertion this month, but will appear in full in our next issue.

Mr. Justice Archibald, whose death was announced last month, was the son of the late Hon. S. G. W. Archibald, LL.D., Master of the Rolls and Judge of the Court of Vice Admiralty, Nova Scotia, and was educated at Halifax. He was a special pleader below the Bar for eight years, and was called at the Middle Temple in 1852. He was appointed a Judge of the Queen's Bench in November, 1872, and in February, 1875, was removed to the Common Pleas. Like Lord Blackburn and Sir James Hannen, he was taken from the Junior Bar to be placed on the Bench. He was universally respected by the profession, was painstaking, conscientious and learned, with a large experience. He died at the comparatively early age of fifty-nine, having in his short career on the Bench displayed the highest judicial qualities.

The *Law Times* calls attention to the growing disinclination of the best men at the Bar in England to go on the Bench. The encouragements to go there are not sufficient, the work being enormous and the salaries inadequate. If the salaries in England are too small, what must they be with us? Any Minister of Justice would deserve well of his country were he largely to increase the judicial salaries here. We may echo the desponding words of the *Law Times*: "It is impossible to look without apprehension to the necessities which must shortly arise and

the appointments which will have to be made." Let the remedy be applied before it is too late. What was a fair salary here a quarter of a century ago, is now a paltry pittance, which any man at the Bar of any eminence would naturally decline to accept, but for the honour of being made a target for the abuse of disappointed suitors or enraged politicians. This disinclination to accept an office the acquisition of which ought to be a barrister's highest ambition, is a grave misfortune, and is a subject much more worthy of consideration than many of the petty matters which engross the attention of our rulers.

The first part of the "Rough draft of the Revised Statutes of Ontario, being a consolidation of the Acts of the Legislature of Ontario, with such of the Acts of the late Province of Canada as relate to matters within the jurisdiction of the Legislature of Ontario," (to use the language of the title page,) has been distributed for the information of members and others, and for the purpose of receiving suggestions from any quarter before the review of the work by the Statute Commissioners and its submission to the Legislature. If this review of Part I.—the rest of the volume not yet being issued—is to be more than a mere formal endorsement of the labours of the working men on the Commission, it will be sharp work to have the revision of the whole ready for the Legislature at its next session. We have every reason to believe that those who have this matter in hand are endeavoring to push the work with all speed. We can well understand its tedious and laborious nature, and though a consolidation will be of immense service, it will be far better to make it as perfect as possible, than so to hurry it as to necessitate further legislation. If it cannot be done we shall not grumble, if it can, we shall be proportionately pleased.

LAW SOCIETY, MICHAELMAS TERM, 1876.

Election of Treasurer.

At the first meeting of convocation, this Term, the Benchers proceeded to elect a Treasurer in place of Hon. John Hillyard Cameron, whose loss we have referred to in another place. The choice of those present fell upon Hon. Stephen Richards, Q.C. We congratulate him upon his appointment to so high and honourable an office. The selection of Mr. Richards will be quite acceptable to the Bar, who thoroughly appreciate his sterling qualities of head and heart, his scrupulous rectitude of character, and his conscientious devotion to his profession.

As there has been some discussion as to vacancy being filled so promptly after Mr. Cameron's death, and so, as has been alleged, not giving a number of the Benchers special notice of such important business so that they might be present, it would be well to quote the language of No. 14 of the Rules of the Law Society, which provides that:—

"In case of a vacancy in the office of the Treasurer, or of the Treasurer elect, before entering upon the duties of the office, the Benchers present at the first meeting of Convocation next ensuing the occurrence of such vacancy shall, before proceeding to any other business, elect a Bencher to fill the office of Treasurer until the next statutory election."

Provision is made by Rule 12 for the case of the absence of the Treasurer, by the appointment of a temporary Chairman, but this does not apply to a vacancy in the office. It might have been more satisfactory (and would we are sure have been so to the newly elected Treasurer) if these rules had been a little more elastic, or framed with a little more thought as to possible contingencies, so as to have given more time for discussion as to the successor of one whose brilliant administration must make the office more difficult to any person who might follow

him; but the gentleman who now occupies the position may rest assured that he enters upon the duties of his responsible office with the best wishes of his brethren, who accept his election in the belief that an excellent appointment has been made, and that he will fulfil his duties with that conscientious attention and honesty of purpose, which, with his undoubted learning, has gone so far to establish his reputation at the Bar.

CALLS TO THE BAR.

The following gentlemen were called to the Bar this Term:

H. H. Ardagh, J. S. Fraser, (without oral, for merit).

E. P. Clement, H. H. Culver, D. W. Clendennan, J. W. Liddell, J. W. Nesbitt, A. C. Galt, Harry Symons, Albert Ogden, J. L. Whiteside, F. W. Casey, C. L. Ferguson, F. S. Nugent, T. E. Lawson, R. Harcourt, G. A. Cooke, (without oral as being attorney), J. C. Patterson, J. Judd.

ATTORNEYS ADMITTED.

The following is the list of those admitted this Term to practice as attorneys:

John L. Whiting, John Crerar, (without oral, for merit).

A. C. Galt, F. W. Patterson, W. H. Culver, E. F. B. Johnston, C. H. Woodward, C. L. Ferguson, J. L. Whiteside, C. S. Jones, E. Mahon, T. M. Daly, F. S. Nugent, J. J. Creighton, H. A. E. Kent, R. J. Duggan, J. C. Patterson, and R. E. Wood, (who passed his examination last Term).

BENCH AND BAR.

It has been our unpleasant duty, on several occasions, to call attention to the objectionable practice, indulged in by certain newspapers, of discussing cases pending in the courts, and to the freedom with which improper motives are attributed to honourable and upright judges in giving the judgments which the justice of the case before them seemed, in their opinion, to require. We have never denied the right of the press, and when we thought the occasion offered have acted accordingly, to discuss freely a judgment upon its merits as a matter of abstract argument, though even this has, as far as the lay press is concerned, its dangers. But when this freedom is abused, and abused to the extent that has been seen of late, it is time that some steps should be taken not only to protect the judges from such cowardly attacks, but to repress an evil fraught with the most serious consequences to the welfare of the State. We have had lately an avalanche of libels on the Bench, most of them arising out of bitterness engendered by party politics. But the last case that has come under our notice was subject to no incident of that nature, and was of an especially aggravated character, in that the offender was, and still is, unfortunately, a practising barrister and solicitor.

The offence in the case we are about to allude to, and of which a correspondent speaks in a letter which we publish in another place, is of a twofold character. In the first place there was conduct fraudulent in itself, and there was also a most unjustifiable attack on one of the judges of the Court of Chancery. It is with the first of these two offences, and other matters incident thereto, that we propose now specially to deal.

In the suit of Dr. Pringle against Henry Sandfield Macdonald, a bill was filed to compel the defendant to re-convey to the plaintiff a piece of land in the town of Cornwall; and it was alleged that the defendant had obtained from the plaintiff a conveyance of the land by fraud and deceit. It appeared in evidence that an agreement was entered into between the parties for the sale and purchase of the west three-quarters of the north half of a lot in the town of Cornwall, which agree-

ment was embodied in the following correspondence:

"Cornwall, Nov. 12th, 1874.

"Dr. Pringle, Cornwall:

"Dear Sir,—I offer you one thousand dollars for three-quarters of the *north half* lot number twenty-one on the south side of Second Street, in this town—the three-quarters to be measured off the west side of the lot; the depth of the property to be, at least, one hundred and thirty-two feet. [Here follow the terms of payment, which were not disputed.] Yours truly,

"(Signed) H. Sandfield Macdonald."

"To H. S. Macdonald,

"Cornwall:

"In consideration of the terms expressed in the foregoing letter, I hereby accept your offer for the property above mentioned, and upon the conditions you state above.

"(Signed) George Pringle,

"Cornwall, 12th November, 1874."

The words in italics were interlined, as sworn by the plaintiff, by the defendant himself, at the plaintiff's request, to prevent any mistake, the defendant at the time saying it was unnecessary to do this, as the measurement showed that the bargain was only as to the north half of the lot. The deed which was supposed to carry the above agreement into effect was prepared by the defendant, but was a conveyance not of the west three-quarters of the *north half* but the west three-quarters of the *whole lot*, the words describing the depth as one hundred and thirty-two feet being omitted, as well as the words "north half." The defendant, in his examination, at first expressed a doubt whether the words *north half*, interlined in the letter signed by defendant, were in his handwriting, but on being pressed, asserted that they were not.

The case was tried before Mr. Vice-Chancellor Blake, whose judgment was substantially as follows:

"I find but one question to be answered. Was there a binding agreement between the parties for the sale and purchase of the west three-quarters of the north half of lot number twenty-one on the south side of the street? To determine this, it is necessary to decide the question—Is the copy of the agreement produced by the plaintiff, with the words 'north half' interlined, in the same state that it was when it was handed by the defendant to the plaintiff? Can it be found, from the evidence adduced, that the plaintiff was so utterly dishonest as to alter it? Certainly not. He appears to have acted throughout as an honest man should. If the north half was not intended, why was the depth, one hundred and thirty-two feet, inserted? If the defendant bought the whole lot, these words or figures could not give him an inch more. The depth was inserted in the agreement because the north half was intended. From the time of the first conversation with French down to the completion of the purchase, the defendant knew, and knew right well, that such was the understanding. He, in person, measured the land to that depth, and with his own hands planted a stake to mark the extent of his purchase. There was no room for misapprehension on his part; he measured and marked it. If I am forced to conjecture between the two, I would certainly rather say that the defendant had forgotten that he had interlined the words 'north half,' than that the plaintiff could be guilty of an almost criminal act in inserting them. To a certain extent the charge of fraud was laid against the defendant. As to the proof of fraud, the defendant's action spoke more loudly than words. Even taking the defendant's own copy of the agreement, there was a discrepancy between it and the deed, inasmuch as the 'one hundred and thirty-two feet' contained in the former, were entirely omitted from the latter. The defendant knew that all the lots in the neighbourhood were two hundred and sixty-four feet deep, and therefore must have known that he was bargaining for a part of the north half only, and it would have been objectless inserting the words 'at least one hundred and thirty-two feet if it was intended to refer to the whole lot. It was clearly the duty of the defendant, who was a solicitor of this court, to draw the attention of the plaintiff to this change, but he had not done so. L. R. 5 E. & I. Ap. 64. As to the exceptions taken to the plaintiff's pleadings, there is nothing in them. I am clearly of opinion that the plaintiff has proved the allegations of the bill, and will grant a decree ordering the defendant to reform the deed, by re-conveying the portion of land to which he was not entitled, and that the defendant pay the plaintiff his costs in the suit."

The defendant is the editor and proprietor of a newspaper published in the town of Cornwall, which, in the same issue that gives a report of the trial of the case, makes the following editorial comment:

"Several years ago a series of editorials, levelled at the Chancery ring, appeared in the Toronto *Daily Telegraph*, and created then some sensation. Mr. Blake—now V. C.—came in for no small share of the criticisms, which, from all accounts, he did not appreciate. In delivering his judgment in *Pringle* v. *Macdonald*, is it probable that there was a lively recollection of one of the reputed authors of those editorials?"

It appears that at the time spoken of in the above paragraph the defendant in *Pringle* v. *Macdonald* was a student in the office of the firm of which the present Vice-Chancellor was a member. We pass by for the present the questionable propriety of a student discussing in the public papers the professional conduct or standing of his master for the time being; but for the latter to assert, and expect people to believe, that the adverse judgment in the case recently tried at Cornwall was the result of spite, would almost go to prove that the defendant is as devoid of sense as he is of decency. We are not even driven to take the judgment of the Vice-Chancellor, though no judge on the Bench is more competent to form an accurate opinion on a question of fact than Mr. Blake, for the evidence given in the local papers is amply sufficient to warrant the finding.

Under a recent statute, 39 Vict. cap. 31, sec. 1, the Law Society may make all necessary rules and regulations relating to the "interior discipline *and honour* of the members of the Bar." The Benchers had probably power, without that Act, to purge the profession of objectionable members. They have never, we make bold to assert, been fully alive to the duty they owe to their brethren in such matters; and we go further, and say that the judges themselves are not free from blame in allowing this evil to go so far. It is time to call things by their right names, and to apply a sharp remedy to a dangerous and insidious disease. Men who bring discredit upon their order, should be made an example of, for otherwise their brethren cannot complain if the public speak of all in the same category.

The case already spoken of is, unfortunately, not the only case of the kind. In *Gilleland* v. *Wadsworth*, 23 Grant, 547, the Chancellor ordered a rule to issue, calling on another solicitor, there referred to, to show cause why he should not be struck off the rolls for malfeasance; and we might here inquire if the Society propose to take any action as to the conduct of another barrister, once also a solicitor, now awaiting sentence for having obtained money under false pretences.

It is all very well to say that men who could be guilty of such conduct as we have alluded to are beneath contempt and that it is not worth while taking any action. If a limb mortifies it is worth while to cut it off, and it is worth while to let the public know, in the most decided manner, that we will not allow those who have been proved guilty of such things to remain members of a body which for complete usefulness ought to be, and which boasts that it is, like Cæsar's wife, above suspicion.

