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DIARY FOR JANUARY.

1. Sat.. *Circumcision.* Taxes to be computed from this date.
2. SUN. *2nd Sunday after Christmas.*
3. Mon. Municipal Elections. Heir and Devisee Court begins. County Court Term begins.
5. Wed. *Epiphany.*
8. Sat.. County Court Term ends. Last day for Township, Village and Town Clerk to make return to Conuty Clerk.
9. SUN. *1st Sunday after Epiphany.*
10. Mon. Election of Police Trustees in Police Villages.
12. Wed. Election of School Trustees.
15. Sat.. Treasurer and Cham. of Municipalities te make returns to Board of Auditors of School Rep. to be made to Local Superintendent.
16. SUN. *2nd Sunday after Epiphany.*
17. Mon. Members of Municipal Councils (except Counties) and Trustees of Police Villages to hold 1st meeting.
22. Sat.. Articlts, &c., to be left with Sec. Law Society.
23. SUN. *3rd Sunday after Epiphany.*
25. Tues. *Conversion of St. Paul.* 1st Meeting of County Councils.
28. Sat.. School Finance Report to Board of Auditors. Last day for Non-Residents to give list of their lands.
30. SUN. *4th Sunday after Epiphany.*

THE

Canada Law Journal.

JANUARY, 1870.

THE BENCHERS AND THE LAW SOCIETY.

A petition was circulated last year amongst the profession, asking for a change in the mode of appointing the Benchers of the Law Society, by making their appointment depend on the general vote of the Bar of Ontario. A bill was introduced in accordance with the views of the petitioners.

The sections which it is important to refer to at present are the following:—

"2. The Benchers of the Law Society shall be *thirty* in number, exclusive of the Attorney-General, for the time being, and retired Judge or Judges of the Superior Courts of Law or Equity for Ontario, who shall respectively, *ex officio*, be Benchers of the Law Society.

3. For the purpose of the election of the Benchers of the Law Society, this Province shall be deemed to be divided into the five districts following:—

One.—Comprising the Counties of Essex, Kent, Lambton, Middlesex, Elgin, Oxford, Huron, Perth, and Bruce.

Two.—Comprising the Counties of Wellington, Waterloo, Brant, Norfolk, Haldimand, Monck, Welland, Lincoln, Wentworth and Halton.

Three.—Comprising the Counties of Grey, Simcoe, Peel, York, Ontario, and the Districts of Algoma and Muskoka.

Four.—Comprising the Counties of Victoria, Durham, Peterboro', Northumberland, Hastings and Prince Edward.

Five.—Comprising the Counties of Frontenac, Lennox, Addington, Renfrew, Leeds, Lanark, Grenville, Dundas, Stormont, Glengarry, Prescott, Russell and Carleton; and the Districts may be termed respectively London, Hamilton, Toronto, Cobourg and Kingston.

4. For each of the said Districts, other than Toronto, there shall be elected by the members of the Bar usually resident and practising in the said Districts respectively, five members of the Bar, of at least [*seven*] years standing, and whether resident or practising in said respective districts or not, to be Benchers of the Law Society, and for the Toronto District there shall be similarly elected as Benchers ten members, members of the Bar in like standing.

11. The election of Benchers under this Act shall take place during the first week of the month of October, and the next subsequent election in the first week of October in the fifth year after the said first election, and so on."

This bill was thrown out last session on a technical ground, but as no opinion was expressed on the merits, it is likely that it will be again introduced, either in its present, or in a modified shape. It is therefore not out of place to refer to the measure as introduced last session, for upon the making of any such sweeping change as some contemplate, and upon the principle of the scheme some advocate depend consequences whether of good or evil to that Society to which we belong, and therein to the future injury or benefit of the profession, and incidentally and consequentially to the advantage or disadvantage of the public at large.

It was rumoured that the origin of the whole scheme was a personal matter, arising from want of temper on the part of some of the persons concerned, but of this we know nothing beyond the current report, nor do we desire to know anything more about it; the simple enquiry now is, not as to the motives which first prompted the desire for a change, (though perhaps, this might have considerable weight with many in inducing them to reject the scheme, or at least, make them more cautious in considering it)—but as to whether any such change as that proposed is in itself desirable.

It is a true saying that men in general are given to change, even for the very sake of

a change; but Lord Bacon says, that no change in the law should be for change sake, but for the love of excellence, and that law reforms should be gradual and permanent. Whatever has been the reason, it cannot be denied that the idea of an alteration in the direction indicated, has become popular in certain localities. We confess however to a want of respect for popular clamour; and, without arrogating to ourselves the gift of prophecy, we venture to predict that there will, sooner or later, be a reaction in the minds of many; and this must necessarily be so unless the basis of the present fabric of popularity is founded, after careful consideration and deep thought, on sound reasons and unanswerable arguments in favour of the change.

That many professional gentlemen have signed this petition is quite possible. As we have said, it is "popular" in certain localities for the time being, but that the majority of the signers have thoroughly appreciated the effect of the proposed change, we very much doubt. Even putting it on no other ground, it is, as is well known, a matter of the smallest difficulty to get a given number of names to any petition bearing on its face a semblance of plausibility—one signs because another does—he does not like to appear singular—does not like to refuse—signing is less troublesome than giving reasons for refusing, the thing seems plausible and cannot hurt any one, at all events does not affect the signer, and so on; and all this is done, and an impression is given, without in reality obtaining the thoughtful well-considered sense of the signers of the petition, whatever it may be. Now in this case we do not say (simply because it has never been tested) that a majority of the profession are against the change, nor do we presume to say that many who have signed this petition, have done so without fully comprehending the subject in all its bearings, and with the conviction that the effect will be to cure defects, which either exist, or are supposed to exist (and for the sake of this argument whether they exist or not makes no difference), but we only argue that there is no evidence that there is any pressure for the Bill, (at least in its present shape,) and that the subject has not been brought before the profession in such a way as to enable the promoters of the Bill to say, that the voice of the profession is in favour of this, or any similar measure.

It will be doubtless admitted on all sides, that the Law Society should be so managed as to make it as conducive to the general advancement and welfare of the legal profession in Ontario, as circumstances will permit. To effect this it is obviously necessary that the best men that can be had from the ranks of the profession should be selected to conduct the affairs of the Society. Has then the present system worked well or badly with respect to the *personel* of the managers? Are the members of the Bench, selected under that system, entitled, from their means of use-usefulness, business capacity, standing in the profession, position and general rectitude of character, to the confidence of those who can claim the protection, assistance and benefits of the Society; in other words, have the Benehers properly fulfilled the trust reposed in them by, up to the present time, electing as members of their body persons of the stamp alluded to. This is the first question. The next is, is there any reasonable ground for believing that a change, such as is proposed, would introduce a better class of men as Benchers, or otherwise better advance the desired object. And, finally, supposing as good men are secured for the position as at present, will the proposed new tenure of office conduce to the well-being or otherwise of the Society. And, to begin with, it may, we think, be laid down as attendant axioms to these problems, that, with the same men as Benchers (no matter in what mode they are appointed), the same results will follow, and that if a lower class of men are appointed worse results will follow.

The first question every enquirer can answer for himself, by merely looking at the list of those who have been appointed from time to time, and perhaps the fairest way would be to look at the selection during more recent years, when the field for choice has been more extended.

Then as to the second question, whether there is any reasonable ground for belief that the election of the Benchers in the manner proposed will advance the desired object. At present the Benchers select from the ranks of the profession, once every year, four gentlemen to be associated with them in their duties and position; so that it comes to this, that Benchers are now elected by a select few, and not by the mass of the profession. But it is argued and undoubtedly with some force, that in

these days of responsible government and elective rights, it is not in accordance with the analogy of other institutions, and with the spirit of the age, that the governed should have no voice in the selection of their governors. This argument, so far as it goes, may for the purposes of this enquiry be admitted to be founded on a reasonable basis. But to give it any weight it must also appear as an established fact, that the governed desire a change, which shall place the appointment of their governors directly in their hands. As we have endeavoured to shew, there cannot, as yet, be said to have been any such expression of opinion; the petitions being, so to speak, *ex parte*, and, as such, valueless for any purpose whatever. And it must be conceded, that if the profession have not expressed a desire for a change, they must be presumed to be satisfied with the present system, and content that the power heretofore exercised by the few shall so continue, and as perfection can never be obtained, it may be because out of the two evils, they thus choose the least.

On looking over the law list, and comparing the names of the present Benchers with those from whom a selection can be made, one is inevitably led to the conclusion, that nearly all those who are not past work from age or ill health would probably be elected under the new system. Some few who are not "popular," in the worst sense of the word, would be left out, though perhaps amongst the best men that could be had for the position, and their place would be supplied by men less competent, but more "popular," younger or more pushing, as the case might be.

If the same men, or an equally good class are elected, of course no harm would be done, except the harm of introducing a system which is attended with so much of evil, and in this case, without, so far as any arguments have as yet proved, any compensating advantages. But the fear is, that a lower class of men will be elected. What has been the experience of years? Has it not been that the noisy, pushing and unscrupulous come to the front, leaving more really competent men in the background. Surely it is not in matters appertaining to the profession of the law that one would like to see the turmoil of an election, party spirit invoked, politics doubtless introduced, by and by ill-feeling engendered, and the nice feelings and instincts of those, who would not condescend to lower themselves by an appeal to others for support in such a contest, blunted.

If the present system is shewn to work badly, we will be amongst the first to applaud any well considered scheme that will make things better, or remove any well-grounded causes of complaint, but we cannot support a measure which not only is not shewn to be necessary, but bears on its face the elements of discord and destruction. It is not our business to advocate the interests of the present or any former Benchers of the Law Society, and we do not now pretend to do so; they are perfectly competent to fight their own battles. But we cannot, even as a mere matter of justice, allow it to be said or even insinuated that the present Benchers have done nothing to give us confidence in the present system; to speak of nothing else, they have inaugurated a course of legal education, probably superior to that of any other country in the world. This is something to be proud of, and let those who have done the work get their share of credit for what they have done, as well as blame for what they may have left undone. A system that has produced such good fruit in such an important matter must not be lightly interfered with. Would as much have been done by men appointed for a few years, not knowing whether at the end of one period whether they would be in office the next year to carry out to completion what they might have commenced? We much doubt it. And here it is but right to pay a passing tribute to the zeal and talent of the indefatigable Treasurer of the Law Society, to whose sagacity, the admirable measures alluded to are mainly due. He has worked early and late, devoting his great business talents and much of his valuable time to the work of the Society, and, like the rest of the Benchers, without the slightest remuneration; doing more than those who are not familiar with Osgoode Hall are aware of. We hope, for the sake of the Society, he may long hold his present position.

A host of objections present themselves to the Bill as introduced, but to which we have not at present space to refer; but we shall probably have occasion to speak of this subject again. Without having as yet stated half the objections to this Bill, we may at least have

suggested to some, that this question, like others, has two sides to it, and we shall, for the present, be satisfied if we have caused any of the promoters of the scheme, to pause and consider more carefully its probable results.

THE NEW CHANCERY JUDGES.

The recent appointment of Mr. Spragge to the Chancellorship, and Mr. Strong to the seat vacated by Mr. Spragge's promotion, will give great satisfaction. The present Chancellor has risen step by step to his present high position, and none will grudge him his well-earned honors. The hopes of his many friends that his services would not be overlooked on the first available occasion have not been disappointed, and amongst the profession the elevation of this able, conscientious and most pains-taking judge — a man who has deservedly won the respect and regard of all— meets with general and hearty approval.

The new Vice-Chancellor has established a reputation second to none as an equity counsel; and the Equity Bench, as well as the Court of Appeal, will be greatly strengthened by the learning and talent that he will add to them.

The Chancellor took his oath of office at Ottawa, but Mr. Strong was sworn in at Osgoode Hall. The Bar was largely represented, and after the formal part of the proceedings were concluded, Hon. J. H. Cameron, Q.C., on behalf of the profession (we copy from one of the daily papers),

"Offered the congratulations of the bar to the Chancellor. He said that if anything could lessen the pain felt at loss of the able and well-beloved man who had last filled the high office of Chancellor so well, it would be the wisely and well-ordered action of the government in the choice of his successor. It gave him (Mr. Cameron) particular pleasure to be the medium of conveying the expresson of the Bar's feeling towards his Lordship. There was no member of the Bar who had had so long and intimate acquaintance of his Lordship's career. He (Mr. Cameron) had been first his Lordship's student, then his partner, and lastly a practitioner in his court—his whole acquaintance extending over half the time allotted to man. He could, therefore, well appreciate the high qualities of his Lordship, and know how well and honorably he had performed his duties. He cordially joined in the wish which he offered on behalf of the Bar, that his Lordship might live long and happily to enjoy the office to which he had been appointed and which he was so competent to fill.

Mr. Cameron, addressing Vice-Chancellor Strong, also tendered the warmest congratulations of the profession. The Chancellor had been so long in an official position, that there were few members of the bar who could remember him at the Bar. Mr. Strong, however, was fresh from the legal arena and its contests, and so seemed nearer to the profession. He considered that the Bench had a material assistance in the appointment of a Judge who was in the full vigor of manhood, and eminently in the possession of mental and physical strength. He hoped the Vice-Chancellor would long live to to enjoy his new dignity.

The Chancellor briefly returned thanks, saying that he could not make a return in set words and phrases, as the congratulations of the Bar had taken him by surprise. His Lordship then referred in touching terms to the worth and talent, the kindly heart, and amiable qualities of the late Chancellor. He said he trusted he would receive assistance from his colleagues in the discharge of his important and onerous duties, and then expressed the admiration he had always felt for the Bar of Ontario—in which could be found legal talent of which any nation might feel a just pride.

Mr. V. C. Strong also returned thanks for the expression of good will towards himself, and hoped that the same would continue. There could be nothing more assuring to a Judge entering upon his duties than such manifestations as the present. He should always conserve the privileges of the Bar, feeling that thereby he was best securing the ends of Justice."

SELECTIONS.

THE ALABAMA CLAIMS.

What are the "Alabama claims?" If the case of the *United States of America* v. *Great Britain* were now before some tribunal of competent jurisdiction, what are the precise claims that we should make, on what grounds should we urge them, and what award should we reasonably and fairly expect from an intelligent arbitrator? The failure of the recent attempt at negotiation having set the whole subject once more afloat, it is well to consider where we stand, and what is the next thing to be done. No one can suppose that a claim so large in amount, and so well founded in justice, can be waived or abandoned on our part.

It is very frequently said, that, in the present condition of thecase, there is no occasion for us to do any thing at all; and this suggestion is usually received with great favor, as if it embodied a large amount of practical wisdom. We are usually told that our claim is one that will "keep;" that England has established a precedent that we can follow hereafter with much advantage to ourselves, and much inconvenienee to her; that, in effect, we have put her under heavy bonds to keep the peace, and be of good behavior towards all the world; that, if ever she should venture into a war with any other power, we can cover the ocean with Alabamas, and fearfully retaliate

upon her the wrong that she has done us. This is equivalent to saying that the question between the two nations, which has already produced so much exasperation on both sides, and which involves such large pecuniary interests, is never to be settled at all; that we are sullenly to wait an indefinite, and perhaps a very long time, for "something to turn up," as Mr. Micawber would say, which shall give us an opportunity, not for indemnity, but for revenge, and that in the mean time the actual sufferers by the depredations complained of—the merchants whose property was burnt, and the insurers who have paid losses—are to be left to the full enjoyment of the right of petition for relief from the national treasury. But this expectant system, though received with some applause when first suggested, is not likely on the whole to be satisfactory to the country. None but the head centre of some Fenian lodge would deny that a just and honorable settlement is better than any further postponement.