In England the Incorporated Law Society deals, we understand, with matters affecting the honour of the profession. There ought to be in this country a committee of the Benchers to enquire into all cases of this sort which might come under their notice. It should be their *duty* to do it, and they should be responsible for its being done. Until some step of this kind is taken we are not likely to see much effect given to the recent statute, and one of the supposed advantages of Convocation will be a dead letter.

FORECLOSURE DECREES AND PERSONAL ORDERS.

Some doubt exists in the minds of the profession at present as to the rights of mortgagees to the double remedy in the Court of Chancery which the Administration of Justice Act of 1873, sec. 32, was designed to afford. When a decree for sale is prayed no difficulty is felt, we believe; but when a foreclosure is prayed, it is said the mortgagee's rights are more restricted.

The point came up recently before Vice-Chancellor Blake in a case of *Armour* v. *Usborne*. In that case the bill prayed for a personal order for payment against the defendant, and also a decree for foreclosure. It, however, appeared by the statement of counsel that the office copy of the bill served on the defendant had been endorsed with an endorsement, notifying the defendant that, in default of answer or note disputing claim, &c., a decree for foreclosure might be drawn up; this endorsement made no reference to the application intended to be made for the personal order, so that the defendant, looking at the bill, saw that a personal order and foreclosure was asked; but looking at a notice which the practice of the Court did not render necessary, but which the plaintiff served on the defendant, he perceived that the plaintiff only demanded foreclosure. The defendant allowed the bill to go *pro con.* The Vice-Chancellor considered that as the special endorsement had been unnecessarily made, it would have the effect of misleading the defendant, and therefore refused to grant the plaintiff any other relief than the simple decree for foreclosure.

In a previous case of *Crickmore* v. *Dow* the question of special endorsement did not arise, and in that case an order for payment was made, together with a decree for foreclosure, but the decree was so worded that the remedy on the personal order was to be first exhausted or abandoned before recourse could be had to the foreclosure proceedings.

In this case the Court gave the plaintiff the remedy by action, and also a decree for foreclosure, but at the same time virtually stayed the proceedings for foreclosure until after the plaintiff should have proceeded, as far as he wished, to enforce the personal remedy on the covenant.

We are not aware what special circumstances there were in this case which called for this mode of framing the decree, though doubtless there were such. But to prevent any misconception it would be well to consider the subject in the abstract. We do not think it could have been intended by this decision to specify a form of decree of general application, one which would not, as it seems to us, give the two remedies in the one suit which the Administration of Justice Act intended. And it may be argued in this way:—The nature of the relief which a plaintiff is now entitled to claim in a mortgage suit must obviously be governed by the relief which he could have got by his action or actions at law and suit in equity before the Administration of Justice Act; and no principle, we think, was more clearly established than this, viz., that a mortgagee at any time before, and up to obtaining the final order of foreclosure, and even after final order, as long as he retained the mortgaged estate, was at liberty to enforce all the remedies he might be entitled to at law and in equity concurrently. The Court of Chancery over and over again has refused to stay an action at law on the covenant or in ejectment because a suit in equity had been brought for foreclosure. As early as 1780, Lord Mansfield held that a mortgagee having a bond securing the mortgage debt, might bring an action on the bond and arrest the debtor pending a suit in equity for foreclo-

sure, and an application to stay the action at law was refused, Lord Mansfield saying that it had been settled over and over again, that a person in such a case is at liberty to pursue all his remedies *at once*. The rule then laid down in a court of law has since been repeatedly re-affirmed in courts of equity. It is only necessary to refer to two cases: *Lockhart* v. *Hardy*, 9 Beav. 349; and *Cockell* v. *Taylor*, 16 Beav. 159. In the latter case the Master of the Rolls says, speaking of the rights of the mortgagee: "He may at *the same time* take possession of the estate, sue the mortgagor on his covenant, and proceed to foreclose." In the former case he said: "A mortgagee may pursue all his remedies at *the same time*. If he obtains full payment by suing on his bond he prevents a foreclosure; if only part payment is obtained, he must account for what he has received, and may foreclose for the residue. If a mortgagee obtains a foreclosure first, and alleges that the value of the estate is insufficient to pay what is due to him, he is not precluded from suing on the bond; but if he thinks fit to do so, he must give the mortgagor a new right to redeem, notwithstanding the foreclosure, and the mortgagor may file a bill to redeem." What he said on the argument he repeated after taking time to consider.

The only disadvantage which a mortgagee incurred by thus pursuing all his remedies at the same time was this, that the Court would not make the payment of the costs at law a condition of redemption, as a matter of course, but required the plaintiff to show some special reason for seeking the two remedies (see *Ord.* 465), and the necessity of retaking the account, of having a new day appointed, or serving a notice when anything on account had been realized.

But to compel the plaintiff to suspend his proceedings for foreclosure, in other words, to stay the time for redemption from running so long as he may be endeavoring to enforce the personal remedies on the covenant, would not, it appears to us, be granting the plaintiff the same remedy he would have been entitled to before the Administration of Justice Act, but something less, and not so extensive. If, before a final order is obtained, he have received any part of his debt, he must give credit for it; if he have received the whole, he is prevented from getting his final order; and if after final order he still pursues his remedy on the covenant, as he has a perfect right to do, so long as he retains the mortgaged estate, he thereby opens the foreclosure, and the mortgagor becomes entitled to a new day to redeem. By analogy to the former practice, the extra costs occasioned by the mortgagee enforcing his remedy on the covenant and by ejectment, we are inclined to think, should not be allowed as a matter of course, as a condition of redemption.

The practice as it now stands can hardly be said to be settled, and there is a prospect, we hear, that the question will be carried before the full Court, when it is to be hoped the point may be discussed free from any technical difficulty such as arose in *Armour* v. *Usborne*, to which we have refered.

LOCAL MASTERS IN CHANCERY.

The Local Masters and Deputy Registrars of the Court of Chancery have recently been coming in for a full measure of discussion, not altogether complimentary, at the hands of writers in the public press.

We are not prepared to say that they are in all respects perfection, but we do say that they have been subjected to much unjust criticism, and that in their case the exception has been made to take the place of the rule. As these officers cannot themselves reply to attacks, too often made by those who live entirely in

the past and think that what has been still is, or possibly sometimes by disappointed solicitors, we venture to say a few words in their defence. The attacks on the Masters, moreover, are an indirect censure on the Judges of the Court of Chancery, to which they are certainly not open.

In some of the smaller towns it is not so easy to induce a practitioner with a good Chancery business to give it up for the lesser emoluments arising from master's fees, and the Judges of the Court have to make the best selection which the material at hand supplies. The Judges are not blind to the requirements of business, nor are they insensible to the necessity of having the best men they can get for these responsible situations. They are, moreover, entitled to great credit for their exertions in introducing from time to time more speedy and satisfactory modes of conducting business into a Court, the name of which had become a by-word of contempt and dislike.

Changes have been made in the personnel of the Local Masters as occasion offered, and though there may yet be three or four who might be replaced with advantage, and who will, doubtless, eventually give place to better men like others have done, it is highly unjust to speak of the whole in the general terms of reproach that have been used in some of the letters referred to.

A very little consideration of the subjoined list will shew that, as a body, the Local Masters must possess the confidence of their brethren. Twelve out of the thirty-six are County Court Judges, whilst it would be a difficult matter to find better men than those who hold office in all the larger centres of business such as London, Kingston, Hamilton, &c., and Ottawa, Peterboro' and Lindsay (where there is a choice); and most of the other towns in the same way. There is no doubt that so far as possible, County Judges should be selected, and that has evidently not escaped the attention of the Judges of the Court of Chancery, as recent appointments point in that direction. The payment of Local Masters by fees is an undoubted evil. So far as possible, County Judges should be selected and they should be properly paid. A salary commensurate with the work they now do, and with what would be required of them as Local Masters, would hurt no one, and would be an inducement to the best men to accept positions which at present do not command the best talent at the Bar. The following is the present list of Local Masters:

Algoma—Judge McCrae,
Barrie—James R. Cotter.
Belleville—Samuel S. Lazier.
Berlin—Anthony Lacourse, Junior Judge.
Brampton—Judge Scott.
Brantford—Judge Jones.
Brockville—J. D. Buell.
Cayuga—Judge Stevenson.
Chatham—Robert O'Hara.
Cobourg—Wm. H. Weller.
Cornwall—J. F. Pringle, Junior Judge.
Goderich—Henry McDermott.
Guelph—J. Watson Hall.
Hamilton.—Miles O'Reilly, Q.C.
Kingston—Jas. A Henderson, Q.C.
Lindsay—Wm. H. Weller, and Judge Dean, (Concurrent).
London—Jas. Shanly.
L'Orignal—Judge Daniell.
Milton—Judge Miller
Napanee—Samuel S. Lazier.
Ottawa—W. M. Matheson, and Robt. Cassels, Jr., (Concurrent).
Owen Sound—Jas. Masson.
Picton—Samuel S. Lazier.
Pembroke—Thos. Deacon.
Perth—Judge Senkler.
Peterborough—Wm. H. Weller, and Chas. A. Weller, (Concurrent).
Sandwich—Samuel S. Macdonell.
Sarnia—Peter T. Poussett.
Simcoe—C. C. Rapelge.

St. Catharines—F. W. McDonald.
St. Thomas—Jas. Shanly.
Stratford—Judge Lizars.
Walkerton—W. A. McLean.
Woodstock—H. B. Beard.
Whitby—G. M. Dartnell, Junior Judge.

CHANGES IN THE ENGLISH BENCH.

The vacancies caused by the elevation of Lord Blackburn to the Court of Appeal, and the death of Mr. Justice Quain and Mr. Justice Archibald, have been filled by the appointment of Mr. Manisty, Q.C., Mr. Hawkins, Q.C., and Mr. Lopez, Q.C. Mr. Hawkins is well known as a Counsel, and it was thought that he had finally declined promotion. He will be a great acquisition to the bench; though he is making a large personal sacrifice in giving up his immense practice at the bar. The *Law Times* says that the appointment of Mr. Lopez "is colourless from a professional point of view." The *Law Journal*, in speaking of the appointment of Mr. Hawkins, says:—

"Mr. Henry Hawkins, Q.C., who has now been elevated to the bench, is the son of Mr. J. H. Hawkins, the well-known and much-esteemed solicitor of Hitchin, in Hertfordshire. Mr. H. Hawkins was called to the bar at the Middle Temple in 1843, and was a member of the Home Circuit. He became Queen's counsel in 1858. Mr. Hawkins enjoyed one of the most lucrative practices at the bar ever known, his business in compensation cases having been very large and very remunerative. In the general conduct of a case and in cross-examination he stood unsurpassed, while his addresses to the jury were famous for their lucidity. Probably no counsel ever possessed a greater capacity for interesting and amusing jurymen, and for putting them on excellent terms with themselves and with things in general. 'The audience' in Courts of Law—by which we mean the idle people who lounge about Courts to pass away the time—will deplore the loss of Mr. Hawkins, who, in nine cases out of ten, succeeded in giving them a much greater treat than they were ever likely to get at a play. It would, however, be unjust to suppose that Mr. Hawkins relied on these arts for his success. On the contrary, he has always shown himself to be a man of a very high degree of talent, with plenty of decision and force, a good knowledge of law, industry, energy, and a thorough acquaintance with mankind, and the affairs of life in all its aspects, civil, social, and mercantile. We believe that he will be a capital judge, and that he will thoroughly justify the anticipations generally formed concerning him."

The following extract from the same journal, remarks in the following language upon the changes which have been wrought in modern times in relation to the bench, by the increase of business, the altered organization of the Courts, and the spirit of the present age:—

"In the present day judgeships are not sought after with that keenness which for centuries characterized the ambition of lawyers. The emoluments of a really first-rate practice at the bar are just about double the amount of the salary of a judge of the High Court; while the office of judge, instead of presenting as heretofore some prospect of comparative repose, menaces its occupant with labours of the most arduous kind. The work has become more continuous, more varied, more difficult. Each judge has to rely far more on his own energy, learning, and legal acumen. The complications of modern commerce, aggravated by the use of postal and telegraphic communications, augment the number of facts in each case, and, therefore, the points of law involved. There is also, the personal annoyance necessarily attendant upon an office which compels the holder to be in ignorance, from day to day, of what he has to do, and where he is to be; and which brings him into unfortunate collision with a host of suitors, solicitors, and counsel justly aggrieved by the disorder into which proceedings are now thrown. The dignity of the judicial position must in former times have also proved a strong attraction. But the spirit of our times takes not such note of rank. The civil position of a judge is, therefore, probably not so exalted as it formerly was. Moreover, this is an age of independence, and an age, also, in which health is studiously regarded; and there can be no doubt that a barrister can secure independence and health to a degree not attainable by a judge. The judges of our bench still occupy a position, in the eyes of the nation, far above the

judges of the Continental and American Courts. But the relative advantages in this country of bench and bar are no longer to be regarded as decidedly in favor of the former."

CANADA REPORTS.

ONTARIO.

NISI PRIUS.