As we occupy the position of plaintiffs in this matter, we are of course to go forward, to state distinctly what our claims are, and on what grounds we undertake to maintain them. And, first of all, we are to bear in mind that our claim is against the British government for its *own* sins of omission or commission. This is a matter in which we can deal only with that government. So far as we have been injured by the reckless and unlawful acts of British subjects, perpetrated under such circumstances as to furnish no ground for charging that government with expressly or impliedly authorizing, permitting, or conniving at the wrong complained of, we do not seek to call it to account. For that reason, it has never occurred to any one, not even to Mr. Sumner, to claim that the British government is to be held responsible for the manifold inconveniences produced by the almost constant evasions of our blockade of the Southern ports. There is no kind of doubt that the activity and success of the blockade runners prolonged the war for years. It would have been impossible, but for them, for the Confederacy to have maintained the contest for a single year. In regard to them, we neither had nor claimed any right from that government, except that it should leave them to take the chances of capture and confiscation. In regard to them, we have never charged that government with any complicity in the mischief, and their doings make no part of our claims against England. They were tempted by the prospect of enormous profits to run the risk of capture, and in this commercial age it has hardly occurred to any one that it was a matter of resentment, even against the blockade runners themselves.

The first item of our claim against the British government is one about which *we* need little argument, and which is not very seriously controverted anywhere, viz., the pecuniary claim; the damages demanded for losses incurred and depredations committed, directly resulting from, and occasioned by, the failure of England honestly and faithfully to fulfil the obligations of neutrality. Mr. Sumner insists that this is not the real question between the two nations, but even he will hardly deny that it enters into it, and makes a part of it. It is *one* of the things to be settled and adjusted, and it is important to consider upon what principles this part of our case is to be urged.

So far as this item is concerned, the claim can be computed, adjudicated upon, and paid, in pounds shillings, and pence. All this is a peculiarly proper subject for arbitration, and we, on our part, can have no hesitation or scruple in binding ourselves to submit to the award. We are fully prepared, as we think, to satisfy any impartial arbitrator, that, upon this point at least, we have an unanswerable case. It is hardly denied on the floor of Parliament that there was something approaching to neglect of duty on the part of the officials at Liverpool, at least in permitting the escape of the Alabama. We cannot reasonably complain that the same commission which passes upon our individual claims against England, is also to audit and examine the individual claims of British subjects against our own government. It is a little extraordinary that Mr. Sumner should object to the treaty on the ground that, in providing for individual claims on the part of our citizens, it makes them "subject to a set-off from the individual claims of England, so that, in the end, our country may possibly receive nothing." It would be strange if it did not. What sort of an arbitration would it be that provides that the claims of the plaintiff shall be heard and investigated, and that the claims of the defendant shall not be heard? Is not an account in set-off a good defence as far as it goes, and as far as it is proved? How can he say that, in the end, our country will receive nothing, if all our claims are allowed and charged against England in the general account current between her and our own country? Each country makes its claim in behalf, and in the right, of such of its own citizens as have been sufferers by the misconduct of the other. One of the objects of the proposed arbitration is to ascertain how much England owes, for depredations and losses, to our merchants, Certainly, there is no injustice in inquiring at the same time, and upon the same principles, how much (if any thing) this country owes for mistakes in seizures and confiscations, to British merchants. Mr. Sumner, surely, does not suppose that in the very improbable event of so large a set-off as to leave a very small balance, or no balance at all, in our favor, our Government can say to the merchants, in whose behalf it claims, that nothing has been recovered. Can our government charge these claims against England, and have them allowed, and then refuse to pay them over to the losers?

The next item of claim on our part would seem to be certainly more remote, or consequential damages, or what may be called the

indirect losses, growing out of the same cause. The mere value of shipping and cargoes actually destroyed was but a part, and probably but a small part, of the injury to our commerce. A hostile steamer, fitted out with all the appliances of modern skill and science, roving about the Atlantic and along the great highways of commerce, her crew consisting of "gunners from the Excellent," herself finding enthusiastic friends and admirers in every British port; applauded, encouraged, and welcomed by every British colonial governor from Halifax to the Cape of Good Hope, and from the Cape of Good Hope to Australia, eagerly and promptly furnished with supplies, repairs, coals, and recruits, wherever British authority was established, and could reach out its hand to her,—such an enemy was, formidable, indeed. The fact that there were many such cruisers upon the sees, and that they had found such exceeding favour everywhere in the eyes of John Bull, was almost enough to substantially sweep our commerce from the ocean. The loss of profits, the difficulty of procuring insurance, the abandonment of contemplated voyages, and the very general transfer of our tonnage into foreign hands, threw us a long way behind, in the competition with other countries, for the carrying trade of the world, and inflicted upon us an immense national loss. But if we were to bring forward this great national loss as a matter of pecuniary claim, we should certainly find ourselves embarrassed with certain well-established, and not wholly pedantic rules, familiar to the courts of law, as to remote and proximate causes of damage. The merchant, whose ship and cargo have been burnt on the high sees, has a claim for damages that admits of precise and definite computation. It can be expressed, and exact compensation can be made, in coined money of the realm. But a merchant who keeps his ships and cargo at home, for fear they may be burnt; the merchant who sells his ship, because it is unsafe to use her himself,—such a merchant may have taken very prudent precautions, and may be a decided loser; but can it be said that the damage which he has suffered was the direct and necessary consequence, the immediate result, of the breach of neutrality on the part of the British government? The decline of national commerce, the expense and inconvenience of convoys, the frequent and expensive search and pursuit after the rovers, enter into the sum total of the national loss, but none of them are elements which enter into a claim for pecuniary indemnity. According to well established legal principles, our claim, so far as it is merely of a pecuniary character, must be confined to losses by actual depredations. In an action against the worthy Captain Semmes himself, supposing him to be before a competent court, and able to respond, with all his demurrers and dilatory pleas overruled, we could hardly claim to hold him responsible in damages for any thing but the direct and proximate consequences of his acts. The expense incurred in trying to keep out of his way, would not be a matter of judicial consideration.

Such, then, being the extent of our pecuniary claim on the British government (for it cannot be too distinctly borne in mind that our claim is not against the British public at large), what is the next item? Much has been said, and much will continue to be said, of the hasty and unseasonable concession to to our insurgents, or belligerent rights. It was to them, perhaps, a very valuable and important concession, but it is to be remembered that this recognition of a mere fact must have come at last. They certainly were belligerents in the summer of the year 1861, if they had not become so in May of that same year. The recognition on the part of England may have been an unfriendly and discourteous act, but how could it be called a violation of our rights? It was a matter in which, perhaps, a decent regard for international civilities would have justified and perhaps may be said to have required some delay; and perhaps they should at least have waited until our minister, then on his way to England, had arrived. But the most that we can say is, that it was premature, and that the ministry ought to have waited for official information from our own government. It may possibly be true, as Mr. Bemis insists, that their reliance on our proclamation of the blockade, as a justification, was an afterthought. But long before this concession of belligerent rights, much had been done on our side of the Atlantic that indicated but too plainly what was coming. State after State had formally withdrawn itself from the Union, so far as such a withdrawal can be accomplished by mere legislation and by vote. State after State had disowned and excluded from its limits every shadow and vestige of the Federal authority. They had organized a new confederation, had formed a new government, so far as all this could be done on paper, and had raised armies. In April they struck their first blow, and all the world now acknowledged that that first blow was the beginning, not of a riot or a skirmish, but of what certainly may be called a civil war, if ever there was such a thing as a war. Before that first blow was struck, the whole world saw that war was coming, and was close at hand. The British government eagerly, and joyfully perhaps, declared, on the 6th day of May, 1861, that it had come. And the event has shown that their declaration was true as a matter of fact. But even if it had not proved true in point of fact, it would have been no violation of any international right. It might have been a great breach of decorum, or a great national insult; but whether civil or uncivil, friendly or unfriendly, considerate or hasty, it was an act entirely within their own discretion to do or not as they pleased.

The Alabama Claims.

We on our part might have resented it by an instant declaration of war; but when it comes up for consideration long afterwards, as a matter of national complaint, it must be viewed with more calmness. If our insurrection had in fact proved to be a mere riot which had been suppressed by our civil authorities, the belligerent rights conceded to the insurgents would have been only an expression of ill-will against us, of as little practical importance perhaps as our own recognition of Hungary, some years ago, not merely as a belligerent, but as a nation. The concession of belligerent rights to our insurgents was not the cause of the fitting out of the privateers. They were not fitted out till long after the war had become a perfectly established fact, recognized as such by the whole civilized world.

This item in one list of grievances is usually spoken of as the climax of all injuries,—the crowning wrong and indignity that no merely human patience could be expected tamely to endure. Mr. Sumner denounces the declaration of neutrality as a declaration of equality between our national government and the rebel "slavemongers;" as an insult to our government; as a "moral absurdity,—offensive to reason and to all those precedents which makes the glory of the British name." Is there not some slight confusion of ideas in this view of the case? All that we had any legal right to demand of England was a strict and impartial neutrality;—and the sum and substance of all our complaints against her government is simply that she did not faithfully fulfil that obligation. The Queen's Proclamation of neutrality can hardly be said to have been intrinsically wrongful and offensive of itself. It was a warning and command to her subjects to do the very thing that we insist they were bound to do, and the very thing and only thing which we had a *right* to insist that they should do. The fact that the rebels were "slavemongers" (to use the classical expression of Mr. Sumner) has nothing to do with the matter. So far as the obligation of neutrality was concerned, England placed both combatant parties upon equal ground. If she had done otherwise, it would not have been neutrality; if any thing in the time and manner of issuing the proclamation justifies us in saying that it was a premature concession, "a hasty recognition," we may have had cause to take offence: but it is difficult to conceive how it can be made the subject of a treaty. It cannot be paid for in money; it is too late now to resent it by a declaration of war; it is sheer absurdity to talk of retraction or apology. There is absolutely nothing that we can ask the British government to do about it,—and it is impossible to understand what Mr. Sumner proposes that we should do as to this (as he seems to consider it) most important item in our list of wrongs.

By far the greatest part of the wrong which England inflicted upon us during our late struggle, is one which money cannot pay for, and which no treaty can adjust. When our rebellion, unprovoked and unreasonable as we considered it, first broke out, we flattered ourselves that we were upholding lawful authority against revolutionary violence and disorganization; that the world generally would understand that our disturbances had their origin in the domestic conflict of opinion in this country on the subject of slavery: that it was also universally known that the entire secession movement was in the interest of slavery as a permanent and dominant national interest; and that although, from our position, we claimed only to uphold and maintain the Constitution, and the existence and authority of the Union under it, and so were not at liberty directly to assail slavery in its local strongholds, we at the North at least deplored its existence, and would be glad to witness its downfall. We supposed that England also was sincerely, and on principle, a foe to slavery; but we were not at all prepared for the discovery that she was a thousand times more a foe to democracy. Nothing could have been more dismal and overwhelming than our disappointment at finding that all the sympathies of the British public and all the moral weight of British opinion were on the side of our foes. Of course, it was no matter of surprise that a large portion of the people of Great Britain, imperfectly informed of the merits of the case, and perhaps caring about them but little, should have bestowed their applause and sympathy upon the party which seemed numerically the weaker, yet defended its cause with such spirit, and with such a brilliant promise of success. But the difficulty lay much deeper. The cry everywhere throughout the kingdom was that the great republic had broken down, and all England clapped its hands with delight. England rejoiced and triumphed at the prospect of our downfall without reserve and without disguise. We were everywhere denounced as mere wrongdoers. Our efforts to defend our Union and preserve our nationality were stigmatized everywhere as unjustifiable and unchristian obstinacy, in prolonging a hopeless and meaningless, and for that reason a brutal and inhuman war. There was not a word of encouragement or sympathy for us (with a very few honourable exceptions) from the periodical press—from the peerage—from parliament—the clergy—the army—the navy—or the commercial classes. Bankers hastened to lend their money to the rebels, and the confederate loan was current on the London Exchange at a higher rate than that of the United States. So far as the public opinion of a country can be expressed in any mode intelligible to other nations, it was with substantial unanimity against us, and in favour of our enemies. The whole moral weight of England was upon the side of the Confederates; and she did about all she could, short of actually declaring war

against the United States, to help them gain the victory over us.

But all these things, offensive, injurious, and insulting as they were, have very little to do with any international claims or grievances that can be made the subject of a negotiation or arbitration. They show that the state of public opinion in England was all wrong; but we do not claim to call the government of that country to account for errors of that kind. We have happily passed the point of time when the mistaken public sentiment of Great Britain gave us any cause for alarm. The only point of view in which it is now a matter of any practical importance, is, that it throws some light upon the *animus* which inspired their languid and feeble efforts to prevent the escape of the Alabama from the port of Liverpool. It is not at all strange, in in such a state of public sentiment, that the official telegram to Liverpool for the arrest of that vessel should unluckily fail to arrive till after office hours on a Saturday afternoon. It throws some light upon Lord Russell's insolent inquiry, addressed to Mr. Adams, whether it is common in America to arrest a vessel on a charge of an intended breach of neutral law without proof. The victorious conclusion of our great contest is a sufficient answer to all cavils, to all reproaches and insults; to all the shouts of triumph over our anticipated downfall. We can bear, without a murmur, the recollection that we had not a single friend upon the bench of bishops, and that respectable bankers invested in the confederate loan. We were willing that the high church-and-state tory should dislike our institutions, if he should feel so inclined, and should speak of them in any terms that he may happen to choose. But there is a portion of the matter in dispute between the two nations which admits of being made the subject of a treaty, and which can be settled by arbitration. It is no sufficient reason for refusing to go so far, by treaty and by arbitration on fair and equitable principles, that there were also certain other unpleasant matters which are not the subjects of a negotiation, and do not admit of being disposed of by treaty. It is something, that, so far as the claim for damages is concerned, Great Britain, to use a phrase often heard in the New England court-houses, has offered "to leave it out to men,"—to submit the question to a fair and impartial arbitrator. Payment of the money under such circumstances would be an acknowledgment of the wrong, and apparently all the practical reparation for it that can be made. The offer to submit to arbitration is very little, if at all, short of it.

The position in which England stands at this moment is substantially this: She offers to make full reparation for all actual spoliations committed in violation of her neutral obligations, resulting from the want of suitable and proper legal provision for enforcing those obligations upon her subjects, or from the inadequate administration of such law in that behalf as was in existence; she has also invited us to join her in such new legislation, as to the duties of neutrals, as experience has shown to be needful. Under the circumstances, what more ought we to demand? and what other basis of negotiation does the nature of the case admit of?—*American Law Magazine.*

MR. JUSTICE HAYS.

It is with extreme regret that we record the death of Mr. Justice Hayes, who expired on Wednesday night. On Friday Sir G. Hayes was in court, and apparently in his usual heath. He heard a summons in his private room, and was leaving for his home at Esher when he was seized with what at first was supposed to be paralysis or apoplexy. He scarcely rallied at all, and died at Westminster Palace Hotel, to which he had been removed after the seizure. Sir G. Hayes was educated at Highgate and the Roman Catholic College at Ware, Herts. He was called to the Bar at the Middle Temple in 1830, received the coif in 1856, and in 1860 was granted a patent of precedence to rank next after Mr. A. J. Stephens, Q C.. Not long after this he became Recorder of Leicester. He was the leader of the old Midland Circuit, but under the rearranged circuit gave way to Mr. Overend, Q.C. When three new Common Law Judges were appointed under the Parliamentary Elections Act, 1868, Serjeant Hayes became a Justice of the Queen's Bench. It is not too much to say that no judicial appointment ever gave more general satisfaction. Serjeant Hayes was the most genial and popular of men, both on his circuit and off it. In addition to this he was a scholar and a sound lawyer. As a humorist he had few equals. To describe him as an habitual joker would be an utter inaccuracy; his wit was of the character indicated in Mr. Henry Taylor's assertion, that a truly humorous mind is always a grave one,—an assertion, indeed, which amounts to a truism. The late judge never took any active part in politics. He married in 1839 a Miss Hale, of Leicester, by whom he leaves a family of four sons and a daughter. The cause of his death proved to be the rupture of a blood vessel in the brain.—*Solicitors' Journal.*

Once Bishop Horsely met Lord Thurlow walking with the Prince of Wales The Bishop said he was to preach a charity sermon next Sunday, and hoped to have the honor of seeing his Royal Highness present. The Prince intimated that he would be present. Turning to Thurlow, the Bishop said, "I hope I shall also see your lordship there," "I'll be —— if you do; I hear you talk nonsense enough in the House of Lords; but there I can and do contradict you, and I'll be —— if I go to hear you where I can't"—*Bench and Bar.*

ONTARIO REPORTS.

COMMON LAW CHAMBERS.

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

Royal Canadian Bank v. Matheson.

Insolvent Act of 1864—Sec. 3, clause c—Affidavit.

Held, 1. That a sale by a debtor for full consideration to a *bona fide* purchaser cannot render his estate liable to compulsory liquidation under above section merely because he declines to pay the proceeds to one of his creditors, though coupled with subsequent circumstances tending to raise a suspicion of the *bona fides* of his disposal of such money.

2. Affidavits to found an attachment should definitely charge the act of insolvency relied upon.

Semble, that no conveyance which is in itself an act of insolvency can be upheld as valid in favor of any party to it.

[Chambers, November 3, 1869.]

This was an appeal from the judgment of the judge of the county of Oxford setting aside a writ of attachment sued out by the Royal Canadian Bank against John Matheson. The writ of attachment was obtained on the affidavits of Mr. Burns, agent of the plaintiffs at the town of Woodstock, and of Mr. Ashton Fletcher of the same place, solicitor for the plaintiffs These affidavits shewed that the defendant was indebted to the plaintiffs in the sum of eighteen hundred and thirty-eight dollars, on two bills of exchange, drawn by one Malcolm McKinnon, and accepted by the defendant. The affidavits were so far similar that it is unnecessary to cite them both. The following is an extract from that made by Mr. Burns. After swearing to the amount and origin of the claim, the deponent proceeded as follows:—

To the best of my knowledge and belief, the defendant is insolvent within the meaning of the Insolvent Act of 1864, and has rendered himself liable to have his estate placed in compulsory liquidation under the above act, and my reasons for so believing are as follows:

That the defendant has always, since maturity of the first bill above-mentioned, informed me that he had no property except his house in the town of Woodstock, and that he would sell the same and pay the amount of the plaintiff's claim, and has fixed different times for so doing, all of which have passed.

Some time ago, and within three months, the defendant told me, that he had arranged a sale of the said house to one Mrs. Dunbar, and as soon as she paid the money for the same that he would pay up the plaintiff's claim.

On the twenty-second instant, the defendant came into the office of the bank and told me that he had got sixteen hundred dollars on the said house, that he had given to his wife one thousand dollars to induce her to bar her dower, and had nine hundred dollars in his pocket, but that he would not pay the same unless I would release the whole of the bank's claim, and give up both the said bills of exchange on receiving the said nine hundred dollars.

I requested him to pay the same on account, offering to give time for the balance.

From these facts and circumstances I have been led to believe, and verily do believe, that the defendant has within a few days past assigned or disposed of his property, or has attempted to assign or dispose of his property with the intent to defeat or delay his creditors, or the plaintiff."

The affidavit of Mr. Fletcher concluded in the same words, which, in fact, are a transcript of clause *c*, of sec. 3 of the Insolvent Act of 1864, omitting any reference to a removal of property which in the present case would be inapplicable.

Upon the facts set forth in these affidavits, the attachment in question was issued on 29th July, 1869, and was served on the defendant on the 2nd of August. The petition of the defendant to set aside the attachment was duly presented to the judge of the county court, supported by an affidavit of the defendant in which, among other things, he stated that he believes that he has not rendered himself liable to have his estate placed in compulsory liquidation; that the papers attached to his affidavit contain true statements of his liabilities and assets; that before selling his house and premises he informed the agent of the plaintiffs of his intention to do so; and that he sold the same for the express purpose of enabling him to pay all his liabilities in full; and that he did not sell the said property with intent to delay or defraud his creditors or any of them; that he had duly received $1000 of the purchase money; that his wife positively refused to bar her dower unless $1000 were paid to her; that the solicitors of the purchaser (Mrs. Dunbar) advised her not to purchase the property unless the wife's dower was barred; and that he was forced to consent to this payment being made, and that the same never came into his hands; that certain improvements are to be made by him, upon the completion of which the balance of the purchase money is to be paid to him, and will amount at least to the sum of $850. There were then several statements made respecting the origin of the plaintiff's claim and other matters, which, as they do not affect the decision of the present appeal are omitted, and the affidavit concluded with a denial of any intention to abscond, or that he had assigned, removed, or disposed of his property with intent to defraud, defeat, or delay his creditors, or any of them, &c., &c. The papers alluded to in the foregoing affidavit shewed that the liabilities of the defendant amounted to $1001.52, exclusive of plaintiff's claim, or including that to the sum of $2831.52; while the assets, including the $850 to be paid by Mrs. Dunbar, amount to $3918; in other words, that exclusive of the plaintiff's claim, the defendant is possessed of nearly four times the amount of his liabilities, and that including it he has $1000 over and above his debts. There were affidavits from Mr Burns and Mr. Fletcher in reply, but the learned judge did not think them to be of much consequence to the decision of the point in dispute.

The case was first argued before the judge of the county court, D. S. McQueen, Esquire, whose judgment was as follows:—

"The words descriptive of an act of bankruptcy in clause c of the 3rd section of our Insolvent Act are similar, and a mere repetition in substance of section 3 of the Imperial Act, 6 Geo. IV. c. 16

I take it then, that the rule of law and the construction of those enactments as affecting the

commercial interests of the county must be the same in all cases coming within them.

That being so I see no difficulty in the way, on considering authorities, of coming to the conclusion, that, in this, as well as every other case, in order to render the estate of a party subject to compulsory liquidation under the clause in question, several circumstances must concur: 1st, the transfer must be fraudulent; 2nd, there must be an intention to defeat and delay creditors; and 3rd, the buyer must know, or, from the very nature of the transaction must be taken necessarily to know that the object was to defeat and delay creditors: *Hill* v. *Farnell*, 9 B. & C. 45; *Harwood* v. *Bartlett*, 6 Bing. N. C. 61; *Baxter* v. *Pritchard*, 3 N. & M. 638; *In re Colemere*, 13 L T. N.S. 621; *Sharp and Secord* v. *Mathews*, 5 P. R 10.

Was there then such a concurrence of circumstances in this case as would shew that the sale of the defendant's house and lot in Woodstock was fraudulent so as to constitute an act of bankruptcy? I think not. It was not contended on the argument that the sale was not *bona fide* and for value; and the affidavits upon which the application for the attachment rests do not aim at impeaching the transaction on the ground of fraud or want of consideration.

The sale, then, being *bona fide* and for value cannot be tortured into an act of bankruptcy merely because the defendant did not pay over to the plaintiffs the amount of the purchase money as they were lead or seemed to expect he would, on the sale, in discharge of their claim against him.

Baxter v. *Pritchard* is an express authority on this point. There it was held that an assignment by a trader of his whole stock with intent to abscond and carry off the purchase money was not an act of bankruptcy, as a fraudulent transfer and delivery of his property with intent to defeat and delay his creditors, as the purchaser paid a fair price for the goods and was ignorant of the trader's design.

But the plaintiffs contend, without impeaching or attempting to impeach the sale or deed of conveyance of the property, that his subsequent conduct with regard to the purchase money shewed that the sale was for the purpose of delaying and defeating creditors, and therefore an act of bankruptcy.

With regard to this doctrine, the Lord Chancellor (Cranworth), in *Colemere and Colemere*, 13 L. J. N. S. 623, says: 'That I cannot understand, because, if the deed is impeachable it can only be impeachable so as to constitute an act of bankruptcy because it is fraudulent. But if it is fraudulent the deed is void. It will not be an act of bankruptcy because the person who receives (erroneously reported, *gives*) the money has it in contemplation probably to deal with the money in some way that may constitute an act of bankruptcy. That is not what can be looked to in considering whether the deeditself is fraudulent. The deed itself, if fraudulent, would be impeachable. If not impeachable, it is not an act of bankruptcy.'

Then on the merits, the defendant, in his affidavit annexed to the petition to set aside the writ of attachment, swears that he sold the property for the express purpose of enabling him to pay off his liabilities in full; that before he sold it he informed Mr. Burns of his intention to do so; that he did not sell it to defeat or defraud his creditors, or any of them; that he disputes and intends to dispute his liability to the plaintiffs in this case; that he is not insolvent; and he then swears to statements of assets and liabilities, which shew an amount of assets in excess of his liabilities, inclusive of the disputed claim of plaintiffs to the amount of $1087 98.

Upon the whole, considering and acting upon the evidence adduced, I can see nothing to lead to the belief that the defendant has made a fraudulent disposition of his property, or, to shew that his estate has become subject to compulsory liquidation. I think therefore that the prayer of the defendant's petition must be granted.

This decision, upon the advice given, will, no doubt, be appealed from; and, if erroneous, will be corrected. It is a great satisfaction to know, that in such important matters the decision is not conclusive upon the parties. The judge or court appealed to will have, however, an advantage, inaccessible to me on the argument, of hearing this case and *Colemere* v. *Colemere*, distinguished."

On the argument in chambers, on the appeal from the above decision of the learned judge of the county court.

R A. Harrison, Q C., appeared for appellant.
J. A Boyd, contra.

Galt, J.—The authorities principally relied upon by the learned judge in his very able and carefully considered judgment are, *In re Colemere*, L. R. 1 Ch. Appeal 128, and the cases cited therein, and *Sharp & Secord* v. *Robert Matthews*, 5 Prac. R 10, decided by Mr. Justice Gwynne. Upon the argument before me, Mr. Harrison, counsel for the appellants, endeavoured to distinguish this case from *In re Colemere*, on the ground, that in the 3rd sec. of 6 Geo. IV. ch. 16, the word "fraudulent" is used, which is wanting in our Insolvency Act of 1864, sec. 3 sub-sec. c. Mr. Boyd, for the defendant, supported the judgment of the learned judge, and in addition, objected that the affidavits on which the attachment was issued were defective for uncertainty, and that they were so vague that it was impossible to say positively what was the act of bankruptcy on which the plaintiffs relied.

I am of opinion that the judgment of the learned judge is correct, and I cannot agree with Mr. Harrison's argument, that a sale made for a full consideration, and to a *bona fide* purchaser (which is not disputed in this case), should, under the provisions of our act, render the vendor's estate liable to compulsory liquidation, because, for some reason or other, he declines paying over the proceeds to some one of his creditors, although he may have ample means to satisfy all claims against him, as is positively sworn to in this case. The case of *Sharp* v. *Matthews*, to which reference has been made, is a stronger case in its circumstances than this, and is an authority in favour of the defendant. Mr. Harrison was obliged to contend in order to distinguish this case from *In re Colemere*, that in this Province, under the peculiar wording of our act, a deed might be valid *quoad* the purchaser, but an act of bankruptcy on the part of the seller. It appears to me, on the contrary, that

no conveyance, which itself is the act of bankruptcy relied upon, can be valid in favour of any party to it if the bankruptcy is upheld.

As regards the objection to the affidavits. I am of opinion that it is entitled to prevail, and that the affidavits in this case are insufficient. It is impossible to say whether the plaintffs complain of an act, or an attempt to commit an act, and when we consider how essential it is to a party to know exactly with what he is charged, as the consequences to him are so penal, I think that the rule laid down in Chitty on Criminal Law, Vol. 1, p. 230, which is as follows:—"Another general rule relative to the mode of stating the offence is, that it must not be stated in the disjunctive, so as to leave it uncertain what is really intended to be relied upon as the accusation"—should be followed in cases of this description, and that an affidavit should state positively the act relied upon as constituting the act of bankruptcy.

The appeal therefore is dismissed with costs.*

Macklem v. Durrant.

Witness—Privilege from arrest.

A witness is privileged from arrest whilst returning home after giving his evidence, and he does not lose his privilege by staying a night at the house of a friend, some distance from the place of trial, to refresh himself, if he uses reasonable expedition to return home.

[Chambers, Nov. 3, 1869.]

The defendant, who was indebted to the plaintiff, went to Michigan to reside. He subsequently returned to this country, to give evidence at a trial which took place at St. Thomas. After the trial was over, it being then too late to start for home that evening, except he went by the night train, he went to a friend's house to stay the night. To do this he had to go a few miles from the place of trial and out of the direct route homewards. He went to the station the next morning to take the first train towards his home, but was arrested on a *capias*, at the instance of the plaintiff.

J. A. Boyd thereupon obtained a summons to set aside this arrest, as being a breach of the defendant's privilege as a witness.

R. A. Harrison, Q. C., shewed cause.—The defendant deviated from his direct route towards home, and thereby lost his privilege: *Spencer* v. *Newton*, 6 A. & E., 623.

J. A. Boyd, contra.—There was no deviation. The defendant did not go out of his way on his return home; he merely went to spend the night at the house of a friend, instead of staying at an Inn, or travelling all night, and, he was at the station ready to take the first train the next morning: see *Pitt* v. *Coombs*, 5 B. & Ad. 1078; *Hatch* v. *Blissett*, Gilbert's cases, 308; Bacon's Abridgment, "Privilege;" *Meekin* v. *Smith*, 1 H. Bl. 636; *Lightfoot* v. *Cameron*, 2 W. Bl. 1113; *Webb* v. *Taylor*, 1 D. & L. 684; *Willingham* v. *Matthews*, 2 Marsh. 59; *Selby* v. *Hill*, 1 Dowl. 257, 8 Bing. 166.