LEPROHON V. CITY OF OTTAWA.

Taxation—Jurisdiction of Local Legislatures—Salaries of officers of House of Commons.

Held, That the Local Legislatures have not power to impose a tax upon the salaries of officers of the House of Commons.

[Q.B.Ottawa, Oct. 27, 1876—Moss, J.]

This was an action of trespass, brought to try the right of the Corporation, under its by-laws, to tax the salaries of the officers of the Dominion Government and of the two houses of Parliament, resident at Ottawa. The facts were admitted. The case was submitted to Mr. Justice Moss, the presiding Judge at the Ottawa Assizes on the 27th October last, for his ruling on the points of law involved.

Cockburn, Q.C. for plaintiff.

O'Gara for defendant.

Moss, J.—As the learned counsel candidly informed me at the outset, this is a test case, and it is intended to ultimately obtain an expression of opinion from the Supreme Court of the Dominion upon the question involved. My own individual opinion, therefore, is a matter of little importance, and I might, without any impropriety, have contented myself with entering a verdict *pro forma*. As I am desired to express an opinion I shall endeavour to do so before entering a verdict, in accordance with the view I have been compelled to take of the law.

This case is one of considerable difficulty, and the time and opportunities I have had to investigate the subject, have been wholly inadequate to that full consideration which it must ultimately receive, and I have made no attempt to reduce it to writing. I have endeavoured, however, to form an opinion upon the various points submitted to me by the learned counsel in the course of their able argument.

The question which it seems convenient first to consider is: Whether upon the proper construction of the Assessment Acts of Ontario the income of an officer of the House of Commons is liable to taxation. On behalf of the plaintiff in this case, who is an officer of the House of Commons and whose salary is payable in the manner stated in the special case, it was argued that upon the true construction of the Assessment Acts, the Legislature of Ontario, so far from imposing any charge upon the income of such an official, had declared it to be exempt. With this contention I am not able to agree. By the Act of 1866, which was in force at the time the British North America Act was passed and Confederation established, the salaries of officials in the position of the plaintiff were exempt; and in the Ontario statute of 1869, relating to the assessment of property, that exemption was continued, the language of the Statute being only varied from that of 1866 so far as the changed circumstances of our political condition rendered necessary. By the Act of 1869 it was clear that these official salaries were not subject to taxation. Sub-section 25 of section 9 expressly includes, among the exemption from liability to taxation, the annual official salaries of the officers and servants of the House of Commons resident at the seat of Government at Ottawa. The plaintiff is a servant of the House of Commons resident at the seat of Government at Ottawa, and therefore if that clause had continued in force he would have been exempt by the express enactment of the Legislature. But that act was repealed by the act of 1871, and therefore, in the existing statute law of the Province there is no express exemption of the salary of a person occupying the position of plaintiff.

But it was argued that an exemption was constructively contained in sub-section 12 of the same section which exempts any pension, salary, or gratuity or stipend, perived from Her Majesty's Imperial Treasury, or elsewhere out of this Province. The contention of the plaintiff was that this was a salary derived out of this Province. I do not think that exemption extends to the present case. The course of legislation seems to me to be quite opposed to this construction being placed upon sub-section 12. That sub-section is to be found in the acts of 1866-9, and contains precisely the same words "or elsewhere out of this Province." Notwithstanding the use of these words, the Legislature, when it desired to manifest its intention of exempting such salaries, deemed it necessary to use express language. This seems equivalent to a legislative declaration that the words in the 12th sub-section did not cover the case. If they did the express exemption in the 25th sub-section was wholly unnecessary. It may be said that this was done for greater precaution. But, even if that explanation was otherwise unsatisfactory,

what is to be said of the repeal of sub-section 25 by the Act of 1871. It cannot admit of serious doubt. I think that the intention of the legislature in repealing the Act was to remove these official salaries from the list of exemptions. On the whole I think that upon the construction of the Ontario Assessment Acts the Legislature of Ontario have not exempted the incomes of officers of the House of Commons from liability to assessment.

The grave question then arises, whether the Provincial Legislature had power to impose a tax upon the salaries of such officers. I need not say that I approach the solution of this question with very grave doubt and very great hesitation. It is a constitutional question involving delicate considerations and affecting very considerable interests. The best conclusion which I have been able to form is, that upon the construction of the powers which are vested in the Legislature of Ontario, the officers in the position of the plaintiff are not liable to be assessed upon their incomes. I look first, as I am bound to look, at the language of the British North America Act. Upon the terms of this statute the defendants relied for finding the power to impose a tax upon these incomes. The 2nd, 8th and 13th sub-section of the 92nd section are the clauses upon which the defendants mainly rely. The object of the 92nd section was to define the matters with which the Provincial Legislature should alone have the power to deal and to describe the subjects which should be withdrawn from the legislative control of the Dominion Parliament. The second sub-section gives the legislature of each province power to legislate in relation to direct taxation in the Province, in order to the raising of the revenue for Provincial purposes. I am of opinion that the assessment in question cannot be said to be a matter of direct taxation in order to the raising of a revenue for Provincial purposes. It is an assessment levied for raising moneys for municipal purposes. Then the Legislature of each Province has also power, by the 8th sub-section, to make laws relating exclusively to matters coming within the class of municipal institutions in the Province. Now, no doubt under this sub-section it belongs to the Provincial Legislature to determine generally the mode of assessment for municipal purposes and on what property taxation should be levied. The power to authorize the mode of assessment and levy of taxes for municipal purposes, it may be conceded, is implicitly contained in the power to legislate generally with respect to municipal institutions. But the extent and limits of this power are not expressly stated. It arises my implication and necessary contendment, not by express enactment. I do not think that that section of itself contains any express authority to levy such a tax as that in question. The 13th sub-section which gives the exclusive legislative jurisdiction over property, and civil rights does not appear to me to be applicable.

On the whole, I do not find in the British North America Act that there is an express provision, either authorizing or prohibiting any tax on such incomes. * That being the case, there being no express provision, and the instrument which forms the great charter of our constitution being silent on the subject, it appears to me that the Court will have to consider the question in relation to the Federal character of the Dominion.

The question has been frequently considered in that respect in the United States. Numerous decisions of the Supreme Court and of the State Courts were referred to by the learned counsel during the argument. Now, it is quite true as suggested in the argument, that these decisions are not binding upon the humblest judge of this Province, but they are the opinions of eminent jurists, distinguished for learning and deeply versed in the solution of questions of constitutional law. I think, therefore, that their reasoning will probably be found to furnish us with a safe guide in the determination of these questions. This reasoning seems to me cogent and conclusive. It is so entirely applicable to the case in hand that I could not come to any other conclusion than that I have indicated without being prepared to impugn its correctness. I have said that I find no express provision in the British North America Act either authorizing or prohibiting this assessment. Now the Courts of the United States have proceeded directly upon the assumption that there is no express provision which regulates this subject. They do not proceed upon the construction of any particular language in the constitution, but they place their decisions upon the foundation of broad and general principles. They rest them upon the character of the essential relations existing between the Federal Government and the State Governments, and upon the estimate of the powers which must be vested in or removed from each respectively. Now, in the great case of *McCulloch* v. *Maryland*, 4 Wheaton, in which that eminent jurist Chief Justice Marshall pronounced judgment, he laid down the principle that the States have no power of taxation or otherwise to retard, impede, burden or restrain in any way the powers vested

in the general Government. That was the general doctrine upon which the judgment of the Court proceeded in that important case. The learned Chief Justice very fully considered the nature of the relations which subsisted between the Central and the States Government, and held that it would be contrary to the character of the Federal Union to permit State legislation of a character that would impair in any way the effective execution of the general powers which had been entrusted to the central authority. In that case it was unnecessary to consider pointedly the power to tax officers of the United States upon their income, but the principles that were laid down were quite enough, in my opinion, to extend to such a case. In subsequent cases they were held so to extend. In the case of *Dobbins* v. *Commissioners of Erie County*, 16 Peters, to which I was also referred by Mr. Cockburn, the question was raised expressly. There the Supreme Court of Pennsylvania held that a law was constitutional by which the State had assumed to tax an officer of the United States. The question, therefore, was raised directly and pointedly before the Supreme Court. It was held that upon the reasoning of the case in 4 Wheaton, and upon the legitimate extension of its principles such a law was constitutional. I cannot do better than refer to the language which was used by the learned Judge who pronounced the unanimous opinion of the Court in that case. After pointing out the inanimate objects, the use of which the constitution contemplated, and the management of which had been entrusted to the central authority, such as ships-of-war which were the means of carrying out the object of the Central Government and could not be taxed by the State, he proceeded: "Is not the officer more so who gives use and efficacy to the whole? Is not compensation the means by which his services are procured and retained? It is true it becomes his when he has earned it. If it can be used by a State as compensation, will not Congress have to graduate its amount, with reference to its reduction by the tax. Could Congress use an uncontrollable discretion, in fixing the amount of compensation, as it would do without the interferance of such a tax? The execution of a national power, by way of compensation to officers can in no way be subordinate to the action of the State Legislatures on the same subject. It would destroy also all uniformity of compensation for the same service, as the taxes of the States would be different."

Now, the reasoning employed in that case is precisely applicable to that on which I am giving my opinion. Without expressing dissent to these views, and without, so to speak, overruling the case, I could not come to any other conclusion. Our circumstances, it appears to me, sufficiently resemble the circumstances that existed in these cases to render the principles entirely applicable. There is but one other case to which I shall refer, *Buffington* v. *Way*, 4 Law Times, U. S. Supreme Court Reports. In that case Mr. Justice Nelson said:

"It is conceded in the case of *McCulloch* v. *Maryland*, that the power of taxation by the States was not abridged by the grant of a similar power to the Government of the Union; that it was retained by the States, and that the power is to be concurrently exercised by the two Governments, and also that there is no express constitutional prohibition upon the States agains taxing the means or instrumentalities of the General Government; but it was held, and we agree properly held, to be prohibited by necessary implication, otherwise the States might impose taxation to an extent that would impair, if not wholly defeat the operations of the Federa authorities when acting in their appropriate sphere. These views, we think, abundantly establish the soundness of the decision of the case of *Dobbins* v. *Commissioners of Erie*, which determined that the States were prohibited upon a proper construction of the constitution, from taxing the salary or emoluments of an officer of the Government of the United States, and we shall now proceed to show that upon the same construction of that instrument, and for other reasons, the Government is prohibited from taxing the salary of the judicial officers of the State. It is a familiar rule of construction of the Constitution of the Union, that the Sovereign power vested in the State Government by their respective Constitutions remain unaltered and unimpaired, except so far as they were granted to the Government of the United States."

In this case the Central authority, in the exercise of its appropriate functions, appointed the plaintiff to a position of emolument. In the exercise of its proper powers it assigned to him a certain emolument. This emolument the plaintiff is entitled to receive for the discharge of duties for which the Central Goverement is bound to provide. I do not find in the British North America Act that there is any express constitutional prohibition against the Local Legislatures taxing such a salary, but I think that upon the principle thus summarized in the case which I am now citing,, there is necessarily an implication that such power is not vested in the

Local Legislature. I therefore, in accordance with these views which I have just imperfectly expressed, have thought it right to enter a verdict for the plaintiff, and I think he should have a certificate to entitle him to full costs.

Verdict for plaintiff.

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS FOR MAY, JUNE, AND JULY, 1876.

From the American Law Review.

Account.—*See* Evidence; Partnership; Solicitor and Client.

Action.—*See* Evidence; Husband and Wife.

Agency.—*See* Bills and Notes; Lien, 2; Negligence, 2.

Agreement.—*See* Contract.

Alteration of Contract.—*See* Contract.

Alteration of Instruments.—*See* Check.

Answer.—*See* Pleading.

Appropriation of Payments.—*See* Bills and Notes.

Assault.—*See* Husband and Wife.

Average.—*See* Lien, 2.

Bank.—*See* Check.

Bankruptcy.

1. The Divorce Court ordered M. to pay £5,000 to O. on the latter's undertaking to pay the same into the registry, to abide the further order of the court. M. did not pay the money, and O. filed a petition for adjudication in bankruptcy against M. *Held*, that there was no good petitioning creditor's debt.—*Ex parte Muirhead. In re Muirhead*, 2 Ch. D. 22.

2. Action for breach of an agreement, whereby the defendants agreed, in consideration of the plaintiff transferring and disclosing to them all his property upon trust for all the plaintiff's creditors, to repay to the plaintiff £50 upon realization of the plaintiff's property. *Held*, that said agreement was void, being a fraud upon the plaintiff's creditors.—*Blacklock* v. *Dobie*, 1. C.P.D. 265.

3. A partner in a firm died; and by the partnership articles, his share was to be paid out by instalments extending over a period of fourteen years. Before they were paid, the firm became bankrupt. *Held*, that the amount due the estate of the deceased partner could not be proved in bankruptcy against the firm.—*Nanson* v. *Gordon*, 1 App. Cas. 195.

See Fraudlent Transfer; Surety.

Bequest.—*See* Cy-pres; Devise; Election; Legacy; Marriage, Restraint of.

Bill in Equity.