Galt, J., during the argument said, that unless the rule laid down in the case cited from Gilbert's Reports was no longer law, the defendant's contention must prevail.

After deliberation the summons was made absolute, the judge remarking, that the defendant had used reasonable expedition in preparing to return home. He was not bound to leave the same evening after the trial, as, under the cases, he was entitled to rest and refresh himself. Nor was it any deviation that the defendant, instead of lodging at an hotel or inn, went out of town to stay at a friend's house; in all this he was acting within the limits of his privilege, and should not have been arrested at the station on the following morning.

Robertson v. Glass.

Embarrassing plea—Immaterial averment—Duplicity.

The plea set out below was *held* embarrassing, and was ordered to be struck out.

A plea is embarrassing which alleges several facts wholly irrelevant to the question in controversy.

[Chambers, November 26th, 1869.]

The plaintiff as indorsee sued defendant as acceptor of a bill of exchange drawn by one E. E. Gilbert upon and addressed to the defendant.

To this the defendant pleaded as follows:—

"That a certain corporation or body corporate known as and called the Richardson Gold Mining Company had certain dealings with the said E. E. Gilbert, of the city of Montreal, in the declaration mentioned, and from him they purchased certain machinery for the purposes of them the said Richardson Gold Mining Company, and for the purpose of the mining operations then carried on by the said company. Being so indebted to the said Gilbert, he the said Gilbert made and drew the bill of exchange hereafter set out, which was in form and to the effect following, that is to say:

"$800 00. Montreal, February 19th, 1869.

"Two months after date pay to the order of myself at the Jacques Cartier Bank in Montreal, eight hundred dollars value received and charge the same to account of James Glass.

"(Signed,) E. E. Gilbert,
"*Secretary Richardson Gold*
"*Mining Co., Belleville, Ont.*

"*To James Glass.*"

That the said Gilbert drew the said bill for said consideration received by said company, and intended the said bill of exchange, when so drawn, to be accepted and paid by the said company, and he did not when he drew the said bill, intend or understand that the same should be a draft or bill upon the defendant in his individual capacity, or that the same should be accepted by, or be payable by the said defendant in his individual capacity.

That the said bill so drawn and addressed was presented by the said Gilbert to the defendant as secretary to the said company and in his, the defendant's official capacity, that he the defendant then being the secretary of the said company, wrote upon and across the face of the said bill of

* Mr. Boyd applied for an order to tax a counsel fee and briefs to the same amount, and in the same manner as would be allowed if the appeal had been argued before the court. The order was granted, but with an expression on the part of the learned judge, that he very much doubted his power to make it, although he stated, that in his opinion it should be granted in cases of this description where the labour of counsel in preparing and arguing the case, and of the attorneys in preparing the briefs, had been very onerous, and precisely the same as if the appeal had been to the court.—Rep.

exchange these words, "Accepted—the Richardson Gold Mining Company, per James Glass, secretary," and that in no other way or form was the said bill of exchange accepted. That the said Gilbert received the said bill of exchange with the said words so written on the face thereof from the defendant in his the said defendant's official capacity as such secretary, and took and kept the same until after the same fell due, and that after the same was long past due, he transferred the same to the plaintiff, who took the same after it was due as aforesaid. That the defendant never had any consideration for accepting the said bill, nor was it ever intended by said Gilbert or defendant, that any personal liability should arise thereon against the defendant. And that the bill of exchange in this plea set out is the bill of exchange in the declaration mentioned, and no other, and the acceptance thereof alleged above, and in this plea mentioned, is the acceptance of the said bill in the declaration mentioned, and that in no other way or form howsoever was the said bill of exchange in the declaration mentioned accepted."

Scott, for defendant, obtained a summons to strike out the above plea as embarrassing and for duplicity. He cited *Bank of Montreal* v. *Delatre*, 5 U. C. Q. B. 362; *Owen* v. *Van Lester*, 10 C. B. 319; Bullen & Leake's Prac. 810.

Bell, Q C. (Belleville), shewed cause, citing *The Great Western Railway Co.* v. *The Grand Trunk Railway Co.*, 24 U. C. Q. B. 107.

Gwynne, J.—The summons in this case, as it appears to me, must be made absolute for striking out the plea which has been pleaded.

The plea sets out the bill sued upon, *verbatim* by which it appears to have been addressed to the defendant as follows:—"James Glass, secretary Richardson Gold Mining Company, 'Belleville.' The plea also avers, that the bill was presented to the defendant as secretary of the said company, and that he then being 'secretary of the said company' wrote upon and across the face of the said bill of exchange these words, '*Accepted—the Richardson Gold Mining Company, per James Glass, secretary*, and that in no other way or form was the said bill of exchange accepted.' Now if this had been the whole of the plea, the object of the pleader as stated in the argument, namely, of inviting a demurrer for the purpose of submitting to the court as a question of law, whether this constituted the acceptance of the defendant or not would have been effectually obtained: *Yates* v. *Nash*, 8 C. B. N. S. 581. But the plea does more; it avers that the Richardson Gold Mining Company is a body corporate; that it purchased from the drawer certain machinery for the purposes of the company's operations, and thereby became indebted to the drawer and that to obtain payment of the debt so due from the company to the drawer, the latter drew the bill, which is set out *verbatim:* that the drawer, when drawing the bill *intended* that it should be accepted and paid by the company, and did not intend that the same should be a draft or bill upon the defendant in his individual capacity, or that it should be accepted or be payable by the defendant in his individual capacity: that the bill was *addressed* and presented to the defendant *as* secretary of the company and in his official capacity: that the drawer received the said bill, with the said words written on the face thereof, from the defendant in his official capacity, and took and kept the same until after the same fell due, and after it became due he transferred it to the plaintiff, who took the same after it became due: that the defendant never had any consideration for accepting the said bill, *nor was it ever intended* by the drawer or the defendant that *any* personal liability should arise thereon against the defendant."

Now, unless there be some statute authorising the bill of exchange, so drawn and addressed, to be accepted in the manner this was, so as to bind the company, upon whom the bill was not drawn, as the acceptors thereof, it is plain that this is not the acceptance of the company, and unless it be the acceptance of the defendant it is no acceptance at all; if it be no acceptance at all, the plaintiff cannot recover, and this is the only event which can defeat his right of recovery, for, whatever may have been the want of consideration as between the drawer and the defendant, and whatever may have been their intention, not appearing on the face of the bill, as to the exemption of the defendant from a liability appearing on the bill, in virtue of its being accepted if accepted by him, cannot prejudice the plaintiff's right of recovery, although it was transferred to him after it became due, if he gave value, which is not questioned.

These matters alleged in the plea can have no bearing or effect upon the question, whether the bill has been accepted by the defendant or not, and whether he is liable thereon as acceptor or not. Facts alleged in a plea must be taken to be inserted for some purpose. The natural purpose appears to be to invite an issue upon the facts so alleged—and if several of the facts so alleged are wholly immaterial to the merits of the plaintiff's right to recover, he may well, I think, complain that the plea is embarrassing. If he should join issue on the plea, what does it put in issue? Would the acceptance of the bill by the defendant be properly in issue? It may be questionable whether it would—for the allegation "that the defendant never had any consideration for accepting the said bill, and that it was transferred to the plaintiff after it became due," seems to imply an admission of an acceptance, although such acceptance was without consideration; moreover, how could the bill have been transferred after it became due, if having never been accepted it never did become due; whether the plea or any part of it, taken by itself, is good upon demurrer or not, I express no opinion; it is sufficient for the purpose of the present motion to say, that the only material point being whether the bill upon its face shews that it is or is not, as alleged in the declaration, the acceptance of the defendant, all the other matters alleged, although they may be immaterial to that question, may well be complained of as calculated to embarrass the plaintiff, and should not therefore be permitted to be introduced into the record. The case of *The Great Western Railway Company* v. *The Grand Trunk Railway Co.*, 24 U. C. R. 107, to which I was referred, does not in my judgment warrant such a plea as this, nor have I found any case which does.

Montgomery v. Gale.

Change of Venue—Set off.

Where a defendant requires to call five witnesses residing in the county of Grey (the venue being laid in York, and the alleged difference of expense being $80), to prove his set-off, such preponderance of convenience to the defendant is not sufficient, in itself, to justify a change of venue, and thereby deprive the plaintiff of his right to try the action where he has laid his venue.

[Chambers, Nov. 30, 1869.]

The declaration was on the common counts. The defendant pleaded never indebted, payment, statute of limitations and set-off.

The venue being laid in the County of York, the defendant applied to change it to the County of Grey, on affidavits which stated,—that the plaintiff's cause of action, if any herein, arose in the County of Grey, and not in the County of York or elsewhere out of the County of Grey: that this action is brought to recover the sum of three hundred and twenty dollars alleged to have been received by me from the said plaintiff for his use: that I have no recollection of ever having received the said amount from the said plaintiff, or of ever giving any acknowledgment for same, and I verily believe I never received said amount from said plaintiff, although I received a portion of said amount from him: that I have a set-off against the said plaintiff for work and labour, and money paid by me for said plaintiff, and it will be necessary and expedient for me, as I am advised and believe, to subpœna no less than five witnesses to support and establish my defence to this action: that they are as I am advised and believe material and necessary witnesses for that purpose, and it is my intention to subpœna them: that the said witnesses reside in the township of Keppel and the Town of Owen Sound, in the County of Grey or elsewhere in the neighbourhood, and none of them reside in the said County of York: I have no other witnesses that I am aware of to subpœna in support of my defence besides these witnesses: that the expenses of subpœnaing and procuring the attendance of the said witnesses at the trial of this action, if it takes place in the said County of York, will, I verily believe, be at least eighty dollars more than if the trial took place in the County of Grey: that the application to change the venue herein was not made with any object to delay the plaintiff in the trial of this action, but solely to save the additional expense that would be incurred in the trial of it if it should take place in the said County of York.

The plaintiff in reply filed an affidavit stating that he did not believe the expense of trying the case in Toronto would be greater than it would be if tried in Owen Sound: That until lately, he always supposed that the defendant was perfectly good for the amount of his claim herein, but that he was a short time ago informed, that the defendant was becoming worthless, and he verily believed, that unless he got a judgment against the defendant he would lose the whole amount, from what he heard, he was certain that if the venue should be changed to the County of Grey and the trial consequently put off until next assizes, he would not be able to recover any portion of his debt herein.

John Paterson shewed cause.

Osler, contra.

Gwynne, J.—*Thornhill* v. *Oastler*, 7 Scott, 272, decides that it is the undoubted privilege and right of the plaintiff in a transitory action to lay his venue where he pleases, and that he should not be deprived of that right unless the court is clearly satisfied that justice requires that he should be In *Ladbury* v. *Richards*, 7 J. B. Moore, 82, affirmed in *Clulee* v. *Bradley*, 13 C. B., 609, it was held that to entitle a defendant to change the venue, the proposed defence intended to be set up to the action ought to be fully disclosed. In *Smith* v. *O'Brien* and *Julland* v. *Riches*, 26 L. J. Ex. 30, the application to change the venue was founded upon affidavits somewhat similar to that used in this case; the difference being, that there it was sworn that the defendant had a defence to the action upon the merits, *and also* a set-off exceeding the plaintiff's claim, and the affidavits not having been answered at all, it was held that a *primâ facie* case was made out to shew that it would be more convenient to try the case in the county to which the venue was asked to be changed. This case does not seem to be adopted, at least by all the judges, to any greater extent than to establish that such an affidavit wholly unanswered *may be sufficient* to justify a judge in ordering the venue to be changed, for in *Gough* v. *Bertram*, 27 L. J. Ex. 53, to an observation of Bramwell, B. (upon an affidavit of merits, and that defendant had several witnesses residing in the county to which he desired to change the venue, and that the expense there would be much less than in London, where it was laid), that such an affidavit if unanswered was sufficient to change the venue—Martin, B., answered, that *it was sufficient*, but, he adds "for my own part I do not ever change the venue to the assizes (from the London sittings), except for some real reason sufficient to counterbalance the injury to the plaintiff of delaying his case until the assizes." There £60 of £67 having been paid by the defendant into court, an order to change the venue was drawn up on consent of the parties. In *Ross* v. *Napier*, 30 L. J. N. S. Ex. 2, the rule is stated—that the venue ought never to be changed where it would cause great delay, except upon strong grounds. Now in the present case the plaintiff's claim is for an ordinary money demand, the cause of action for which cannot be said to have arisen in one county more than another. The defendant himself swears, that the action is brought to recover $320, alleged to have been received by the defendant from the plaintiff to plaintiff's use. He says he has no recollection of having received the whole amount, or of having ever given any acknowledgment for same, but he admits having received a portion of the amount, not saying how much, but he says he has a set-off, not saying for how much, whether sufficient to cover the whole of the plaintiff's demand, or only a part, and if a part what part thereof. The plaintiff answers this affidavit by saying that his cause of action is evidenced by defendant's receipts or acknowledgments in writing, and that he is apprehensive that the circumstances of the defendant are not good, and that if delayed in this action until the Spring assizes at Owen Sound, he will by reason thereof lose the amount of his claim, and every part thereof. Now from these affidavits it is clear, that in so far as the plaintiff's

cause of action is concerned, there is no reason whatever given for changing the venue. This being so, the question I have to decide in this case is, whether inasmuch as the defendant requires to call five witnessess, residing in the county of Grey, to support the cause of action involved in his set-off, the convenience to the defendant of having the action tried there so preponderates as to justify me in depriving the plaintiff of his undoubted right, of trying his action in the county where he has laid his venue, and as to which, standing alone without the set-off, there is no reason given for changing the venue.

It has been urged that the defendant is *entitled* to have it changed, as the plaintiff has not filed an affidavit shewing what witnesses he has to call or where they reside. But it is to be observed, that as to the plaintiff's cause of action, the defendant's affidavit does not show that *he* has any witnesses, and it does not appear that the plaintiff has been made aware of the particulars of the defendant's set-off to enable him to say whether he would admit the whole or any part of it, or whether he will be required to call any witnesses in respect of it. In *Jackson* v. *Kidd*, 8 C. B. N. S., 355, Erle, C. J., says—"the principle upon which the judges have been guided since the passing of the C. L. P. A. 1852 is this, that if it be made to appear that there will be great waste of costs in a trial of the cause at the place where the venue is laid, and much saving of costs in trying it at the place to which it is sought to change the venue, the judge is at full liberty to exercise his discretion in the matter, and to make the order if he sees fit." I agree with Martin, B., that the delay occasioned to the plaintiff is an element to be considered, and inasmuch as the plaintiff swears that he apprehends the delay might cause him the loss of his debt, I do not think it would be a sound exercise of discretion in me to expose him to such a danger, because the defendant pleads a set-off to prove which he requires five witnesses residing in the county of Grey. Whether plaintiff's apprehensions are well or ill founded, he swears to them and I do not think I should try upon affidavits the reasonableness of these apprehensions; he may have laid his venue for the winter assizes at Toronto, expressly because of these apprehensions, and I think the delay of four months which would be occasioned to the plaintiff if the proposed change should be granted, may be so material to the plaintiff that I should not deprive him of an undoubted right because it may be more convenient to the defendant to have the question of his set-off tried where he and his witnesses reside. I think, moreover, that where the defendant rests his ground of convenience upon a cause of action of his own involved in a set-off, he ought before he applies, at least to place the plaintiff in possession of full particulars of that set-off to enable him either to admit it in whole or in part, or to say whether he may not have witnesses to call in respect of it; and that if he does not do so he cannot fairly seek an advantage from the circumstance of the plaintiff not answering so much of the defendant's affidavit as relates to the expense to him of establishing his set-off. Cases of this nature must all be decided according to their particular circumstances, and the view which the judge before whom the motion is made may take of the sufficiency of the circumstances in each case, as justifying him or not in depriving a plaintiff of an undoubted right.

John J. Robson v. Warren & Washington.

Insolvency—Misdescription of creditor in schedule.

The name John Robinson appeared in the schedule of defendant Warren, an insolvent, and notices were mailed to him under that name. The insolvent swore that this entry in the schedule was intended for the plaintiff, and that he was known by both names.

But *held* that the plaintiff could not be considered to be sufficiently described as a creditor under the name of John Robinson.

[Chambers, January 5, 1870.]

This was a summons calling upon the plaintiff to shew cause why the writ of execution issued herein on 17th November, 1869, and the seizure made thereunder of the goods and chattels of the above defendant John Warren, should not be set aside, as respects the defendant Warren, on the ground that subsequent to the recovery of the judgment herein the said defendant Warren had obtained his discharge under the Insolvent Acts of 1864 and 1865.

It appeared from the affidavits filed on obtaining this summons and in answer thereto, that in October, 1864, the plaintiff obtained a judgment in this case for the sum of $552.25 damages and costs, and that execution against the goods and chattels of the defendants was issued thereon and returned *nulla bona*. The defendant Warren swore, "I believe that the above-named plaintiff recovered a judgment against me and my co-defendant the said John Washington in the year 1864, upon a promissory note for four hundred dollars or thereabouts, made by me and the said John Washington. That owing to sundry losses I was unable to pay my debts and liabilities, and on or about the 21st March, 1865, I duly caused notice under the Insolvent Act of 1864, to be duly published in the *Canada Gazette* and local paper, calling a meeting of my creditors, to be held at the office of S. B. Fairbanks, in the village of Oshawa, on the 10th day of April, 1865, a copy of which notice I duly forwarded to the plaintiff by placing the same in the post office at Oshawa addressed John Robinson, Bond Head." It appeared further from his affidavit, that on the 17th day of April, 1865, he made an assignment in duplicate under the said act to Mr. Macnachton, official assignee of the united counties of Northumberland and Durham, within which both plaintiff and defendant resided.

In the schedule of creditors of the said Warren the following entry appeared:

"John Robinson, Bond Head, judgment on suit $448," which defendant Warren swore was intended to represent this debt.

It appeared that the plaintiff resides at Newcastle, but that adjoining to or within the limits of that village is a small place known as Bond Head; but the only post office is at Newcastle.

Osler showed cause, citing *King* v. *Smith*, 19 U. C. C. P. 319; *Proudfoot* v *Lount*, 9 Grant, 70; *McDonald* v. *Rodgers*, *Ib.* 75.

W. Sydney Smith supported the summons.

Galt, J.—The plaintiff swore most distinctly

that he never received any notice of any proceedings being taken by Warren under the Insolvent Act, or had any knowledge of his having obtained his discharge until after the same had been granted. It is not disputed that all notices sent by the official assignee to the plaintiff were addressed "John Robinson, Bond Head"; but it is asserted on the part of Warren, that the plaintiff was known to himself and others by the name of Robinson, and that he was in the habit of receiving from the post office at Newcastle letters addressed John Robinson. The plaintiff, on the other hand, swore most positively that he never received any notice so addressed in relation to this matter, and it is quite evident from Mr. Macnachtan's affidavit that any notices sent by him were not intended for the plaintiff, for he states that he has known him intimately for about fifteen years; "that his name is John James Robson, by which name he is well and generally known, and by which I have always known him, and he is not known by the name of John Robinson; that the post office address of the said plaintiff is now and has been since I knew him at the village of Newcastle in the county of Durham; that as the name of the plaintiff is not upon the schedule of creditors furnished me by the defendant John Warren, I could not have forwarded to the said plaintiff by his proper name and style and to his proper post office address, any notice of any kind relating to the insolvency of the said defendant John Warren, of his having assigned to me or calling meetings of his creditors or any notice whatever; that I do not believe that a letter or notice addressed John Robinson, Bond Head, and posted in this town or elsewhere would reach the said plaintiff at Newcastle."

By the 2nd section of the Insolvency Act of 1864, the person intending to avail himself of the provisions relating to voluntary assignments (which this was) must exhibit a schedule containing the names and residences of all his creditors; it is his positive duty to do this with accuracy, as he is required to swear to its truth. The defendant Warren did not do this. In fact, considering that John Robinson appears in the schedule as the second largest creditor, it would really appear that he had given himself very little trouble about it. The debt also is materially misdescribed being $448 in place of $552.25. There is a good deal of contradiction in the evidence, but in my opinion the evidence on the part of the plaintiff, as regards his never having received any notice of the insolvency proceedings is very much stronger than that on the part of the defendant, and from the affidavit of the official assignee it is manifest that he was not aware that the plaintiff was a creditor of the insolvent and that he never intended to give him any notice. A discharge under the Insolvent Acts of 1864, 1865, operates only as a discharge from the liabilities mentioned and set forth in the statement of the affairs of the insolvent annexed to the deed of assignment, or which are shewn by any supplementary list of creditors furnished by the insolvent previous to such discharge. No such supplementary list appears to have been furnished in this case. The name of the plaintiff does not appear in the list of creditors and consequently his claim is not discharged. It seems to me impossible to hold that a creditor described as John Robinson, Bond Head, should be considered as properly described when his true name is John James Robson and his address Newcastle.

Summons discharged with costs.

ENGLISH REPORTS.

CROWN CASES RESERVED.

Reg. v. Ritson and Ritson.

Forgery—Ante-dating a deed—24 & 25 Vict. c. 98, s. 20.

A deed really executed by the parties between whom it purports to be made, but ante-dated with intent fraudulently to defeat a prior deed, is a forged deed.

[C. C. R., 18 W. R. 73.]

Case stated by Hayes, J:—

The prisoners were indicted at the last Manchester Assizes under 24 & 25 Vict. c. 98, s. 20, for forging a deed with intent to defraud James Gardner. William Ritson was the father of Samuel Ritson, and prior to May, 1868, had been the owner in fee of certain building land, on the security of which he had borrowed of James Gardner more than £730 for which he had given him on the 16th of January, 1868, an equitable mortgage by written agreement and deposit of title deeds.

On the 5th May, 1868, William Ritson conveyed all his estate real and personal to a trustee for the benefit of his creditors, and on the 7th of May, 1868, there being then due to James Gardner from William Ritson a sum in excess of the value of the land, William Ritson and the trustee conveyed the land, in fee, to James Gardner, covenanting that they had good right to convey, except as appeared by the deed. The deed contained no mention of the deed which the prisoners were charged with forging.

James Gardner entered into possession of the land so conveyed to him, and about March, 1869, he employed William Ritson to erect some buildings on adjoining land, and permitted him to erect a shed on the land conveyed to him as aforesaid. He afterwards wished to have the shed removed, and upon Ritson's refusing to do so, removed it himself; Samuel Ritson thereupon brought an action of trespass against him, claiming under the deed charged as a forged deed.

This deed was dated the 12th of March, 1868, and purported to be a demise from William Ritson to Samuel Ritson for 999 years from the 25th March, then instant, of a large part of the frontage and most valuable part of the land which had been conveyed to James Gardner. It was executed by both the Ritsons, and professed to have been attested by a witness; but such witness was not called at the trial, nor was any evidence given as to the professional man by whom the deed was prepared. Although the deed was dated 12th March, 1868, it was proved by the stamp distributor who had issued this stamp, that it was not issued before the 7th of January, 1869, nor was the deed ever mentioned by the prisoners before that year.

It was contended on the part of the prosecutor that the deed was a forged deed, made after the prosecutor's conveyance, and ante-dated for the fraudulent purpose of over-reaching that convey-

ance, and so endeavouring to deprive the prosecutor of his estate under the said conveyance, and of a considerable part of the property for a long term, and leaving only a valueless reversion in him in such part of the property.

The counsel for the prisoners contended that the deed could not be a forgery, as it was really executed by the parties between whom it purported to be made, and that there was no modern authority in support of the doctrine contended for by the prosecution He also contended that the prosecutor had obtained his conveyance by fraud, and that it was void against the prisoners, and if so, the lease would be rightfully made.

The jury found that there was no ground for imputing any fraud to the prosecutor with regard to his security and conveyance; and the learned judge having expressed an opinion in conformity with the authorities cited, on the part of the prosecution, informed the jury that if the alleged lease was executed after the prosecutor's conveyance, and ante-dated, with the purpose of defrauding him, it would be a forgery. The jury found both the prisoners guilty, and in pursuance of the request of the prisoners' counsel, the question whether the prisoners were properly convicted of forgery under the circumstances was reserved for the opinion of the Court for the consideration of Crown Cases reserved.

Torr for the prisoners.—There is no authority for holding this to be forgery, except the case of *Salway* v. *Wale*, Moore, 655, cited by Coke, 3rd Inst p. 169. Coke there says:—The statute of 1 Hen. 5 hath these words [forge of new any false deed] and yet if A. make a feoffment by deed to B. of certain lands, and after A. maketh a feoffment by deed to C. of the same land, with an ante-date before the feoffment to B, this was adjudged to be a forgery within that statute, and by like reason, within this statute also" (5 Eliz. c. 14); "and the rather in respect of the words subsequent [or make, &c.]." But there are no such words in 24 & 25 Vict. c. 98, s. 20, upon which this indictment is framed. The section only applies, to "forging or altering," and what was done here did not amount to forgery, and came within no definition of that offence. [Martin, B.—It is defined in 2 East, P. C. 852, as "a false making of any written instrument for the purpose of fraud and deceit]. There is a distinction between a mere false statement and an instrument false in itself, and this was a mere falsehood. Suppose a man who had no property were to make a purely imaginary conveyance, that would clearly be no forgery: how does the case differ because he once had property with which he has parted, and then purports to convey it again? [Blackburn, J.—Is there any case which conflicts with the passage in 3 Inst. and the case in Moore?] No: but that case is not referred to in Comyn's Digest, tit. Forgery, and he defines forgery to be the fraudulent writing or publication of a "false deed." [Blackburn, J.—A deed is false if it purports to be what it is not; is not that the case where it purports to be of a day on which it was not in fact made—the date being material, and being inserted for the purpose of fraud?] I should submit that the deed is not false, but contains a falsehood, and might be ground for an indictment for conspiracy, or for obtaining money by a false pretence, but not for forgery.

Addison, for the prosecution.—According to all the authorities, this was a forgery, for it was the making of a false deed with intent to defraud. In addition to the definitions already quoted, it is said, in Bacon's Ab.: Forgery, p. 745: "The notion of forgery doth not consist so much in the counterfeiting of a man's hand and seal, which may often be done innocently; but in the endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as the solemn act of another, which he is in no way privy to; *or at least to make a man's own act appear to have been done at a time when it was not done*, and by force of such a falsity to give it an appearance which in truth and justice it ought not to have. Hence, it is holden to be forgery for a man to make a feoffment of certain lands to J. S; and afterwards make a deed of feoffment of the same lands to J. D. of a date prior to that of the feoffment to J. S., for herein he falsifies the date in order to defraud his own feoffee, by making a second conveyance which at the time he had no power to make: 3 Inst. 169, Pult. 46 b. 27 H. 6; 3 Hawk. P. C. c. 70, s. 2."

Kelly, C.B.—I have entertained some doubt upon this question, because all the authorities upon the subject are comparatively ancient, and long anterior to the statute 24 & 25 Vict. c. 98, or to 11 Geo. 4, c. 66, which was in operation before that statute was passed. But, on referring to all the ancient authors, and to all writers upon criminal law, Coke, Foster, Comyns, and others, we find that they are uniform to the effect, not that every instrument which contains a false statement is forged, but that every instrument which purports to be what it is not, as by purporting to be executed on a day on which it is not in fact executed, is a forgery if the date is material and is inserted with intent to defraud.

I think that it is impossible to distinguish this case from the old authorities and text writers, and that it comes within the definition of forgery given by them.

Martin, B.—I am of the same opinion. I agree with Mr. Torr that this is not an ordinary instance of forgery; but all the books, ancient and modern, concur in their definition of that offence, and this case is clearly within those definitions. In Tomlin's Law Dictionary, Forgery, 7, I find it said that "when a person knowingly falsifies the date of a second conveyance, which he had no power to make, in order to deceive a purchaser, &c., he is said to be guilty of forgery: 3 Inst. 169; 1 Hawk. P. C. c. 70."

Blackburn, J.—I am of the same opinion. The statute 24 & 25 Vict. c. 98, s. 20, makes it a felony to "forge" a deed with intent to defraud; it does not define forgery, and the question is what is included in that word. The correct definition, as I understand it, is that given by Baron Comyns: "Forgery is where a man fraudulently writes or publishes a false deed to the prejudice of the rights of another." Not "a deed containing a falsehood," but "a false deed." Then, according to the passage cited from Bacon's Ab. by Mr. Addison: "The notion of forgery may consist in making a man's own

act appear to have been done at a time when it was not done;" and if an instrument purports to have been made at a time when it would have one effect, and has in reality been made at a time when it would have another effect, that I think would make the deed a false deed, and be forgery. The date of a deed is frequently quite immaterial, but here that is not so. The date is shown by extrinsic evidence to be false, and the deed is therefore a false deed within all the definitions. Even without any authority upon the question, I think that common sense would lead to this conclusion. But all the authorities are at one upon this point. Lord Coke refers to the Year Books to show that forgery includes this very case; the case in Moore as far back as the time of Queen Elizabeth, is to the same effect. In the case of Ann Lewis, Foster's Crown Cases, 116, the same view was taken by eleven judges in consultation. No authority can be cited on the other side, and the only argument against this view is that there is no recent authority in support of it.

Lush, J.—I am of the same opinion. If the parties had originally made a deed bearing a true date, and had then fraudulently altered the date, no question could have been raised; it seems to me that it would be an absurdity that the alteration of a true date to a false should be a forgery, and yet that the making of a deed with a date originally false should not be. I think that this deed was "a false deed" within all the definitions, as purporting to be what it in fact was not.

Brett, J., concurred.

Conviction affirmed.

COMMON PLEAS.

Farrow v. Wilson.

Master and servant—Determination of contract of service by the death of the master.