A bill of discovery to obtain inspection of documents in the defendant's possession cannot be maintained in England if in aid of proceedings about to be taken for the recovery of land in India.—*Reiner* v. *Marquis of Salisbury*, 2. Ch. D. 378.

Bill of Lading.—*See* Bills and Notes.

Bills and Notes.

A. in England employed B. in South America to purchase goods for him. The course of business was as follows: B. raised funds to purchase goods by drawing bills on A. and selling them; B. with the proceeds purchased goods and shipped them to Liverpool, and sent the bills of lading and invoices of the goods by post direct to A.; in his accounts, B. credited A. with the bills, and charged him with the cost of the goods and with commision; and in his letters he directed A. to place the price of the goods to his credit, and the bills to his debit. Both A. and B. became bankrupt. At the time A. became bankrupt, goods were in transit to Liverpool; and some of the bills out of the proceeds of which the goods had been bought had been accepted, and others were presented to A. after his bankruptcy and not accepted. The goods arrived, and were taken possession of by A.'s trustee in bankruptcy. The holders of the bills claimed to have the proceeds of the goods appropriated to the payment of the accepted and also of the unaccepted bills. *Held*, that holders of the bills had no right to have the proceeds of said goods specifically appropriated to their bills. The property in the goods passed to A., subject to B.'s right of stoppage *in transitu*; it did not revest in B. on A.'s failure to accept some of said bills; and there was no evidence of an agreement by virtue of which B. had a charge upon the goods in the hands of A., and a right to have them applied in taking up the bills.—*Ex parte Banner. In re Tappenbeck*, 2 Ch. D. 278.

See Bond; Check.

Bond.

A New York company sold its bonds there, and parted with its interest in them, and control over them. The bonds on which the name of the payee was left blank were then sent to England, and there advertised and sold by the New York purchaser's agents. *Held*, that the bonds were "issued" in England.—*Grenfell* v. *Commissioners of Inland Revenue*, 1 Ex. D. 242.

See Surety.

Carrier.

By statute, a common carrier is not liable for injury to pictures which shall have been delivered either to be carried for hire, or to accompany the person of any passenger, when the value of the pictures exceeds £10, unless the pictures are declared and an increased charge made. It was *held* that the common carriers are protected by this statute, although the injury occurred after the pictures

had been negligently taken by them beyond the point of destination.—*Morrit* v. *North-eastern Railway Co.*, 1 Q. B. D. 302.

See SHIP.

CHARITY.—*See* CY-PRES.

CHARTERPARTY.

1. By charterparty a vessel was to carry a cargo of lumber from P. to M., "sixteen days to be allowed for loading at P., and to be discharged at such wharf or dock as the charterers may direct, always afloat in fourteen like days, and ten days on demurrage over and above the said lying days, at £10 per day." The ship duly began unloading at M. It was the duty of the master to put the timber over the ship and from it into rafts, and the charterer was to take it away. Bad weather came on, and the rafts could not be formed; and the charterer consequently could not take the timber away. The bad weather caused a delay of four days in discharging the ship; and the ship-owner brought this action against the charterer for four days' demurrage. *Held*, that the defendant was liable, as there was an implied contract that he would take the risk of any ordinary vicissitudes which might prevent his releasing the ship at the expiration of the lay days.—*Thüs* v. *Byers*, 1 Q. B. D. 224.

2. To an action against charterers for delay in loading the vessel, the defendants set up this clause in the charterparty: "This charter being concluded by the said charterers for or on behalf of another party, it is agreed that all liability of the former shall cease as soon as the cargo is shipped, loading excepted; the owners and master of the vessel agreeing to rest solely on their lien on the cargo for freight, demurrage, and all other claims, and which lien it is hereby agreed they shall have." *Held*, that "loading excepted" extended to delay in loading, and that the defendants were therefore liable.—*Lister* v. *Hannsbergen*, 1 Q. B. D. 269.

See INSURANCE, 2.

ACT.

CHECK.

The defendant drew a check, payable to B. or bearer; and B. handed it to his clerk for deposit. The clerk absconded with it, and after altering its date from March 2, 1875, to March 26, 1875, passed it to the plaintiff for value. The plaintiff was not guilty of negligence. Payment of the check was stopped. *Held*, that the alteration was material, and that the check was void in the hands of the plaintiff.—*Vance* v. *Lowther*, 1 Ex. D. 176.

CHURCH OF ENGLAND.

1. A Wesleyan minister who had inscribed upon the tombstone of his daughter, who was buried in an English churchyard, the words "daughter of the Rev. H. K., Wesleyan Minister," was held entitled to use the word "Reverend" before his name, as it was not a title of honor or dignity belonging exclusively to the Established Church of England.—*Keet* v. *Smith*, 1 P. D. 73.

2. The Rubric of the Book of Common Prayer prefixed to the Communion Service, and the 27th canon in the canons of 1603, warrant a minister of his own authority, and without any trial, in repelling a parishioner from the Holy Communion in case he is "an open and notorious evil liver," who thereby gives offence to the congregation, or "a common and notorious depraver of the Book of Common Prayer." "Evil liver" in the Rubric, according to the natural use of the words, is limited to moral conduct. The appellant printed and published a volume entitled "Selections from the Old and new Testaments," and omitted therefrom all reference to the Devil or evil spirits. At the suggestion of the vicar of his parish, the appellant wrote him a letter concerning the book, in which he said, "With regard to my book, the parts which I have omitted are, in their present generally received sense, quite incompatible with religion or decency (in my opinion). How such ideas have become connected with a book containing everything that is necessary for a man to know, I really cannot say, and can only sincerely regret it." *Held*, that the appellant was neither an open and notorious liver, nor a depraver of the Book of Common Prayer.—*Jenkins* v. *Cook*, 1 P. D. 380; s. c. L. R. 4 Ad. and Ec. 46.

CLASS.—*See* DEVISE, 2.

COLLISION.

A steamer ran into the barge A. in endeavoring to avoid collision with the barge S., which had brought herself across the bow of the steamer by improper steering. The A. instituted a cause of damage against the S. *Held*, that the S. was liable. That the A. might, by different steering after the steamer had changed her course to avoid the S., have avoided collision, did not make her necessarily guilty of negligence.—*The Sisters*, 1 P. D. 177.

See LEX FORI.

COMMON CARRIER.—*See* CARRIER; SHIP.

COMMON COUNTS.—*See* FRAUDS, STATUTE OF.

CONDITION.—*See* DISTRESS; LEASE, 1; LEGACY 2; MARRIAGE, RESTRAINT OF.

CONFIRMATION OF SETTLEMENT,—*See* SETTLEMENT, 6.

CONSTRUCTION.—*See* CHARTERPARTY; CONTRACT; DEVISE; ELECTION; LEGACY; RAILWAY; SALE; SETTLEMENT, 3, 5; SURETY.

CONTINGENT REMAINDER.—*See* DEVISE, 2.

CONTRACT.

1. The defendant bought 100 tons of iron to be delivered at his works. Delivery, 25 tons at once, and 75 tons in July next. The first 25 tons were delivered immediately, and 50 tons more in July. On the 15th October the defendant met the plaintiffs' manager,

and said, "You have not sent any pigs lately;" to which the manager replied, "I will send you a boat this week." The plaintiffs forwarded 25 tons addressed to the defendant, and the latter declined to receive the iron. To an action for non-acceptance of the iron pursuant to contract, the defendant pleaded that the plaintiffs were not ready and willing to deliver the iron according to contract. *Held*, that the defendant was not liable. It is laid down, that, where a vendor is shown to have withheld his order to deliver until after the agreed time in consequence of a verbal request of the *vendee* before the expiration of the agreed time, and where after such time the vendor proposes to deliver, and the vendee refuses to accept, the vendor can recover damages; but that, if the alteration of the period of delivery was made verbally at the request of the *vendor* before the period for delivery, the vendor could not show that he was willing and ready to deliver according to the original contract, and therefore could not recover.—*Plevins* v. *Downing*, 1 C. P. D. 220.

2. The plaintiff engaged to sing in an important part in a play which the defendants were about to bring out in their theatre. The first performance was to be Nov. 28; and on Nov. 23 the plaintiff was taken ill, so that it became evident that she could not perform the part on Nov. 28. Accordingly on Nov. 25 the defendants made a provisional arrangement with another person for a month, in case the plaintiff should be unable to sing on Nov. 28. The plaintiff was unable to sing until Dec. 4, on which day she offered to fill the part, but was refused. The Court *held*, that if no substitute capable of performing said part could be obtained except upon the terms that she should be permanently engaged at higher pay than the plaintiff, then it followed as a matter of law that the failure on the plaintiff's part went to the root of the contract, and discharged the defendants; and that upon the facts the defendants were discharged.—*Poussard* v. *Spiers*, 1 Q. B. D. 410.

3. The defendant invited offers for the execution of the works comprised in certain specifications and plans for the purpose of building a bridge across a river. It was stated that "these plans are believed to be correct; but their accuracy is not guaranteed." The plaintiff agreed to complete the work in the manner described in the specifications; and do the work according to the terms of the specifications; and the agreement contained a condition, that if the mode of doing the work was altered (as it might be by the defendant's engineer) the plaintiff should do it in the altered way; and that if in consequence he incurred expense, he should have compensation, of the amount of which said engineer was to be sole judge. According to the specifications, the foundations of the piers were to be laid by means of caissons as shown in a drawing. The plaintiff attempted to lay the piers accordingly; but after much expense, it was found impracticable to do it in the above manner, and a new method was adopted by directions of the engineer. The plaintiff brought an action for breach of warranty that the bridge could be built according to said plans and specifications. *Held*, that there was no such warranty. *Quære*, whether the plaintiff could recover upon a *quantum meruit* for his extra work.—*Thorn* v. *Mayor of London*, 1 App.. Cas. 121; s. c. L. R. 10 Ex. (Ex. Ch). 112; 10 Am. Law. Rev. 107.

4. A. and B., in consideration of the services and payments to be mutually rendered agreed that B. should be A.'s sole agent at Liverpool for the sale of his coal during the term of seven years, and should not act as agent for any person other than A.; that rates should be fixed by A., and B. should receive a commission upon his sales; and that if B. should not have sold a certain amount, and A. supplied a certain amount per year, the agreement might be determined upon giving notice thereof. After four years, A. sold his coal mine; and from that time B. ceased to be employed in the sale of the coal. *Held*, that there was no implied contract that A. would send any coal to Liverpool, or would continue for any particular length of time to send coal there; and that an action for breach of said agreement could not be maintained by B.—*Rhodes* v. *Forwood*, 1 App. Cas. 256.

See Charterparty; Damages; Frauds, Statute of; Insurance; Lien, 2; Negligence, 3; Partnership; Railway; Sale; Trust, 2; Vendor and Purchaser.

Covenant.

The owner of houses numbered 38 and 40 on a street demised 40 to the plaintiff, who covenanted to repair the demised premises. Said owner had previously demised No. 38 in similar terms. Under 40 was an archway, the southerly side of which was formed by the northerly wall of house 38; and this side of the arch did not fall within the plaintiff's covenant to repair. Above the archway, the wall between 38 and 40 was used by both buildings; and this wall partially gave way, in consequence of the giving way of the wall under the archway. *Held*, that there was no implied covenant on the part of the defendant to maintain the wall under the archway, so as to support the plaintiff's premises.—*Colebeck*, v. *Girdlers' Co.*, 1 Q. B. D. 234.

See Lease 1; Settlement, 5.

Cy-pres.

The doctrine of *cy-près* disposition of charitable legacies is not necessarily inapplicable where the residuary bequest is to charity. For a discussion of the applicability of the doctrine of *cy-près*, see *Mayor of Lyons* v. *Advocate-General of Bengal*, 1 App. Cas. 92.

Damages.

1. The plaintiff, who was in the habit of exhibiting his goods at cattle-shows, exhibited them at B. There he contracted with the defendants for the carriage of the goods to N., where there was to be another show, delivery to be before a certain day. The goods

did not arrive until after said day, and when the show was over. The defendants paid the plaintiff's pecuniary travelling expenses; but the plaintiff demanded compensation for loss of time and profits. It was found that the defendants had notice of the purpose for which which the goods were sent. *Held*, that the plaintiff was entitled to damages for loss of profits, as such loss was the natural consequence of the failure of the object for which the goods were sent.—*Simpson* v. *London & North-western Railway Co.*, 1 Q. B. D. 274.

2. The defendant made his living by collecting messages, and transmitting them by telegraph to America and other places. He received from the plaintiffs a message in words by themselves unintelligible, but which could be understood by the plaintiffs' correspondent in New York as giving orders for certain goods. The defendant negligently omitted to send the message; and the plaintiffs, in consequence, lost large profits which they would have made by the transaction. The plaintiffs claimed damages to the amount of such profits. *Held*, that the plaintiffs were only entitled to nominal damages.—*Sanders* v. *Stuart*, 1 C. P. D. 326.

See Negligence, 2, 3.

Death by Drowning.—*See* Settlement, 2.

Debenture.—*See* Bond.

Declaration of Trust.—*See* Trust, 1.

Detinue.

Detinue for a policy of insurance, wit a count in trover by an administratrix of R. R. had effected insurance upon his life, and had given the policy to the defendant. No notice was given to the insurance company, and no assignment was executed. *Held*, that although the administratrix might not be able to recover the insurance money without the policy, nor the defendant with the policy, yet as there had been a valid gift of the policy, the administratrix could not maintain the action.—*Rummens* v. *Hare*, 1 Ex. D. 169.

Devil, The.—*See* Church of England, 2.

Devise.

1. A testator gave the residue of his property to trustees in trust to divide the income equally amongst his three children during their respective lives; and after the decease of each of said children, to hold the share of of which such child should be entitled to the income, in trust for his, her, or their issue. In case any of such children should die without leaving issue, the trustees were to hold the share to which such child should be entitled during life, as well originally as by survivorship or accruer, in trust for the survivor or survivors of said children during their, his, or her respective life or lives, and in equal shares if more than one; and after the decease of such survivors, the trustees were to hold the surviving or accruing share to which such survivor for the time being should become entitled for his or her life under the trusts aforesaid, in trust for his or her issue; and in case all said children should die without leaving issue, then in trust for the representatives of the survivor. The three children survived the testator. A child died without issue; then a child died leaving issue; and finally the third child died without issue It was urged, that, as the third child died without issue, there was, on her death, intestacy as to one-half the said residuary estate. *Held*, that the issue of the second child were entitled to the whole of said residuary estate.—*Wake* v. *Varah*, 2 Ch. D. 348.

2. Devise to N. for life, remainder on events which happened, to the child or children of G., who, either before or after G.'s death, should attain twenty-one, or die under that age, leaving issue living at his, her, or their death, in fee-simple as tenants in common. At the death of N., two children of G. had attained twenty-one; and there were other children who attained twenty-one after N.'s death. *Held*, that said two children of G. were entitled to the whole estate.—*Brackenburg* v. *Gibbons*, 2 Ch. D. 417.

3. A testator gave his property to a trustee in trust to pay the income to his wife for the support of her and of his children until the eldest child should attain twenty-five, or until his wife should marry again; and in case of her second marriage before any of his children should attain twenty-five, in trust to pay her £30 a year, and apply the residue of the income for the support of his children: and the trustee was to raise and pay a certain sum to each child on his attaining twenty-five, and then pay the proceeds of the residue of his estate to his wife for life, if then unmarried; but in case she should marry again, then to sell and invest so much of his estate as should produce £30 a year, and pay the same to his wife, and pay the residue equally between his children, and their issue, and their heirs and assigns as tenants in common; and in case of the death of both of his children under twenty-five without leaving issue, in trust to pay the income of the whole estate to the wife for life, and after her death to hold one moiety of the estate to the use of said wife and her heirs, and the other moiety to the use of the trustee. The wife survived the testator, and died without having married again, and leaving the testator's two sons living, who attained twenty-five. *Held*, that the gifts over on the second marriage of the wife took place upon her death, and that the two sons took equitable estates tail according to the rule in *Wild's Case*, 6 Req. 16 *b*.—*Underhill* v. *Roden*, 2 Ch. D. 494.

See Election; Legacy; Marriage, Restraint of; Vendor and Purchaser, 2.

Discovery.—*See* Bill in Equity.

Distress.

The lessee of a farm covenanted not to remove hay and unthreshed corn, or to sell them off the premises, but to use them for the improvement of the land demised. The landlord distrained hay and unthreshed corn for rent arrear, and sold the same with condition that they should be consumed on the

premises; and consequently the best price was not obtained. *Held*, that the landlord could not, under 2 Wm. & M. c. 5, legally impose such a condition when selling the distress.—*Hawkins* v. *Walrond*, 1 C. P. D. 280.

Documents, Inspection of.

The court refused to make an order on the solicitor of a defendant for the production of documents belonging to the defendant.

See Cashin v. *Craddock*, 2 Ch. D. 140.

Domicile.—*See* Jurisdiction.

Easement.—*See* Covenant; Prescription.

Election.

A., upon the marriage of his daughter B., covenanted that he would give her by will one-half of all the real and personal estate to which he should be entitled at the time of his death, after payment of his debts and legacies, which latter were not to exceed in value one-fourth of said estate. B. and her husband covenanted to settle any property so given to B. upon certain trusts under which the husband had an estate for life, and after his death B. had an estate for life,, subject to which B. and her husband had a joint power of appointment among the children of the marriage. By his will, A., after giving a small annuity not amounting to one-fourth part of his estate in value, gave one moiety of his estate upon certain trusts under which B. had an estate for life, remainder to her husband for life or until he should become bankrupt, remainder as B. should appoint. The other moiety of his estate A. gave to a second daughter. B. contended that she was entitled by the settlement to three-eighths of A.'s entire estate, and by the will to one-half of what remained. *Held*, that the presumption that A. did not intend to give B. a double portion was not destroyed by the fact that the portion given by the will was slightly larger than that given by the settlement, or by the difference of the trusts in the will from those in the settlement; and that B. must elect between the provisions of the will and the settlement.—*Russell* v. *St. Aubyn*, 2 Ch. D. 398.

Eminent Domain.—*See* Lease, 2.

Equity.—*See* Bill in Equity; Settlement, 1; Trade-Mark.

Estate Tail.—*See* Devise, 3; Lunatic.

Evidence.

In an action upon accounts stated, it appeared that N. wrote from Battersea to T.'s attorney in London, "I will call at your office in the early part of next week, and hope to make some satisfactory arrangement for the payment of T.'s claim, as I cannot possibly pay it down at once." *Held*, that the letter was evidence to show an account stated at London.—*Taylor* v. *Nicholls*, 1 C. P. D. 242.

See Prescription; Presumption; Will, 2.

Executors and Administrators.—*See* Detinue.

Executory Devise.—*See* Devise, 2.

Forfeiture.—*See* Lease.

Fraud.—*See* Contract, 2.

Frauds, Statute of.

The plaintiff, who proposed to take a lease of the defendant's house, agreed to pay £75 towards certain alterations in the house, which it was agreed should be made. By consent of the defendant, the plaintiff had the house painted, gas-pipes laid, and other improvements made; and he also ordered gas fittings, cornices, and blinds to be made for the house, and paid certain sums of money for work done and materials provided at the defendant's request for decorating a room and making the agreed alterations. There was no valid agreement for a lease signed by the defendant. The plaintiff was obliged to give up the house through the defendant's neglect to complete said alterations. The plaintiff declared on the common counts for work done and materials provided by him for the defendant, for money paid, and money due on accounts stated. An arbitrator gave a verdict for £51. *Held*, that the plaintiff was entitled to recover money spent on the improvement of the house. Judgment on verdict.—*Pulbrook* v. *Lawes*, 1 Q. B. D. 84.

See Contract, 1; Pleading.

Fraudulent Transfer.

A. delivered possession of goods, together with an inventory, to B., in pursuance of a transaction intended to prevent A.'s creditors from being paid in full, and inducing them to accept a composition. Subsequently B. executed a bill of sale of the goods to C. for the alleged purpose of securing a debt. C. knew of the prior transaction. A. failed to come to a settlement with his creditors, and demanded back his goods from B. and C., and brought an action against C. for detaining his goods. *Held*, that A. was entitled to the goods as the intended illegal transaction was not carried out, and that he was entitled to repudiate the transfer.—*Taylor* v. *Bowers*, 1 Q. B. D. 291.

Freight.—*See* Insurance, 2.

General Average.—*See* Lien, 2.

Gift.—*See* Detinue.

Highway.—*See* Way.

Husband and Wife.

Action for assault on the plaintiff by the defendant. The plaintiff was divorced from the defendant; but the assault was committed while they were husband and wife. *Held*, that the action could not be maintained, because when the parties were husband and wife they were one person, and the difficulty was not merely one of procedure removed by the divorce.—*Philip* v. *Barnet*, 1 Q. B. D. 436.

See Settlement, 4.

Implied Covenant.—*See* Covenant.

Infant.—*See* Settlement, 6.

Injunction.—*See* Trade Mark.

Inscription,—*See* Church of England, 1.

Inspection of Documents.—*See* Documents, Inspection of.

Insurance.

1. A vessel was insured from "P. to N., and for fifteen days whilst there after arrival." The vessel arrived at N., discharged her cargo, and then moved to a different part of the harbor to complete her loading, and while there was damaged by a storm. The stamp on the policy was sufficient to cover both a voyage and a time policy. *Held*, that the policy was a voyage policy, with a time policy of fifteen days ingrafted upon it; and that the insurers were liable.—*Gambles* v. *Ocean Marine Insurance Co.*, 1 Ex. D. 141; s. c. 1 Ex. D. 8; 10 Am. Law Rev. 408.

2. A vessel was chartered to D. by a charterparty providing that freight should be paid on unloading and right delivery of cargo at the rate of 42*s.* per ton on the quantity delivered, and providing further that said freight was to be paid one-half cash on signing bills of lading, less four months' interest at bank rate, remainder on right delivery of the cargo. The owner insured his freight, and D. insured the cargo at its value increased by prepayment of freight. The vessel was wrecked, and half the cargo delivered. The owner claimed from his insurers the unpaid half of his freight. The insurers contended that D. was only bound to pay one-half the freight remaining unpaid, and that they therefore were only liable to that amount, being one-quarter of the whole freight. *Held*, that the insurers were liable for the whole unpaid freight.—*Allison* v. *Bristol Marine Insurance Co.*, 1 App. Cas. 209; s. c. L. R. 9 C. P. (Ex. Ch.) 559; 9 Am. Law Rev. 291.

See Detinue.

Interest.—*See* Tenant for Life.

Jurisdiction.

A man and woman were married in the Island of Jersey; and nine years afterwards the husband deserted his wife and went to the United States, where he committed adultery. After the desertion the wife resided in England. *Held*, that the courts in *England* had no jurisdiction over the husband in a suit for dissolution of marriage brought by the wife.—*Le Sueur* v. *Le Sueur*, 1 P. D. 139.

See Bill in Equity.

Lease.

1. The defendant leased certain premises to A. and B., subject to a proviso that (*inter alia*) if the tenants or either of them should become bankrupt or assign over the demised premises, or should not fulfil their covenants, the defendant might re-enter. A. and B. covenanted to keep the premises in repair. The defendant also covenanted that he would, at the expiration of said lease, in case said covenants on the tenants' part should have been duly performed, grant to said tenants, their executors and administrators, a fresh lease of the premises, provided said tenants or either of them gave him notice of the desire to take such fresh lease. A assigned his interest in said lease, and became bankrupt. At the termination of said lease, B. notified the defendant of his desire for a fresh lease. The premises then required repairs to the extent of £13 10*s.* The defendant refused to grant a fresh lease. *Held*, that B. was not entitled to a fresh lease, because the defendant's covenant was to grant a lease to both A. and B., and not to B. only, and because, by failure to repair, a condition precedent had been broken.—*Finch* v. *Underwood*, 2 Ch. D. 310.

2. The owner of mineral under land upon which ran a railway leased the minerals to H. The company paid H. a certain sum in consideration of his not working the minerals. H. failed to pay rent, and surrendered his lease to said owner, who then sold the minerals to the defendant. The railway company filed a bill to restrain the defendant from working the minerals to their injury, and offered to pay the defendant the value of the minerals less the amount paid to H. The company had a statute right to take land, &c., on making compensation. *It seems* that the company had a right to have the minerals unworked for fifteen years without making further compensation, as said lease was terminated by surrender and not by entry for breach of condition. Otherwise if there had been a forfeiture by entry.—*Great Western Railway Co.* v. *Smith*, 2 Ch. D. 235.

See Covenant.

Legacy.

1. A testatrix, after devising certain property, bequeathed to the plaintiffs "all my furniture, plate, linen, and other effects that may be in my possession at the time of my death." At the time of her death the testatrix was entitled, in addition to her freehold property, to furniture, plate, linen, wearing apparel, jewellery, sums in cash, and £130 in the savings bank. *Held*, that all said personal property passed by the bequest.—*Hodgson* v. *Jex*, 2 Ch. D. 122.

2. A testator gave each of his younger sons £1,000 each, "which I charge on my estate at A. hereinafter devised [to his eldest son]; but I direct that the same shall not be raiseable or paid to them respectively until my eldest son shall come into actual possession of the M. estate." The M. estate was settled upon F. for life, remainder to said eldest son for life, remainder to his issue in tail male. The eldest son died before F., and never came into actual possession of the M. estate. *Held*, that the legacies failed, and fell into the residuary estate.—*Taylor* v. *Lambert*, 2 Ch. D. 177.

3. A testator gave his sons H. and J. £16,000 upon trust to pay the interest of £8,000, part thereof, to his daughter Ann for life, remainder to her children; and to pay the interest of the remaining £8,000 to his daughter Sarah for life, "in the same manner in every respect, and subject to the same control," as he had before directed as to his daughter Ann. He then gave £6,000 in trust for his son Samuel for life, remainder to his children, and empowered his trustees to

apply the interest of all said sums for the maintenance and education of the children of said daughters and son. Sarah died leaving children. *Held*, that by implication Sarah's children were entitled to £8,000.—*Sweeting* v. *Prideaux*, 2 Ch. D. 413.