A. engaged B. to serve him as farm bailiff at certain wages, the service to be determined by six months' notice by either party, or on payment by A. to B. of six months' wages. On A.'s death the defendants, A.'s administrators, dismissed B. without notice or payment of the six months' wages.

Held, on demurrer, that the contract of service was determined by the death of the master, and that the general rule, that the death of either party puts an end to contracts of personal service, unless the contrary be stipulated for, applied to the present case.

[C. P. 18 W. R. 43.]

This was an action brought against the defendants as administrators of Pugh, deceased.

The declaration stated that heretofore in the lifetime of Pugh, in consideration that plaintiff would enter into the service of Pugh, and serve him as farm bailiff, at the wages of 15s. per week, and of a certain residence in a farmhouse, until the service should be determined. Pugh promised the plaintiff to retain him in his service until the expiration of six months after notice given by Pugh or the plaintiff to the other of them to put an end to such service, or that in case Pugh should put an end to such service without such notice he should pay to the plaintiff such wages at the same rate for the said six months from the time of the end of such notice; and the plaintiff accordingly entered into the said service of Pugh, and continued therein until the death ol Pugh, and has always been ready and willing to continue in the service of his administrators in the capacity and on the terms aforesaid, of which the defendants always had notice, yet the defendants wrongfully dismissed the plaintiff from the said service without such notice as aforesaid, and without paying the plaintiff such six months' wages as aforesaid, whereby the plaintiff was deprived of the wages, &c., which he would have derived from the said service, and has remained for a long time unemployed.

Demurrer and joinder in demurrer.

Bridge, in support of the demurrer.—The declaration is bad. There has been no breach of the contract alleged in the declaration. A contract of personal service expires on the death of either party. In Williams on Executors, 6th ed. p. 765, the correct rule is laid down: "By the death of a master his servant is discharged; and therefore the executors or administrators of the former can bring no action to enforce the contract of service after his death." (Wentw. Off. Ex. 141, 14th edit). If it had been intended that the executors should be bound by the contract they would have been named in it. In *Tasker* v. *Shepherd*, 9 W. R. 476, 6 H. & N. 575, it was held that where a person had been appointed as the agent of a partnership given for the period of a certain number of years for the sale on commission of certain stone, that the contract was subject to the condition that all the parties should so long live, and that it did not contemplate the continuance of the agency by the executor after the death of the agent, or by the surviving partner after the death of the other member. In *Boast* v *Firth*, 17 W. R. 29, L. R. 4 C. P. 1, a covenant in an apprenticeship deed that the apprentice will honestly remain with and serve his master for a certain term, is subject to an implied condition that the apprentice shall continue in a state of ability to perform his contract. To an action therefore by the master for breach of the covenant. A plea that the apprentice was prevented by the act of God—to wit, permanent illness—which arose after the making of the deed and before breach, was held good. Montague Smith, J., says in his judgment in that case:—*Taylor* v. *Caldwell*, 11 W. R. 726, seems to be decided on the principle that where parties are contracting about a certain thing or person there is an implied condition that the thing or person shall continue to exist in a state fit for the performance of the contract, and that if that state ceases to exist, then the obligation ceases. This contract could not have been intended to continue after the master's death, for one term of the contract is that the plaintiff shall occupy the farmhouse.

Bush Cooper, *contra*.—The services of farm bailiff would not be determined by the death of the master. The nature of the contract must be looked at for the purpose of placing the right construction upon it. He cited *The King* v. *The Inhabitants of Ladock*, Burr. Sett. Cas. 179; *The King* v. *Peck*, 1 Selk. 66.

July 5.—The judgment of the Court (Willes, J., and Montague Smith, J.), was delivered by

Willes, J.—This is an action by a servant against the administrators of a deceased master, and the question is whether the contract of service was determined by the death of the master. It was not on account of any doubt we had at the time that we deferred giving judgment. We are of opinion that our judgment ought to be for the defendants. The declaration alleges a contract between the plaintiff and defendants' testator to serve in the capacity of farm bailiff, and it is not stated in the declaration that either party, either expressly or impliedly, contracted for his executors or administrators. The general rule of law is, that the death of either party puts an end to such contract of personal service, unless there is a stipulation, expressed or implied, to the contrary. There being no such stipulation in the present case, the servant as well as the personal representatives of the testator are equally discharged from such a contract by the death of the master.

Judgment for the defendants.

CHANCERY.

Robinson v. Wood.

Warrant of attorney—Judgment—Rate of interest.

A memorandum indorsed on a warrant of attorney stated that the warrant had been given to secure the payment on the 2nd of June, 1864, of a sum of money, with interest thereon at the rate of £5 per cent. per month; that judgment was forthwith to be entered up, and that if the debt and interest were not paid on the day aforesaid, execution was to issue. The debt was not paid at the time named, and judgment was not entered up.

Held, that after the day named for payment the debt carried interest at £4 per cent. per annum only.

[V. C. S. 18 W. R. 32.]

This suit was instituted to administer the estate of William Bevan, deceased, and the present application was to take the opinion of the judge upon the chief clerk's certificate, allowing to a claimant, Mr. Robert Cook, interest at the rate of £60 per cent. upon a debt secured by a warrant of attorney, on which was endorsed a memorandum in the words following, viz.:—

"Memorandum.—The within written warrant of attorney is given for securing the payment of the sum of £1,330, with interest thereon at and after the rate of £5 per cent. per month on the 2nd day of June next. Judgment to be entered up forthwith, and in case of default in payment of the said sum of £1,330 and interest thereon on the day aforesaid, execution or executions and other process may then issue for the said sum of £1,330 and interest, together with costs of entering up judgment, registering same, and writ and writs of execution or executions, sheriffs' poundage, officers' fees, and all other incidental expenses whatsoever. Dated 2nd day of May, 1864."

The debt was not paid on the day named for the payment thereof, and no judgment upon the warrant of attorney had ever been entered up. The chief clerk by his certificate dated the 12th of February, 1869, had allowed interest up to that day at the rate of £5 per cent. per month, or £60 per cent. per annum, and the summons was to take the opinion of the judge as to whether this rate of interest should not be reduced to £4 per cent. per annum, or to such other rate as the court might think fit.

Green, Q.C., and *F. J. Wood*, for the executors.

Dickinson, Q.C., and *Daly*, for Mr. Cook, the claimant, referred to *Sherborn* v. *Lord Huntingtower*, 11 W. R. 344, 13 C. B. Rep. N.S. 742.

Bristowe, Q.C., and *Bagshawe*, for the plaintiff.

Fischer, for other parties.

Stuart, V. C., thought that after the second of June, 1864, Mr. Cook was entitled to interest at the rate of £4 per cent. per annum only, and ordered the certificate to be varied accordingly.

In re Lever's Trusts.

Will—Construction.

A testatrix gave a sum of money in trust for "my nephew and nieces." She had numerous nephews and nieces, but in a former part of the will she had mentioned by name four nieces and one nephew.

Held, that all the nephews and nieces were entitled to a share of the trust money.

[V. C. M. 18 W. R. 35.]

A testatrix by her will gave her household furniture, plate, linen, books, &c., to four of her nephews and one of her nieces by name. In a subsequent part of her will she gave the sum of £600 to trustees in trust to invest and pay the dividends to "my nephew and nieces." She had at the time of her death seventeen nephews and nineteen nieces. A petition was now presented by the nephew and nieces named in the will to know whether they alone were entitled to the dividends of the £600.

B. B. Rogers, for the petition, contended that the word "said" had been accidentally omitted before the word "nephew."

Renshaw, for the testatrix's other nephews and nieces, contended it was much more probable that the letter "*s*" had been omitted at the end of the word "nephews." The testatrix knew she had other nephews and nieces besides those she had named.

Wigglesworth, for the residuary legatees, contended that it was impossible to say which nephew was intended by the testatrix, and that his share accordingly fell into the residue.

Rogers, in reply.

Soley, for the trustees.

Malins, V. C., said that although the testatrix might not have meant it, yet that on the whole he was bound to conclude that all the nephews and nieces were entitled to share in the dividends of the £600.

The Manx Laws.—The grossly defective state of the Manx criminal code has just led to a miscarriage of justice. The woman who was accused of having tried to murder her husband, by slowly poisoning him, at Port Crin, was put on trial on Thursday; but, although the evidence was almost overwhelming, the prosecution had to be withdrawn, as there is no provision under the Manx criminal code for the punishment of a person charged with attempting to murder by poison.—*Daily Paper.*

DIGEST.

DIGEST OF ENGLISH LAW REPORTS.

FOR MAY, JUNE AND JULY, 1869.

(Concluded from Vol. V. page 300.)

Account.

A., the owner of a patent for a loom, agreed with B. that B. should make and sell such looms; A. to receive as a royalty, not to exceed £20, the amount for which the looms were sold above £45. B.'s charges were not to exceed £45, and one-tenth of the royalty. *Held*, that A. could not bring a bill in equity for an account against B., as there was no agency in which a fiduciary position was created.

A single receipt by B. of money due to A. did not alter the case.—*Moxon* v. *Bright*, L. R. 4 Ch. 292.

See Election; Rebellion.

Acquiescence—*See* Bank.

Action—*See* Award, 2; Conflict of Laws.

Administration—*See* Executor and Administrator.

Admiralty—*See* Collision; Salvage.

Adultery—*See* Alimony, 2.

Affidavit—*See* Evidence, 3; Interpleader.

Agent—*See* Account; Cheque; Collision, 2; Company, 4; Libel, 1; Mortgage, 4; Rebellion.

Agreement—*See* Contract.

Alimony.

1. A respondent is not entitled to alimony while she is living with the co-respondent as his wife, and supported by him.—*Holt* v. *Holt*, L. R., 1 P. & D. 610.

2. The court refused to make any order for alimony, *pendente lite*, after a decree *nisi* had been obtained for a dissolution of marriage by reason of the wife's adultery, the wife having allowed nearly a year to elapse after the commencement of the suit before she filed her petition for alimony.—*Noblett* v. *Noblett*, L. R., 1 P. & D. 651.

Amendment—*See* Will, 6.

Ancient Light—*See* Light.

Appeal—*See* Collision, 2; Nuisance, 2.

Appointment.

1. A leasehold for lives was settled upon trust for A. for life, with remainder to defendant. A. renewed the lease to himself and his heirs, and purchased the fee which was conveyed in trust for him. Then he made an oral demise for a year, and died between two rent days. *Held* (reversing the decision of Stuart, V.C.), that the rent was not apportionable either under St. 11 Geo. II. c. 19, or 4 & 5 Will. IV. c 22.—*Mills* v. *Trumper*, L. R. 4 Ch. 320; s. c. L. R. 1 Eq. 320; 1 Am. Law Rev. 168.

2. By a will which came into operation after the passing of the Apportionment Act, 4 & 5 Will. IV. c. 22, real estate was devised to A. for life, subject to impeachment for waste, with remainder to B. for life without impeachment for waste, with remainders over. With the sanction of the court, timber on the estate was cut down and sold, and the proceeds of sale invested; and the dividends were ordered to be paid to A. during his life: *Held*, that the whole of a dividend which accrued shortly after the death of A. was payable to B., and could not be apportioned between him and the representatives of A.—*Jodrell* v. *Jodrell*, L. R. 7 Eq. 461.

See Marshalling of Assets.

Arbitration—*See* Award; Error.

Articles—*See* Contract.

Assault.

Counts in an indictment for "unlawfully and maliciously wounding," and for "unlawfully and maliciously inflicting grievous bodily harm," will each support a conviction of an assault, though the word "assault" is not used in either.—*The Queen* v. *Taylor*, L. R. 1 C. C. 194.

Assumpsit—*See* Award, 2.

Attorney.

When an attorney has been struck off the roll for a fraudulent misappropriation of moneys of a client intrusted to him for investment, it is a condition precedent to his being restored that he should have used the best efforts in his power to make full restitution.—*Re Poole*, L. R. 4 C. P. 350.

See Mortgage, 4; Partnership, 1.

Award.

1. The master made an award in favor of the defendant by mistake, from omitting to take account of an advance by the plaintiff to the defendant, which had been duly proved before the master, but which, at the time of making the award, he overlooked. The mistake was admitted by both parties, and the master stated the facts of the case to the court. *Held*, that the court had power to refer the award back to the master, on motion. —*Flynn* v. *Robertson*, L. R. 4 C. P. 324.

2. J., the outgoing tenant of a farm, and F., the incoming tenant, referred the amount to be paid by F. to J. to two valuers, who

made a valuation. F. paid part and gave his note for the rest, and entered into possession. Later, F. found that errors had been made in the valuation, by including items which, by the custom of the country, ought not to have been valued to him, and items which did not exist. He nevertheless paid his note; but afterwards, without making any demand or informing J. of the nature of his complaint against the valuation, he sued J. for money had and received. *Held*, that F. could not recover.—*Freeman* v. *Jeffries*, L. R. 4 Exch. 189.

See Error.

Bailment—*See* Damages; Pledge.

Bank.

A bank account which was largely overdrawn, was, for the half-year ending June, 1867, charged with interest at 5 per cent. and a commission of £500. The pass-book balanced on this footing was sent to the customer, who raised no objection to the charges. He died December, 1867. *Held*, that the charge of £500 for said half-year had been acquiesced in and was valid, but that this could not be inferred for subsequent half year. Also, that the right of the bank to charge compound interest ended with the death of the customer.—*Williamson* v. *Williamson*, L. R. 7 Eq. 542.

Bankruptcy.

1. A delivery of goods, to be an act of bankruptcy within 12 & 13 Vict. c. 106, s. 67, must pass, or purport to pass, an interest in the goods.—*Isitt* v. *Beeston*, L. R. 4 Exch. 159.

2. A. and B. were partners, and B. fraudulently indorsed certain bills belonging to the partnership to C. in payment of a private debt, C. being aware of the fraud. B. having become bankrupt, his assignee disaffirmed the transaction as a fraudulent preference, and joined with A. in an action against C. *Held*, that the assignees were entitled to disaffirm B.'s act, though dealing only with partnership property; and that they could rightly join with A. in the action.—*Heilbut* v. *Nevill*, L. R. 4 C. P. 354.

3. The husband of a devisee in remainder had issue, became bankrupt, and was discharged, before the estate vested in possession. *Held*, that his inchoate right of curtesy did not accrue until after his discharge, and so did not pass to his assignees.—*Gibbins* v. *Eyden*, L. R. 7 Eq. 371.

4. M. borrowed money from the R. Company, giving them his acceptances and depositing shares as security. When the bills became due, the company sent M. fresh drafts for acceptance, with a letter stating them to be in place of those falling due. M. accepted the drafts in compliance with the letter. M. died insolvent, and the R. Company became insolvent also. Both sets of bills had been negotiated and were outstanding. *Held*, that the holders of the first set had no claim to payment out of the deposited shares. The letter and M.'s acts put an end to the security in respect of the first set of bills.—*In re General Rolling Stock Co. Ex parte Alliance Bank*, L. R. 4 Ch. 423.