See Cy-pres; Devise; Election; Marriage, Restraint of.

Lex Fori.

A pier at Marbella in Spain, belonging to an English company, was injured by an English steamship. By the law of Spain in such cases the master and mariners of the ship, and not the ship or her owners, are liable in damages. The company instituted a cause of damage in England against the steamship. *Held*, that the law of Spain, and not that of England, governed the case.—*The M. Moxham*, 1 P. D. 107; s. c. 1 P. D. 43; 10 Am. Law Rev. 704.

Lex Loci.—*See* Lex Fori.

Lien.

1. W. was in the habit of sending goods to P.'s warehouse, where they were packed for shipment. W. became bankrupt while goods belonging to him were at the warehouse of P., who claimed a lien upon them, not only for the charges for packing them, but for packing other goods of W., which P. had previously packed. *Held*, that P. had such a general lien.—*In re Witt. Ex parte Shubrook*, 2 Ch. D. 489.

2. The master of a vessel which had gone ashore with the cargo on board put the plaintiff on board as his agent to do what was for the benefit of all concerned. The plaintiff did work and expended money in discharging the cargo, which he brought to a place of safety, and took possession of. The vessel remained, and was sold as a wreck. The defendant, the holder of the bill of lading of the cargo, by S. his agent, demanded the cargo, and S. verbally promised that the plaintiff should be paid his said expenses and his charges for said work; and thereupon the plaintiff delivered the cargo to S. S. had no special authority to make said promise. *Held*, (1) that the plaintiff had a lien for his said expenses and charges, which were in the nature of general average or salvage charges; and (2) that S. had implied authority to give security for any charges for which there was a lien on said cargo, and that the plaintiff's giving up his lien was a good consideration of the promise made by S.—*Hingston* v. *Wendt*, 1 Q. B. D. 367.

See Settlement, 3.

Lunatic.

The committee of a lunatic tenant in tail of an estate subject to a charge for portions petitioned for leave to execute a disentailing deed for the purpose of raising the charge by a mortgage. The court refused to allow the entail to be barred further than was necessary, and ordered a mortgage for a term of years without power of sale.—*In re Pares*, 2 Ch. D. 61.

Marriage.—*See* Presumption.

Marriage, Restraint of.

A testator devised all his real estate to three women during their lifetime, and proceeded as follows: "And when any or some of the before-mentioned parties named, M. my sister, E. her daughter, or S. the daughter of the said D. J., shall depart this life, I give, devise, and bequeath her or their shares to be possessed and enjoyed by my sister J., together with her daughter Mary, during their lifetime; *provided* the said Mary, daughter of my sister, shall remain in her present state of single woman; otherwise, if she shall alter her present state of single woman, and bind herself in wedlock, she is liable to lose her share of the said property immediately, and her share to be possessed and enjoyed by the other mentioned parties, share and share alike. Mary married. *Held*, that Mary's estate ceased upon her marriage. It seems that the rule that conditions in restraint of marriage are invalid does not extend to devise of land. The court considered that the testator's object was only to provide for her while unmarried, and not to restrain her marriage.—*Jones* v. *Jones*, 1 Q. B. D. 279.

Marriage Settlement.—*See* Settlement.

Master and Servant.—*See* Negligence.

Mines.—*See* Lease, 2.

Minority.—*See* Settlement, 6.

Mortgage.—*See* Lunatic; Solicitor and Client; Trespass.

Negligence.

1. The plaintiff sent a heifer to the P. station on the defendant's railway. On the arrival of the car containing the heifer, it had to be shunted on to a siding; and as there were only one or two porters to shunt the car, the plaintiff assisted in the shunting. While so doing, the plaintiff was injured by a train through the negligence of the defendants' servants. *Held*, that the defendants were liable, as the plaintiff assisted in the shunting with consent of the defendants, and was not a mere volunteer.—*Wright* v. *London & North Western Railway Co.*, 1 Q. B. D. 252; s. c. L. R. 10 Q. B. 298; 10 Am. Law Rev. 296.

2. A. and B. owned adjacent houses, and A. was entitled to the support of B.'s soil for his house. B. employed R. to pull down and rebuild his house by a contract, under which R. agreed to take upon himself the risk and responsibility of shoring and supporting, so far as might be necessary, the adjoining buildings affected by the alteration during the progress of the works, and to make good any damage which might be sustained by said buildings during the progress or in consequence of the said works, and to satisfy any claims for compensation arising therefrom. A.'s house was injured by said works in consequence of R.'s not properly underpinning A.'s walls. *Held*, that B. was liable for said injuries.—*Bower* v. *Peate*, 1 Q. B. D. 321.

3. The tenant of a house, knowing that a lamp suspended from an iron bracket in front

of the house was of some age, employed an experienced gas-fitter to examine it and put it in thorough repair. Subsequently a servant raised a ladder against the bracket, which he mounted for the purpose of cleaning the lamp. The ladder slipped, and the servant caught hold of the bracket, and thereby shook the lamp, which fell upon the plaintiff. On examination it appeared that the breakage of the lamp fastenings was caused by their general decay. The plaintiff brought an action against the tenant. *Held*, that the tenant was liable for the plaintiff's injuries. That the tenant had employed an independent contractor to repair the lamp was no excuse for his failure to perform his duty to keep the lamp in repair.—*Tarry* v. *Ashton*, 1 Q. B. D. 314.

4. The defendant railway was obliged by statute to carry all carriages, &c., upon its lines, upon payment of certain tolls; and in fact received between twenty thousand and thirty thousand foreign trucks weekly. One G. hired trucks from a waggon company which was to keep the trucks in repair. One of these trucks arrived at Peterborough on the defendant's line, and was there examined by a person in the defendant's employ, and found to have a spring broken and a part of the wood-work cracked. The waggon company put in a new spring without examining the truck, but did not repair the crack in the wood. The truck was then carried forward, and broke down owing to an old crack in the axle which had not been discovered, and the plaintiff was injured. The jury found that the defect in the axle would have been discoverable upon fit and careful examination; that it was not the duty of the defendant to examine the axle by scraping off the dirt, and so minutely examining it that the crack would have been seen; and that it was the defendant's duty to require from the waggon company some distinct assurance that the truck had been thoroughly examined and repaired. Verdict for defendant, with liberty to the plaintiff to move for a verdict for an agreed sum. *Held*, that the defendant was entitled to a verdict.—*Richardson* v. *Great Eastern Railway Co.*, 1 C. P. D. 342; s. c. L. R. 10 C. P. 486; 10 Am. Law Rev. 296.

5. Certain gates belonging to the defendants' gas-works were safe when open, but when half open were liable to fall. The plaintiff, a servant in the defendants' employ, passed through the open gates; but returning not long after, the gates were partly open, and in passing through them the plaintiff was injured. There was no evidence to show that any one had touched the gates in the mean time. Before the accident, the defendants' manager had notice of the unsafe condition of the gates, and he had promised to attend to the matter; and orders had been given to make a bar which would prevent the gates falling, but these orders had not been carried out. *Held*, that the defendants were not liable, as the plaintiff had not shown that the defendants undertook personally to superintend the works, or that the persons employed by the defendants were not proper and competent persons, or that the defendants had failed to furnish the persons employed with adequate materials and suitable resources for carrying on said works.—*Allen* v. *New Gas Company*, 1 Ex. D. 251.

See Carrier; Collision.

Notice.—*See* Damages, 1.

Nuisance.

A chemical company, which had the right to drain from their premises through two separate drains into a sewer, discharged through one drain liquid impregnated with muriatic acid, and through the other liquid impregnated with sulphur; and the two liquids combined in the sewer and gave off sulphuretted hydrogen, which escaped into a street, and was injurious to the public health. *Held*, that the escape of the sulphuretted hydrogen was a nuisance, arising from the act of the company, within 18 & 19 Vict. c. 121.—*St. Helen's Chemical Co.* v. *Corporation of St. Helen's*, 1 Ex. D. 196.

Offer.—*See* Vendor and Purchaser, 1.

Packer's Lien.—*See* Lien, 1.

Partnership.

A. borrowed £250 of B. in 1869, and signed the following agreement: "In consideration of the sum of £250 this day paid to me, I hereby undertake to execute a deed of co-partnership to you for one-eighth share of the O. Music Hall, to be drawn up under the Limited Partnership Act." Subsequently A. wrote to B. offering to repay the money on Sept. 1, 1872, and that proportion of the profits, if any, to which B. was entitled under said agreement. A. made a tender in accordance with said letter, which B. refused; and B. filed a bill against A., claiming to be a partner, and praying specific performance of said agreement and for an account. A. answered on Feb. 21, 1873, claiming that said money was advanced as a loan, and that in any event there was only a partnership at will, which was terminated by said letter. *Held*, that said agreement constituted A. and B. partners at will, and that the partnership was not terminated by A.'s letter, but was terminated by his answer to B.'s bill; and that B. was entitled to one-eighth share in the profits up to Feb. 21, 1873, and one-eighth of the value of the music hall at that date; and accounts were ordered.—*Syers* v. *Syers*, 1 App. Cas. 174.

Party-Wall.—*See* Covenant.

Patent.

The defendant, under contract with officers of the British government, furnished rifles according to a certain patent, at a certain price, the government supplying the stock and tube for the barrel of each piece. It was held that the contract was for the manufacture of the rifles; and that although the rifles were made by an independent contractor, the user of the patent method of manufacture was a user by the government, and that the defendant was not liable for in-

fringement of patent.—*Dixon* v. *London Small Arms Co.*, 1 Q. B. D. 384.

Pleading.

A defendant demurred to a bill of equity for specific performance of a contract, showing for cause of demurrer that there was no memorandum signed by him within the Statute of Frauds. The demurrer was overruled, the bill amended, and the case heard. The defendant did not by answer plead the Statute of Frauds. Specific performance was ordered, and the defendant appealed. *Held*, that the defendant might take said objection on appeal, although not set forth in his answer.—*Johnasson* v. *Bonhote*, 2 Ch. D. 298.

See Frauds, Statute of.

Possession, Reduction to.—*See* Settlement, 2.

Prescription.

The plaintiff and defendant held adjoining lands fronting on a creek communicating with the sea. To prevent the water at high tides from overflowing their lands, the proprietors of said lands and of other adjoining lands, had maintained sea-walls time out of mind. Such walls gradually subsided, and it was necessary from time to time to raise them by placing fresh materials on the top. The defendant neglected to keep his wall at the proper level; and in consequence the water came over his wall, and flowed over his land on to the plaintiff's land. *Held*, that the evidence did not establish a prescriptive right in the plaintiff to have the wall on the defendant's land maintained at height sufficient to keep the water from the plaintiff's land, and that the defendant was under no liability at common law to maintain such a wall.—*Hudson* v. *Tabor*, 1 Q. B. D. 225.

Presumption.

A marriage took place in a chamber some yards from a church while the church was under repair. Divine services had several times been performed in the chamber. The man married again; and in a prosecution for bigamy it was *held* that it must be presumed that the building in which was the chamber was licensed, in accordance with the maxim, *Omnia presumuntur rite esse acta;* and that the presumption was stronger, as the clergyman who celebrated the marriage might by statute have been indicted for felony if he knowingly did so in an unlicensed place.—*Queen* v. *Cresswell*, 1 Q. B. D. 446.

Principal and Agent.—*See* Bills and Notes; Lien, 2; Negligence, 2.

Probate.—*See* Will, 1.

Profits.—*See* Damages, 1.

Property.—*See* Sale.

Railway.

The plaintiff took a ticket at the defendants' station for S. *via* Leeds and York. The ticket had indorsed upon it the words, "Issued by the (defendant) company, subject to the company's regulations, and to the conditions of the time-tables of the respective companies over whose lines this ticket is available." The conditions referred to were the following: "The published time-bills of this company are only intended to fix the time at which passengers may be certain to obtain their tickets for any journey from the various stations; it being understood that the trains shall not depart before the appointed time. Every attention will be paid to insure punctuality as far as it is practicable: but the directors give notice that they do not undertake that the trains shall start and arrive at the time specified in the bills; nor will they be accountable for any loss, inconvenience, or injury which may arise from delays or detention. The granting of tickets to passengers to places off the company's line is an arrangement made for the convenience of the public; but the company do not hold themselves responsible for any delay, detention, or other loss or injury whatsoever arising off their lines, or from the acts or defaults of other parties, nor for the correctness of the times over the lines of other companies, nor for the arrival of this company's own trains in time for the nominally corresponding train of any other company or party." The train carrying the plaintiff arrived at Leeds at 5.27 P.M., being 27 minutes late, so that he lost the usually connecting train which left at 5.20 P.M. He therefore proceeded to York by the next train, which left Leeds at 5.55 P.M., and arrived at York at 7 P.M., where it stopped. The next train for S. did not leave York until 8 P.M., to arrive at S. at 10 P.M.; and the plaintiff therefore took a special train, and arrived at S. between 8.30 and 9 P.M. If the plaintiff's train had made its connection properly at Leeds, the plaintiff would have arrived at S. in the ordinary course at 7.30 P.M. The plaintiff had no business necessitating his arrival at S. at any particular time. The plaintiff brought this action to recover the cost of the special train. *Held*, that the defendants were not liable.—See the various reasons of the judges of the Court of Appeals in support of their opinions.—*Le Blanche* v. *London & North Western Railway Co.*, 1 C. P. D. 286.

See Lease 2; Negligence, 1, 4.

Remainder-man.—*See* Tenant for Life.

Restraint of Marriage.—*See* Marriage, Restraint of.

Reversionary Interest.—*See* Settlement, 5,

Sale.

1. C. agreed to sell H. 200 tons potatoes grown on C.'s land at W., to be delivered during September and October, and paid for as taken away. C. sowed land sufficient in an ordinary season to produce a much larger quantity than 200 tons; but a disease which C. could not have prevented attacked the crop and caused it to fail, so that only 80 tons were delivered to H. An action was brought by H. against C. for failure to deliver the residue of the 200 tons. *Held*, that the contract to deliver the potatoes of a particular

kind and grown on a specific place was excused by the failure of the crop without C.'s fault.—*Howell* v. *Coupland*, 1 Q. B. D. 258; s. c. Law Rep. 9 Q. B. 462; 9 Am. Law Rev. 286.

2. One A. Blenkarn took premises at 37 W. Street, and ordered goods of the plaintiffs, signing his orders so as to look like A. Blenkiron & Co., which was the name of a well-known firm at 123 in said street. The goods were supplied, and Blenkarn sold them to the defendant, who sold them to others. The plaintiffs brought trover. *Held*, that as the plaintiffs intended to contract with the persons carrying on business at 37 W. Street, although they mistakenly supposed him to be of the firm of Blenkiron & Co., the property in said goods passed to Blenkarn, and could not be divested from the defendant, who had acquired the goods *bona fide*.—*Lindsay* v. *Cundy*, 1 Q. B. D. 348.

3. The defendant contracted to purchase of the plaintiff 4,500 quarters oats: "Shipment by steamer or steamers during February next. Should ice at loading port prevent shipment within stipulated time, shipment to be made immediately after reopening of the navigation." The plaintiff shipped 1,139 quarters which arrived in time, but were not accepted by the defendant, and the remainder by another vessel which did not arrive in time. *Held*, that the defendant was bound to accept said oats which arrived in time.—*Brandt* v. *Lawrence*, 1 Q. B. D. 344.

See Contract, 1; Distress; Fraudulent Transfer; Vendor and Purchaser, 1, 3.

Salvage.

Towage services may be described as the employment of one vessel to expedite the voyage of another, when nothing more is required than the accelerating her progress. . . If the vessel was in a state of danger at the time, and he (the captain of the vessel rendering the services) had towed her, he would be entitled to be considered as a salvor. . . It is not necessary that the distress should be actual or immediate, or that the danger should be imminent and absolute. Sir Robert Phillimore (adopting the language of Dr. Lushington) in *The Strathnaver*, 1 App. Cas. 58.

See Lien, 2.

Sea-Wall.—*See* Prescription.

Seaworthiness.—*See* Ship.

Security.—*See* Bond.

Settlement.

1. Ante-nuptial articles were signed, providing that the wife's personal property should, after the marriage, be transferred to trustees upon trust for the husband and wife during their lives: "the trustees of the capital being for and amongst the children according to the appointment of said husband and wife or the survivor of them, and in default of appointment, to the children equally; in the event of there being no children, and of the husband being the survivor, the trust property to be at his absolute disposal." After the marriage, a settlement was executed; but it contained no provision for the event of there being no child and the husband dying before the wife. The property was transferred to trustees; and the husband received the income for several years, and died with part of the income in arrear. There was one child of the marriage, who died an infant in the lifetime of both parents. The representative of the husband claimed the arrears of income, and the capital subject to the wife's estate. *Held*, that the capital and arrears of income belonged to the wife. The settlement was not in accordance with the ante-nuptial agreement, which would have been carried into effect by giving shares to the sons of the marriage contingent upon their attaining twenty-one, and to the daughters contingent on attaining twenty-one or marrying; or by contingent limitations over of the shares of sons dying under twenty-one, and of daughters attaining that age or marrying; in either of which cases, the husband would not have taken as representative of a child dying an infant and unmarried.—*Cogan* v. *Duffield*, 2 Ch. D. 44; s. c. L. R. 20 Eq. 789; 10 Am. Law Rev. 476.

2. In a marriage settlement, L. agreed that he would, after the marriage, transfer certain consols to trustees in trust for himself for life, and after his death for his intended wife for life, and after the death of the survivor in trust for the children; and if no children, then in trust for the survivor of the settlers and his or her executors, &c. G. assigned by the settlement certain bonds to the same trustees upon trust to pay the income to L. during the joint lives of L. and G.; and if L. should survive G., then in trust after G.'s death to transfer the bonds to such persons as G. should by will appoint; and in default of appointment, to her next of kin; but if she survived L., then to transfer the bonds to G., her executors, &c. L. by will gave all his property to G., and G. by will gave her property to L. for life, remainder to her sisters. Both L. and G. were lost in the *Liberia*. It was contended that by the settlement the husband had reduced the wife's property into possession; and that there being no presumption of survivorship, the trusts of the settlement were exhausted, and that the husband's representative was entitled to the whole property. *Held*, that the funds settled by each settlor belonged to his or her respective legal representatives.—*Wollaston* v. *Berkeley*, 2 Ch. D. 213.

3. Previously to a marriage, the intended husband signed a memorandum agreeing to transfer certain stocks, then forming part of the intended wife's property, into the names of the wife and her son by a former marriage, in trust for the wife; "neither party having power to dispose of said stocks without consent of both parties to such disposal." After the marriage the husband got possession of part of the stocks, and disposed of them. It was contended that there was a trust for the wife's separate use, and that she had the abso-

lute power of disposing of the stocks. *Held*, that the husband must make good the amount of stocks disposed of by him, and that the wife and her son as trustees had a lien upon the remainder of the wife's property to make good said amount. *Hastie* v. *Hastie*, 2 Ch. D. 304.

4. By marriage settlement, a wife's property was settled as to one moiety upon certain trusts for the wife, and as to the other moiety in trust for the husband and his heirs. The wife obtained a decree of divorce from her husband, and filed a bill for a declaration that she was entitled to the whole of the settled property, and that it might be conveyed to her. *Held*, that the husband's rights were not forfeited by the dissolution of marriage.—*Burton* v. *Sturgeon*, 2 Ch. D. 318.

5. Covenant in a marriage settlement that all the property to which the woman or the man in her right should during coverture become beneficially entitled in possession or reversion, or in any manner whatever, derivable from J., should be settled upon certain trusts. Before the marriage, the woman was entitled to the reversion in a fund subject to the life interest of a person who survived said woman. *Held*, that said reversionary interest was not subject to said covenant.—*In re Jones's Will*, 2 Ch. D. 362.

6. Upon the marriage of a man with a woman who was a minor, a settlement was made of property belonging to both. The husband died; and a suit was brought against the woman, then of age, in relation to property brought into said settlement by the husband. The suit was settled by consent of the wife, and a certain part of the property paid to her. Subsequently the woman married again; and a petition was filed by her and her second husband, praying, among other things, that certain funds of the wife should be carried over to the credit of an account entitled "The Settlement Account," made on the marriage of said woman with her first husband; and a decree was made accordingly. Afterward the woman and her husband filed a bill to have said settlement set aside; and they alleged that they did not know or intend that said petition might have the effect of confirming said settlement. *Held*, that the settlement had been confirmed by the acts of said woman and her second husband.—*White* v. *Cox*, 2 Ch. D. 387.

See Trust, 2.

Ship.

The defendants received and shipped on board their vessel certain heavy armor-plates belonging to the plaintiff. On the voyage one of them broke loose, owing to the rolling of the vessel, and went through the side of the ship, which was in consequence lost, with all its cargo. At the trial the judge instructed the jury that a ship-owner warrants the fitness of his ship when she sails, and not merely that he will honestly and *bona fide* endeavor to make her fit; and he left it to the jury whether the vessel at the time of her sailing was in a state, as regards the stowing and receiving of said plates, reasonably fit to encounter the ordinary perils that might be expected on said voyage; and whether, if she was not in a fit state, the loss was caused by that unfitness. *Held*, that a ship-owner warrants as above stated, although not a common carrier; and that said directors were correct.—*Kopitoff* v. *Wilson*, 1 Q. B. D. 377.

See Charterparty; Collision; Insurance, 2; Lex Fori; Lien, 2; Salvage.

Solicitor and Client.

A solicitor refused to lend money to his client except on mortgage containing stipulations that he might charge a commission upon rents received by him as mortgagee in possession, and that arrears of interest should be deemed a part of the principal debt. In ordering an account, the court disregarded these stipulations.—*Eyre* v. *Hughes*, 2 Ch. D. 148.

Special Damage.—*See* Damages, 1.

Specific Performance.—*See* Vendor and Purchaser, 3.

Statute of Frauds.—*See* Contract, 1; Frauds, Statute of; Pleading.

Stoppage in Transitu.—*See* Bills and Notes.

Surety.

Action on a joint and several bond given by a debtor and the defendant and others for £14,000 to secure a debt of £7,000, and conditioned to be void if the obligors, or either of them, should in satisfaction of the £7,000 pay £7,000, provided that the defendant should not be liable under the bond for a sum or sums exceeding altogether in debt or damages £1,300. The debtor paid £1,000, went into bankruptcy, and paid 9*s.* 2*d.* in the pound, leaving more than £1,300 unpaid on said debt. The defendant contended that he was entitled to deduct a 9*s.* 2*d.* in the pound from the £1,200. *Held*, that the defendant guaranteed the whole £7,000, although only liable for £1,300, and was not entitled to deduct a rateable proportion of the dividend, but was liable for £1,300.—*Ellis* v. *Emmanuel*, 1 Ex. D. 157.

Surrender.—*See* Lease, 2.

Telegraphic Message.—*See* Damages, 2.

Tenant for Life.

A testator directed that his real estate should be sold, and the proceeds applied in aid of his personal estate; but more than a year elapsed before the sale took place. The personal estate was insufficient to pay debts; but after they were paid, a surplus of the proceeds of the real estate remained. *Held*, that, as between tenant for life and remainder-man, all interest that had accrued during the first year after the testator's death and subsequently must be paid by the tenant for life.—*Marshall* v. *Crowther*, 2 Ch. D. 199.

See Trespass.

Theatrical Engagement.—*See* Contract, 2.

Title.—*See* Vendor and Purchaser, 2.

Title of Honour.—*See* Church of England, 1.

Towage.—*See* Salvage.

Trade-Mark.

The defendant W. advertised and sent out trade circulars to this effect: "W.'s patent *Singer* Sewing Machine.—W.'s sewing machines are the only patented machines of this class. W.'s machines have special improvements over any other make, English or American, of this machine. Buy no machine before you have inspected W.'s patent *Singer*." The Singer Manufacturing Company, the plaintiffs, had its trade-mark, and W. had his own unlike the plaintiff's; and W. did not attach the word "Singer" to any part of his machine. An injunction to restrain W. from advertising as aforesaid was refused, as he was neither using the plaintiff's trade-mark, nor representing that his machines were made by the plaintiff.—*Singer Manufacturing Co.* v. *Wilson*, 2 Ch. D. 435.

Trespass.

The mortgage of a life tenancy, in possession under an order of court, was *held* not to be a trespasser upon the death of the tenant for life.—*Hickman* v. *Upsall*, 2 Ch. D. 617.

See Way.

Trover.—*See* Sale, 2.

Trust.

1. A solicitor, who had received money from E. for investment, executed a declaration of certain personal property for the benefit of E., but without her knowledge. About a fortnight later, the solicitor died insolvent. Whether he knew of his insolvency did not appear. *Held*, that E. was entitled to the personal property, as the gift was *bon fide* and valid within 13 Eliz. c. 5.—*Middleton* v. *Pollock. Ex parte Elliott*, 2 Ch. D. 104.

2. Trustees who held real estate for a term of a thousand years were empowered during certain lives and twenty-one years from the testator's death, and after payment of certain charges, to keep certain buildings in repair, and to erect any new or additional buildings, and generally to make such outlay for the improvement or amelioration of the estate as the trustees should think fit or conducive to the general benefit of the estate or the tenants. The income was insufficient to more than pay said charges. The court allowed the trustees to repay from the principal certain sums expended for new buildings and drainage upon which the tenants paid five per cent interest.—*In re Leslie's Settlement Trusts*, 2 Ch. D. 185.