5. L. deposited with a company securities for the payment of any money which should be owing by L. to them on a general account. Then the company accepted bills for L.'s accommodation. Before said bills, which were L.'s only debts to the company, were paid, both L. and the company became insolvent. *Held*, that neither the bill-holders nor L. were entitled to have the bills paid out of the securities. —*Levi & Co.'s Case*, L. R. 7 Eq. 449.

6. A bank permitted A. to overdraw his account, on having a guaranty to the extent of £300 from a surety, which provided that all dividends, compositions, and payments received on account of A. should be applied as payments in gross, and that the guarantee should apply to and secure any ultimate balance due to the bank. A., when indebted to the bank for £410, compounded with his creditors, the assets to be administered as in bankruptcy. The surety was secured by a mortgage from A., which was realised, and he paid the bank £300 from the proceeds. *Held*, that the bank was entitled to receive dividends on the whole £410, until the sums so received, added to the £300, should equal the whole amount due.—*Midland Banking Co.* v. *Chambers*, L. R. 4 Ch. 398; s. c. L. R. 7 Eq 179; 3 Am. Law Rev. 683.

See Company, 1, 3; Fraudulent Conveyance; Trust, 1; Wife's Equity.

Bigamy—*See* Death, 1.

Bill of Lading—*See* Carrier, 1.

Bills and Notes—*See* Bankruptcy, 4, 5; Cheque; Company, 4.

Bond.

G., an officer twenty-six years old, gave a bond for £1000 to J., a barrister thirty-two years old, without consideration; and at J.'s instance wrote him a letter stating that, for services which were recited, he desired to give J. a promise to pay that sum. G. testified that he thought that he was signing something for J.'s accommodation, and that J. would

indemnify him. J. afterwards told G. that G. was under no liability for him; but later he assigned the bond and letter to B., who took *bona fide* and for value. B. refrained from suing on the bond, on the strength of a promise by G. to pay as soon as he should come into certain property, G. not knowing his right to have the bond set aside. *Held*, that G. had a right to have both J. and B. restrained from suing on the bond.—*Graham* v. *Johnson*, L. R. 8 Eq. 36.

See Executor and Administrator, 3.

Burden of Proof—*See* Will, 1.

Carrier.

1. A parcel containing pictures was delivered to the defendants, common carriers, who gave a bill of lading by which they were not to be liable for loss by railway accidents, among other exemptions. By the Carriers' Act, s. 1, no common carrier by land is liable for pictures, *inter alia*, contained in any package delivered to be carried, when the value exceeds £10, unless at the time of the delivery, &c., the nature and value be declared and an increased charge paid. By s. 6, nothing in the act is to annul or in anywise affect any special contract between a common carrier and any other parties for the conveyance of goods. The value of said pictures was not declared. *Held*, that the defendants received said pictures as common carriers, in spite of the exemption in the bill of lading, and that, as said exemption was not inconsistent with the further exemption in s. 1 of the Carriers' Act, s. 6 did not apply, and the defendants were not liable. (Exch. Ch.)—*Baxendale* v. *Great Eastern Railway Co.*, L. R. 4 Q. B. 244.

2. A railway company refused to carry, free of charge, a "spring horse" (a substitute for a rocking-horse), weighing 78 lbs, and 44 inches long, tendered to them by a passenger, who was entitled to take with him 112 lbs. weight of "ordinary" or "personal" luggage. *Held*, that the company had a right to make an additional charge.—*Hudston* v. *Midland Railway Co*, L. R. 4 Q. B. 366.

3. A carrier of passengers for hire does not warrant that the carriage in which a passenger travels is roadworthy. He is bound to use all vigilance to insure safety, but is not liable for a defect which could not be detected, and which arises from no fault of the manufacturer.—(Exch. Ch.) *Readhead* v. *Midland Railway Co.*, L. R. 4 Q. B. 379; s. c. 2 Q. B. 412; 2 Am. Law Rev. 107.

Case Stated—*See* Error.

Charging Order—*See* Fraudulent Conveyance.

Charity.

1. A testator, after giving other legacies, gave £4000 to the Royal Society (incorporated "for improving natural knowledge"), £4000 to the Royal Geographical Society (incorporated for "the improvement and diffusion of geographical knowledge"), and like sums to three other charities. He directed the charitable legacies to be paid out of the pure personalty, and gave the residue to his executors for their own use. He left £6711 pure personalty, £8045 proceeds of leaseholds, and £867 proceeds of real estate in Madeira. *Held*, that the legacies to said societies were to charities within St. 9 Geo. II. c. 36, and that the proceeds of the Madeira estate were not an interest in land within said act. But (varying the order of Stuart, V.C) the debts, funeral and testamentary expenses, and costs of suit were payable ratably out of the three funds. Then the pure personalty was to be first applied to the charities, other legacies to be paid out of the impure. The charities, so far as unpaid, were also to participate in the proceeds of the Madeira property, abating in the proportion of the impure personalty to the Madeira property.—*Beaumont* v. *Oliveira*, L. R. 4 Ch. 309; s. c. L. R. 6 Eq. 534; 3 Am. Law Rev. 686, 722.

2. A charity was founded in 1626 for the clothing of eight poor boys of the town of E., and causing them "to be put to some petty school, to the end they may learn to read English, and there to be so kept until they shall attain the age of thirteen years, thereby to keep them from idle and vagrant courses, and also instruct them in some part of God's true religion." *Held*, that the primary object was education, and for very poor boys. *Scheme:* An elementary school for boys of E., with twenty-five free scholarships, and clothing for twenty, for boys selected for merit, &c., or for poverty, at the option of the trustees. A superior school for boys from the whole parish, with three free scholars selected by competitive examinations. Capitation fees to be paid by the boys of both schools.—*In re Latymer's Charity*, L. R. 7 Eq. 353.

3. The House of Lords had directed that a scheme be framed for a charity, leaving the question whether a proposed building should be erected to the discretion of those who would consider the scheme, and in the exercise of such discretion it had been determined not to build. *Held*, that said determination was final and conclusive on the House.—*Clephane* v. *The*

Lord Provost, &c., of Edinburgh, L. R. 1. H. L. Sc. 417.

Cheque.

Plaintiff took from her debtor's agent the agent's cheque for the amount of the debt, and did not present it for payment for nearly four weeks. When presented it was dishonored, but there was a reasonable chance, though not a certainty, that it would have been paid if presented at once. The debtor, a week after the cheque was made, paid his agent a part of the amount, the rest being in the agent's hands already. The agent absconded. *Held*, that the debtor was discharged —*Hopkins* v. *Ware*, L. R. 4 Exch. 268.

Chose in Action—*See* Bond; Executor and Administrator, 2.

Codicil—*See* Revocation of Will, 2; Will, 3.

Collision.

1. In a case of collision, the vessel proved entitled to redress set forth the relative position of the two vessels incorrectly in her pleadings. Both vessels were at anchor at the time of the accident, and there was no ground for the objection that the other side might have been misled. *Held*, that the rule that a party seeking redress for an injury must recover *secundum allegata et probata* did not apply.—*The "Alice" & The "Rosita,"* L. R. 2 P. C. 214.

2. In a case of collision occasioned by the fault of a vessel under compulsory pilotage in going at too great speed, where no contributory negligence on the part of the master or crew is proved, the owners of the vessel are not liable. (See *G. S. N. Co.* v. *B. & C. S. N. Co.* (Exch. Ch.), L. R. 4 Exch. 238.)

Semble, said owners not having adhered to the appeal from the decree that their vessel was wholly in fault, but that they were not liable on the above ground, could not raise the questions whether their vessel was free from blame, or whether both vessels were equally in fault.—*Moss* v. *The African Steamship Co. The "Calabar,"* L. R. 2 P. C. 238.

3. The maritime lien on a French vessel for damages caused to an English vessel by collision is not discharged by a sale without notice under the French bankrupt laws to a purchaser who did not know of the collision.—*The Charles Amelia*, L. R. 1 Adm. & Eccl. 330.

Colony—*See* Conflict of Laws.

Common Carrier—*See* Carrier.

Common, Tenancy in—*See* Tenancy in Common.

Company.

1. When one who been induced to become a shareholder in a company by a fraudulent prospectus has filed a bill to have his name removed from the list of members, his right to this will not be affected by a subsequent order for the winding-up of the company.—*Reese River Silver Mining Co.*, v. *Smith*, L. R. 4 H. L. 64.

2. The articles of a company formed for running the blockade during the war in America provided that dividends should not be paid except out of profits, and that the directors should declare a dividend as often as the profits in hand were sufficient to pay five per cent on the capital, subject to the resolutions of a general meeting. In 1864, a dividend was declared, and sanctioned at a general meeting, and subsequently paid, upon a balance sheet in which a debt due from the Confederate government, and a guarantee by the same of part of the value of ships lost in blockade-running, and cotton in the Confederate States, were estimated at their full nominal value. The balance sheet was submitted to the creditor now complaining of it, and advances were made by him, after inspecting it, out of which the dividend was paid. All the above assets were lost and the company was wound up. *Held*, that as the estimate was made *bona fide*, and the facts were plainly stated in the balance sheet, the dividend was to be considered as made out of profits, and not as delusive—*Stringer's Case*, L. R. 4 Ch. 475.

3. Company C., formed to construct railways, &c., ordered rails of Company E. by letter. Said rails were intended to be used in the construction of a railway which had been undertaken by a firm to which the managing director of C. belonged, but not by the company. The managing director of E. was also a director of C. The rails were made but not delivered, as C. became bankrupt. *Held*, that the order was binding on C., although not under seal, and whether the managing director of E. knew the purpose for which the rails were to be used or not; and that E. could prove for damages caused by C.'s non-acceptance of the rails —*In re Contract Corporation. Claim of Ebbw Vale Company*, L. R. 8 Eq. 14.

4. The chairman of the directors of a company was authorised by them to accept bills drawn on the company by L., on L.'s depositing securities to a certain amount. The chairman accepted such bills with the knowledge of the directors, but securities of the specified amount had not in fact been deposited. *Held*, that the company was bound.—*In re Land*

DIGEST OF ENGLISH LAW REPORTS.

Credit Co. of Ireland. Ex parte Overend, Gurney & Co., L. R. 4 Ch. 460.

See LANDLORD AND TENANT, 2; LIBEL, 2; STATUTE, 1.

COMPOSITION DEED—*See* BANKRUPTCY, 6.

CONDITION—*See* COMPANY, 4; CONTRACT; DEVISE, 1; INSURANCE, 2; MORTGAGE, 1.

CONDITIONAL LIMITATION—*See* FORFEITURE; PERPETUITY.

CONFIDENTIAL RELATION—*See* BOND; TRUST, 3; WILL, 12.

CONFLICT OF LAWS.

The legislature of Jamaica passed an act indemnifying the defendant in respect of all acts done by him in suppressing of the rebellion in that island, and this act was assented to by the defendant in his capacity of governor. He was subsequently sued in England for trespasses which were within said act. *Held*, that the act was a bar to the suit, and that his having aided in its enactment, as above, made no difference.—*Phillips* v. *Eyre*, L. R. 4 Q. B 225.

See COLLISION, 3.

CONFUSION—*See* TRUST, 4.

CONSIDERATION—*See* BOND; ILLEGAL CONTRACT; LANDLORD AND TENANT, 2.

CONSTRUCTION OF INSTRUMENTS AND STATUTES—*See* CARRIER, 1, 2; CHARITY, 2; CONTRACT; COPYRIGHT; COURT; COVENANT, 2; DEED; DEVISE, 1; EXECUTOR AND ADMINISTRATOR, 1; FORFEITURE; INSURANCE; LEGACY; MORTGAGE, 2; PARLIAMENT; PERPETUITY; POWER; STATUTE; SUCCESSION DUTY; WILL, 7–14.

CONTEMPT—*See* PRODUCTION OF DOCUMENTS.

CONTINGENT INTEREST—*See* BANKRUPTCY, 3.

CONTRACT.

Plaintiff shipped under articles drawn in pursuance of the Merchant Shipping Act 1854, for a voyage from Shields to Alexandria, and, if required, to ports in the Mediterranean, Black Sea, Danube, &c., and home to the final port of discharge in Europe; the voyage not expected to exceed twelve months. "In consideration of which service to be duly performed," he was to receive 5*l.* 10*s.* wages per month. During the voyage the plaintiff was guilty of drunkenness and insubordinate conduct, and by his own negligence only he was left behind at a port on the Danube. He did not, however, desert. *Held* (*Per* BYLES & MONTAGUE SMITH, JJ.), that plaintiff was entitled to recover wages up to the time when he was left behind. (*Per* BRETT, J.) that construing the articles with the Act, performance of, or readiness to perform the stipulated services throughout the whole voyage was a condition precedent to the right to wages.—*Button* v. *Thompson*, L. R. 4 C. P. 330.

See COMPANY, 1, 3, 4; DAMAGES; ILLEGAL CONTRACT; LANDLORD AND TENANT, 2; SALE; VENDOR AND PURCHASER OF REAL ESTATE.

CONTRIBUTION—*See* DEVISE, 2.

COPYRIGHT.

Under the Copyright Act (5 & 6 Vict. c. 45), the assignor of a copyright may retain copies of the work, and may sell them after his assignment, unless there is a contrary stipulation—*Taylor* v. *Pillow*, L. R. 7 Eq. 418.

CORPORATION—*See* COMPANY.

COSTS—*See* EXECUTOR AND ADMINISTRATOR, 4; MORTGAGE, 2; NUISANCE, 1, 2; PARTITION.

COURT.

Under a statute appointing certain officers commissioners of oyer and terminer, and empowering "any two or more of them to inquire of, hear, determine, and adjudge" certain offences, only one member of the commission need actually sit at the trial, if another member is sitting at the same sessions, though in another court.

Per MELLOR, LUSH & HAYES, JJ., COCKBURN, C.J., *Dissentiente*, if a second judge were required, the same one need not be present through the whole trial.—*Leverson* v. *The Queen*, L. R. 4 Q. B. 394.

COVENANT.

1. One who takes an underlease is bound by all the covenants in the original lease.—*Feilden* v. *Slater*, L. R. 7 Eq. 523.

2. The sale of spirits in bottles by a grocer is a breach of a covenant that premises shall not be used "as an inn, public-house, or taproom, or for the sale of spirituous liquors."—*Ib.*

See EASEMENT; TRUST, 1.

CREDITOR—*See* EXECUTOR AND ADMINISTRATOR, 2; FRAUDULENT CONVEYANCE.

CRIMINAL LAW—*See* ASSAULT; COURT; DEATH, 1; EVIDENCE, 2; WRIT OF RESTITUTION.

CURTESY—*See* BANKRUPTCY, 3.

CUSTOM—*See* SALE, 2, 3.

DAMAGES.

A. purchased jute, to be at the risk of the sellers till the prompt day. A. paid a deposit, and received the warehouseman's weight notes from the seller. These A. deposited with B. as a security for advances made to A. by C., and B. agreed to hold them for C. The jute having been destroyed by fire before the prompt day, B. gave up the notes to A. without authority from C., and A. gave them to

the seller, and thereupon obtained back the deposit. A. subsequently became insolvent, and failed to repay C. his advances. C. sued B. for his breach of contract in giving up the notes to A. *Held*, that C. was entitled to substantial and not merely nominal damages. (Exch. Ch.)—*Matthews* v. *Discount Corporation*, L. R. 4 C. P. 228.