3. Personal property was settled in trust for the wife of H. for life, remainder in trust for H. for life, remainder to the children of H. and his wife; and the trustees had power to invest in real estate, and to allow H. and his wife to occupy an estate so purchased. Certain real estate was devised to H. in trust for sale, and to hold one-third of the proceeds upon the above mentioned trusts. This real estate was put up for sale; and H. requested the trustees of the personal estate to purchase a portion of it upon which H. and his wife desired to reside. The trustees consented, and left the purchase in the hands of H. H. then requested B. to act as agent of the trustees in purchasing; and H. subsequently went to C., and requested him to fix the reserve price of said portion of the land. C. fixed the reserve price at £6,000. H. then requested B. to bid up to £8,000 for the land, and at the sale B. bought the land for £7,230. As the trustees had not enough money, a part of the purchase-money was supplied by H., who acted with good faith throughout the transaction. Certain *cestuis que trust* of the land brought a bill alleging that to the extent of the moneys supplied by him H. was a purchaser from himself of the trust-property, and praying for a resale at a price not less than said purchase price, the surplus, if any, to be invested for the purposes of the trust; but if no surplus, then the trustees to be held to said purchase. *Held*, that said purchase was proper, and that the money contributed by H. must be held to have been added by him to the trust-funds held by said trustees.—*Hickley* v. *Hickley*, 2 Ch. D. 190.

See Settlement, 3; Vendor and Purchaser, 2, 3.

Vendor and Purchaser.

1. The defendant, on June 10, signed a memorandum, whereby he agreed to sell a piece of land to the plaintiff for a certain sum. "P.S.—This offer to be left over until June 12." The postscript was signed by the defendant. On June 11 the defendant sold the land to a third party; and after this the plaintiff, who knew of the sale, offered to take the land according to said agreement. *Held*, that the defendant had made only an offer to the plaintiff, and might at any time withdraw it verbally, or by a sale brought to the knowledge of the plaintiff.—*Dickinson* v. *Dodds*, 2 Ch. D. 463.

2. A. agreed to purchase and E. agreed to sell certain real estate called Bury; but before any conveyance was executed E. died. By his will E. devised all his real estate to H. and M., and all his real estate which might at his death be vested to him as trustee to M. alone. *Held*, that the Bury estate passed to M., and that the concurrence of the testator's heir-at-law in a conveyance was not necessary in order to give A. a complete title.—*Lysaght* v. *Edwards*, 2 Ch. D. 499.

3. A trustee of real estate who had power to sell, leased the property for thirty years by deed, to which the beneficiaries were parties. The lessee underlet the premises; and subsequently, while the lease was still running, the trustee determined to sell the property, and by arrangement with the lessee it was put into one lot, and not as a reversion and leasehold interest separately. The particulars of sale, after disclosing all the facts in detail, stated that the lessee would concur in the sale, so that the property would be sold subject to the underleases only. The defendant agreed to purchase the estate at a certain price, and the trustee agreed with the lessee that the latter should have a certain portion of the purchase-money. The defend-

ant refused to complete the purchase upon the ground that the value of the lessee's interest had not been determined *before* the sale, so that the burden was thrown on the defendant of seeing that a proper proportion of the purchase money was paid to the trustee; and he insisted that to settle this question he was entitled to the concurrence of the beneficiaries in the conveyance of the property to him. *Held*, that the trustee was entitled to a decree for special performance of the defendant's agreement to purchase.—*Morris* v. *Debenham*, 2 Ch. D. 540.

Vested Interest.—*See* Devise, 2.

Warranty.—*See* Contract, 3; Ship.

Way.

In consequence of ways leading to the different ends of a highway being stopped up, access to either end of the highway ceased. *Held*, that the highway ceased to be a highway. Coleridge, C. J: "If the defendants had a right to be there [on the former highway], though they got there by an act of trespass, they would not be trespassers for being there."—*Bailey* v. *Jamieson*, 1 C. P. D. 329.

Will.

1. W. B. Astor made two wills, the latter of which disposed of British funds only; and he directed that it should not affect his first will, which related to property in America. The first will was very long, Probate was granted in England of the second will only, with a note of reference to the authenticated copy of the first will filed in the registry.—*In the goods of Astor*, 1 P. D. 150.

2. The contents of a lost will was allowed to be proved by secondary evidence; and probate was granted of the portion proved, although it was not the whole will. Declarations of the testator made both before and after the execution of his will were admitted.—*Sugden* v. *Lord St. Leonards*, 1 P. D. 154.

See Cy-pres; Devise; Election; Legacy; Marriage, Restraint of; Vendor and Purchaser, 2.

Words.

"*Children and their issue and their heirs.*"—*See* Devise, 3.

"*Depraver of the Book of Common Prayer.*"—*See* Church of England, 2.

"*Evil Liver.*"—*See* Church of England, 2.

"*Issued.*"—*See* Bond.

"*Reverend.*"—*See* Church of England, 1.

"*Survivor.*"—*See* Devise, 1.

Work Done.—*See* Frauds, Statute of.

CORRESPONDENCE.

TO CORRESPONDENTS.

We cannot publish communications unless accompanied by the name of the writer, as a guarantee of good faith.

Unprofessional Conduct—Contempt of Court.

To the Editor of the Law Journal:

Sir,—A case has lately been pending in the Court of Chancery at Cornwall, and a judgment delivered therein by Mr. Vice-Chancellor Blake, which it appears to me, as one interested in the dignity of the profession, should be formally brought under the notice of the Benchers of the Law Society as the duly constituted guardians of the honour of the legal profession.

The case to which I have reference is that of *Pringle* v. *Macdonald*, the defendant being Mr. Henry Sandfield Macdonald, a barrister and attorney-at-law.

The bill alleged an offer from Macdonald for the purchase of three-quarters of *the north half* of lot No. 21, on the south side of Second street in Cornwall, and its acceptance by Pringle; that the defendant afterwards came to the house of the plaintiff with his clerk, who said that a deed had been prepared in accordance with their agreement; that he wished to procure the signature of the plaintiff and his wife; that the plaintiff, relying on the honesty, good faith, and legal knowledge of the defendant, did not read the deed which he and his wife signed; that he subsequently ascertained that defendant claimed to be the owner of the west three-quarters of the whole lot; the bill charged that the signature to the deed was procured by fraud and misrepresentation, and that plaintiff relied on the defendant as his solicitor, and he prayed for a reconveyance.

The answer denied that the agreement was for the purchase of the west three-quarters of the north half, and the charges of fraud and deceit; alleged a willingness to rescind the whole transaction; denied the truth of all the allegations in the bill, and asked that it should be dismissed with costs.

After a patient hearing of the case, His

Lordship gave his decision, finding that the defendant had by fraud and misrepresentation induced the plaintiff to execute the deed. He also declined to believe Mr. Macdonald when he swore that the words "north half" had not been inserted in the agreement by him, and were not in his handwriting.

Not content with receiving so well merited a rebuke from the Bench, the defendant, who is the proprietor of the Cornwall "Freeholder," has the audacity to insinuate that the Vice-Chancellor was, in giving judgment as he did, actuated by motives of personal hostility to him by reason of the fact that when, some years ago, the defendant was a student in the office in which Mr. S. H. Blake was at that time one of the partners, he had made use of his position and the means thus placed at his disposal to write to the since defunct *Daily Telegraph* a series of letters in which the Chancery Bar, and the Messieurs Blake in particular, were very strongly animadverted upon. It certainly would have suggested itself to the ordinary mind that it would, irrespective altogether of the respect due from the Bar to the Bench, have been as well to allow that matter as well as the expulsion which followed, to rest in oblivion. Since, however, the defendant has thought fit to allude to it he must now bear the odium attaching to it.

I trust that the officers of the Law Society will at once take steps to purge the Society of one whose conduct has been so unworthy of a member of the profession, who labours under so severe a censure, and who, if allowed to continue in the practice of an honourable profession, will be enabled to bring still greater discredit upon his gown and work further harm to society.

It will be a matter of serious regret that the son of one who has been the first law officer of the Crown in the Province, should be dealt thus harshly with—but the Benchers of the Law Society owe it to themselves, to the profession they represent, and the trust placed in their hands, to mete out justice to so grievous and unrepentant an offender.

I enclose my card, and you are at perfect liberty to make such use of my name as you may think fit.

BARRISTER-AT-LAW.

November 6th, 1876.

[We have expressed our opinion elsewhere. The matter should be brought formally before the Benchers.—EDS. L.J.]

Suggested Amendments of the Law.

TO THE EDITOR OF THE LAW JOURNAL.

DEAR SIR,—I have read with great interest, the letters in the *Law Journal*, for October and November, 1876, suggesting amendments of the law, and think that discussions of this nature are of great benefit, especially to law students.

In the letter of G. S. H., he says "that the interest of a mortgagee can be sold under a *fi. fa.* goods." I would like to hear fully his authority for the statement, as I have been informed to the contraty, and have not been able to find the law for it.

As the question of amendments has come up, I would like to make a couple of suggestions :—

1. That writs of summons be abolished, and that all actions at law be commenced by a declaration, which would be analogous to the bill of complaint in Chancery.

2. That upon filing an affidavit shewing proper reasons for doing so, a *lis pendens* against lands be granted in an action at law, instead of filing a bill in Chancery for that purpose, which has to be done now.

LEX.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Trinity Term, 40th 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:

Philip McKenzie.
Thomas Hunter Purdom.
John Tobias Lennox.
Heber Archibald.
William Burton Doherty.
Francis Rye.
Alexander John B. Macdonald.
Emanuel Thomas Essery.

And the following gentlemen received Certificates of Fitness, namely:

Henry Peter Milligan.
Ian Alexander Morton.
Albert Ogden.
J. James Kehoe.
Erastus Blair Stone.
William Burton Doherty.
Albert Clements Killam.
William Wyld.
Frederick William Casey.
W. Cosby Mahaffy.
Robert Edwin Wood.
John S. L. Wade.

And the following gentlemen were admitted into the Society as Students-at-Law:

Graduates.

John Nicholson Muir.
George Claxton.
Robert Dobree Carey.
William George Eakins.
Alexander Campbell Shaw.

Junior Class.

George Muirhead.
John S. McBeth.
Colin Campbell.
James Henry.
William Alexander Macdonald.
Alexander Duntroon Macintyre.
Edward N. Lewis.
Alfred Craddock.
Robert A. Pringle.
John R. Haney.
James Leaycroft Geddes.
William Humphrey Bennett.
Thomas Chase Patrick.
Lendrum McMeans.
Abraham Nelles Duncombe.
Sidney Wood.
James B. O'Brian.
Bernard McCann.
Victor Chisholm.
Jeffrey McCarthy.
Manley Germon.
Trevassa Herbert Dyer.
Alexander Ford.
Alexander Stewart.
Thomas H. Jones.
William Charles Perry.
Sydney Bergin.
Franklin Forster Noxon.

Articled Clerks.

John Williams.
Robert Strachan.

After Hilary Term, 1877, a change will be made in the Preliminary Examinations.

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. DouglasHamilton'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 nd (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, and amending Acts.

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, and Ontario Act 38 Vict. c. 16, Statutes of Canada, 29 Vict. c. 28, Administration of Justice Acts 1873 and 1874.

That the books for the final examination for Students-at-Law shall be as follows :—

1. For Call.—Blackstone, Vol. I., Leake on Contracts, Walkem on Wills, Taylor'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, Hawkins 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, Taylor on Titles, Smith's Mercantile Law, Taylor'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. 42, and amending Acts.

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

3rd year.—Real Property Statutes relating to Ontario. Stephen's Blackstone, Book V., Byles on Bills, Broom's Lega Maxims, Taylor'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.

Treasurer.

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

To the Benchers of the Law Society :

The Committee on Legal Education beg leave to submit the following report :

Your Committee have had under consideration the representations made from time to time to the Benchers, and referred to your Committee, respecting the different courses of study prescribed for Matriculation in the Universities, and for Primary Examination in the Law Society, and now recommend :—

1. That after Hilary Term, 1877, candidates for admission as Students-at-Law, (except Graduates of Universities) be required to pass a satisfactory examination in the following subjects :—

CLASSICS.

Xenophon Anabasis, B. I.; Homer, Iliad, B. I. Cicero, for the Manilian Law ; Ovid, Fasti, B. I., vv. 1 300 ; Virgil, Æneid, B. II., vv. 1-317 ; Translations from English into Latin ; Paper on Latin Grammar.

MATHEMATICS.

Arithmetic ; Algebra, to the end of quadratic equations ; Euclid, Bb. I., II., III.

ENGLISH.

A paper on English Grammar ; Composition ; An examination upon "The Lady of the Lake," with special reference to Cantos v. and vi.

HISTORY AND GEOGRAPHY.

English History, from Queen Anne to George III., inclusive. Roman History, from the commencement of the second Punic war to the death of Augustus. Greek History, from the Persian to the Peloponnesian wars, both inclusive. Ancient Geography : Greece, Italy, and Asia Minor. Modern Geography : North America and Europe.

Optional subjects instead of Greek :

FRENCH.

A paper on Grammar. Translation of simple sentences into French prose. Corneille, Horace, Acts I. and II.

or GERMAN.

A paper on Grammar. Musaeus, Stumme Liebe Schiller, Lied von der Glocke.

2. That after Hilary Term, 1877, candidates for admission as Articled Clerks (except graduates of Universities and Students-at-Law), be required to pass a satisfactory examination in the following subjects :—

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

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

4. That all examinations of Students-at-Law or Articled Clerks be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

THOMAS HODGINS, *Chairman.*

Osgoode Hall, Trinity Term, 1876.

Adopted by the Benchers in Convocation August 29, 1876.

Treasurer.

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