See Proximate Cause; Vendor and Purchaser of Real Estate.

Death.

1. On a trial for bigamy, it was proved that the prisoner married A. in 1836, left him in 1843, and married again in 1847. Nothing had been heard of A. since the prisoner left him, but there was no evidence leading to the inference that A. had died. *Held*, that there was no presumption of law that A. was alive at the date of the second marriage.—*The Queen* v. *Lumley*, L. R. 1 C. C. 196.

2. A person entitled to dividends payable in April and October, for which he was in the habit of applying punctually, and on which he mainly depended for support, was last seen in August, 1860, without money and in bad health, and did not draw his October dividend. Seven years having elapsed: *Held*, that on the above facts it was to be presumed that he died before November 14, 1860.—*In re Beasney's Trusts*, L. R. 7 Eq. 498.

Declaration—*See* Evidence, 1, 2.

Decree—*See* Mortgage, 2.

Deed.

1. On the marriage of A., tenant for life of X. estate, with remainder to his first and other sons in tail male, a fund was settled (in case there should be children other than an eldest, second, or only son, for the time being entitled to X. estate, for an estate in tail male in possession, or remainder immediately expectant on A.'s death) on such children, after the death of A. and his wife, as A. should appoint, and, in default of A.'s appointment, equally. C., the eldest son of the marriage, joined with A. in barring the entail, and resettling X. estate to A. for life, then to C. for life, with remainder to C.'s sons successively in tail, remainder to C.'s heirs. A. died, having appointed half only of the fund. *Held*, that A.'s death was the period for ascertaining whether C. was excluded from a share in the fund, but (reversing decision of Wood, V.C.) that C., having had the benefit intended, notwithstanding the resettlement of X. estate, was excluded.—*Collingwood* v. *Stanhope*, L. R. 4 H. L. 43; s. c. L. R. 4 Eq 286; 2 Am. Law Rev 467.

2. A fund was settled after A.'s death on A.'s child J. and A.'s future children, and in case either of them should happen to be dead leaving issue, to such issue, equally to be divided amongst them or their issue respectively, to each being a son at twenty-one, being a daughter at twenty-one or marriage. In case J. or other child should die without issue before his share should become "due and payable," such share to survivors and issue of deceased child equally, when and as their original shares should become "due and payable" If at A.'s death neither J. or other child, nor issue of J. or other child, were living, or if all should die before their shares were "payable, then" over. The trustees had a power of advancement. J. died without issue, living A. *Held*, that J.'s share was divested, and went to the survivors.—*In re Wilmott's Trusts*, L. R. 7 Eq. 532.

See Landlord and Tenant, 1; Mortgage, 2; Separation Deed; Trust, 1.

Demand—*See* Award, 2.

Desertion.

1. A husband left his wife, and the two immediately afterwards executed a separation deed. The husband soon ceased paying the allowance which he had covenanted to pay. *Held*, that the separation, being under the deed, was and continued voluntary, and was not desertion; and the husband's breach of his covenant did not make it so.—*Crabb* v. *Crabb*, L. R. 1 P. & D. 601.

2. A husband and wife were cohabiting in Jamaica, where the husband held an appointment, when the wife was obliged to come to England for her health. Afterwards, in 1851, the husband asked her to return, and provided funds for her passage, but she wrote that her health did not permit it. In 1856, he made her an allowance, which he stopped in 1860. She had made no offer to return since refusing his request. *Held*, that he had not deserted her.—*Keech* v. *Keech*, L. R. 1 P. & D. 641.

Devise.

1. W. devised to his brothers, A., B., and C., thus: to A. "for life, and in default of his having issue living at the time of his death, to B. for life, and in default of his having issue living at the time of his death, to C. and his heirs; but in case A. should die leaving issue," to such issue in tail male. "And *in case B. should come to the possession* of the said estate hereinbefore limited to him, and should die leaving issue, said issue to take in like manner" as before limited to the issue of A. B. died in the lifetime of A., leaving a son who

survived A. A. died without issue. *Held*, that B.'s son took under the will. B.'s coming into possession was not a condition precedent. *Edgeworth* v. *Edgeworth*, L. R. 4 H. L. 35.

2. Estates A. and B., subject to the same mortgage, were devised, A. specifically, and B. by a residuary clause. *Held*, that the residuary devise was specific, and that the two estates must bear the mortgage debt ratably.—*Gibbins* v. *Eyden*, L. R. 7 Eq. 371.

See CHARITY, 1, 2; EXECUTOR AND ADMINISTRATOR, 4; FORFEITURE; LEGACY; PERPETUITY; WILL, 7-14.

DISCLAIMER—*See* MORTGAGE, 3.

DISCOVERY.

1. A defendant who has answered cannot avoid discovery, for the purpose of the suit, on the sole ground that it is the same which is the only object of the suit.—*Chichester* v. *Marquis of Donegal*, L. R. 4 Ch. 416.

2. A. filed a bill against B., who had been his partner, alleging that B. had represented a good debt to be bad, and praying that the agreement of dissolution might be set aside, or that B. might be ordered to pay one half of his receipts on account of said debt, and also for an account. The interrogatories asked B. to set forth his said receipts and the partnership accounts. B. answered that a patent had been assigned to him on account of said debt, and that after much litigation at his own expense connected with the same, he expected to receive from it more than the amount of the debt; and as to the accounts, that they were very long, and could only be given by employing an accountant on the books, which were always open to A. *Held*, that the answer was sufficient.—*Lockett* v. *Lockett*, L. R. 4 Ch. 336.

DISCRETION—*See* CHARITY, 3.

DISQUALIFICATION—*See* PARLIAMENT.

DIVORCE—*See* ALIMONY; DESERTION.

DOMICILE.

If a man is imbecile on attaining his majority, and remains so continuously until his death, his father retains the right of choice of his domicile as long as he lives.—*Sharpe* v. *Crispin*, L. R. 1 P. & D. 611.

DOWER—*See* ELECTION.

DYING DECLARATIONS—*See* EVIDENCE, 2.

EASEMENT.

A. sold land to plaintiff, reserving a rent, to secure which plaintiff covenanted to build, and built accordingly. A. afterwards sold adjoining land to defendant, who drained the same, in consequence of which plaintiff's land lost the support of subterranean water, and subsided. It would have done so even if it had been unbuilt upon. *Held*, that defendant was not liable. (Exch. Ch.)—*Popplewell* v. *Hodkinson*, L. R. 4 Exch. 248.

See LIGHT; NUISANCE, 3; STATUTE, 7; WAY.

ELECTION.

A testator left his wife, among other things, property to which she was entitled in her own right, and an annuity charged on the L. estate in lieu of dower. The wife during her life took what was given her by the will, but never elected to take under or against it. She died intestate, leaving four next of kin, three of whom elected to take under the will; while the fourth, the heir and administrator, elected against it. *Held*, that the election of the three did not bind the fourth, nor that of the fourth the three. In taking the accounts, the fourth was to bring in the annuity, and to be allowed one-fourth of the dower in lieu of which it was given.—*Fytche* v. *Fytche*, L. R. 7 Eq. 494.

EQUITY—*See* ACCOUNT.

EQUITY PLEADING AND PRACTICE.

Service of a petition for vesting in new trustees lands which had descended to the infant heirs of the former sole trustee, upon the guardian of said heirs, is unnecessary.—*In re Little*, L. R. 7 Eq. 323.

See DISCOVERY; EVIDENCE, 8; FRAUDULENT CONVEYANCE, 2; INTERPLEADER; MORTGAGE, 2; NUISANCE, 1, 2; PLEDGE; PRODUCTION OF DOCUMENTS; REVIVOR; WARD OF COURT.

ERROR.

An arbitrator was required by the order referring the cause to him to state a case for the opinion of the Court of Exchequer, at the request of either party; he stated a case accordingly, which was heard and decided by the Court. *Held*, that this decision was not a judgment on which error could be brought.—*Courtauld* v. *Legh*, L. R. 4 Exch. 187.

ESTOPPEL—*See* CHARITY, 3; LANDLORD AND TENANT, 1.

EVIDENCE.

1. A declaration or written entry by a deceased person, who had, at the time of making the same, occupied a house four years, that he was tenant of said house at so much rent, and had paid it, is admissible to prove the payment as well as the tenancy.—*The Queen* v. *Exeter*, L. R. 4 Q. B. 341.

2. Thirteen hours before the death of a murdered person, she made a declaration upon oath. She was asked, "Is it with the fear of death before you that you make these statements? Have you any present hope of your recovery?" She said, "None." Her

statements were written out, together with the above, but the word "present" was omitted from before "hope." The written statement was then read to her, and, at her suggestion, the words "at present" were inserted, thus: "with no hope *at present* of my recovery." It was then signed by her. *Held*, that the declaration was not admissible. It did not appear that the deceased was absolutely without hope.—*The Queen* v. *Jenkins*, L. R. 1 C. C. 187.

3. When an affidavit is made before a notary abroad, the signature of the notary must be verified before the affidavit can be admitted. *In re Davis's Trusts*, L. R. 8 Eq. 98.

Execution—*See* Fraudulent Conveyance, 2.

Executor and Administrator.

1. The court allowed one who had been appointed an executor, and had renounced that office, to take administration with the will annexed, notwithstanding a rule that no person who had renounced in one character should take a representation to the same deceased in another character.—*Goods of Russell*, L. R. 1 P. & D. 634.

2. A female took administration of the estate of the deceased as a creditor, got in a large part of the estate and paid some of the debts, and then married and died. The husband had taken possession of leaseholds, part of said estate, but no fund had been set apart for the payment of the wife's debt. *Held*, that administration of the unadministered effects of the deceased could not be taken by the husband in his own right as a creditor, but only as representative of his wife.—*Goods of Risdon*, L. R. 1 P. & D. 637.

3. A testator made two persons his executors and also the trustees of the residue of his estate, part of which consisted of a bond given by the trustees of a minor. The latter on coming of age, within a year of testator's death, gave his bond to said executors jointly, in place of the bond of his trustees. Ten years afterwards, the obligor of the substituted bond paid part of the money to one of the obligees, who signed a receipt himself, and forged the signature of his co-obligee, and embezzled the money. *Held*, (1) that the obligor was discharged by the receipt of one executor, though he meant to have that of both; (2) that the acceptance of the substituted bond by the executors was not a breach of trust; (3) that the lapse of ten years was not of itself notice to the obligor that the estate had been administered and the executors had become trustees.—*Charlton* v. *Earl of Durham*, L. R. 4 Ch. 433.

4. A testator devised all his real estate upon certain trusts. Some of the gifts lapsed to the heir. The personalty was insufficient to pay the debts. *Held*, that the lapsed shares must go first to pay the costs of administration.—*Row* v. *Row*, L. R. 7 Eq. 414.

See Revocation of Will, 2, 3.

Executory Devise—*See* Forfeiture; Perpetuity.

Forfeiture.

A testator appointed some and devised other real estate to his wife and her assigns during her life, and, after her death, to his son in fee, with a proviso that if his wife should do any thing whereby she should be deprived of the control over the rents and profits, so that her receipt alone should not be a sufficient discharge for the same, her estate should determine as effectually as it would by her actual decease. By a first codicil, he appointed and devised his said estate, after the death of his wife, to his son for life, with remainders over. By a second, he gave his personal estate to his wife for life, for her separate use, independently of any future husband. The wife married again without making any settlement. *Held*, that her interest was forfeited, in spite of the word "assigns" and the allusion to a second husband, and that the remainders limited by the codicil, both in the appointed and devised estates, were accelerated.—*Craven* v. *Brady*, L. R. 4 Ch. 296; s. c. L. R. 4 Eq. 209; 2 Am. Law Rev. 276.

See Mortgage, 3.

Fraud—*See* Bond; Company, 1, 2; Partnership, 1; Will, 12.

Fraudulent Conveyance.

1. When a man executed an antenuptial settlement and married a woman with whom he had previously cohabited, with intent to defraud his creditors, the wife being implicated in the transaction: *Held*, that the settlement was void as against creditors.—*Bulmer* v. *Hunter*, L. R. 8 Eq. 46.

2. January 23, 1867, an examination of defendant's conduct as chairman was begun. February 13, he settled all his property on his children, with power to the trustees to pay him such part of the income as they might think fit. May 6, an order was made against him. *Held*, that the conveyance might be set aside at the suit of creditors having no lien on or order charging the property conveyed, the bill to be brought on behalf of all the creditors. Independent proceedings were necessary for

the creditors to have execution against such property.—*Reese River Silver Mining Co.* v. *Atwell*, L. R. 7 Eq. 347.

3. Land was settled on A. for life, remainder to his son B. in fee, if living at A.'s death, with power to A. and B. to revoke the above and appoint new uses. B. becoming insolvent, A. and B. by deed revoked the uses in B.'s favor and appointed the estate to such uses as A. should appoint, and, in default of appointment, to the use of B. absolutely. B. was afterwards adjudicated bankrupt, and the assignees sought to set aside said deed as fraudulent. A. was enjoined, on motion, from exercising his power under said deed in favor of a purchaser for value, but not from doing so in favor of volunteers.—*Beyfus* v. *Bullock*, L. R. 7 Eq. 391.

Frauds, Statute of—*See* Landlord and Tenant, 1.

Governor—*See* Conflict of Laws.

Guaranty—*See* Bankruptcy, 6; Sale, 2.

Guardian—*See* Equity Pleading and Practice; Revocation of Will, 2.

Heir and Personal Representative—*See* Marshalling of Assets; Power.

Husband and Wife—*See* Alimony; Death, 1; Divorce; Executor and Administrator, 2; Fraudulent Conveyance, 1, 2; Separation Deed; Ward of Court; Wife's Equity.

—*American Law Review.*

REVIEWS.

Blackwood's Edinburgh Magazine, December, 1869. The Leonard Scott Publishing Company, 140 Fulton Street, New York.

We receive the Leonard Scott Publishing Company's Reprints of the British Periodicals with great regularity. In our advertizing columns will be found the advertisement of these Periodicals for the year 1870. And we beg to call the attention of such of our readers as are not yet subscribers to the Periodicals in the advertisement. Money spent in subscribing for them is well spent. In England the, Periodicals are so expensive that few can afford to take all of them. But owing to arrangements which the Leonard Scott Publishing Company have made with the English Publishers for the receipt of advance sheets, the reprints are published nearly as soon as the originals are issued in England, and on terms so low, that nearly all the reprints can be obtained at little more cost than that of one Review in England. Fifteen dollars per annum will enable a person here to procure Blackwood and the four Reviews. No man in America who cares anything for the literature of the day should be without the Reviews. The contributors consist of the best talent that Great Britain can produce, either in science, art, religion or general literature. The field which they traverse is far more extensive than anything of the kind attempted in the United States. The contents of American Reviews, compared with the English Periodicals, are meagre and barren. Each of the English Reviews has its own peculiar characteristics. Blackwood is so well and so widely known that it demands little notice from us. The reputation which it has acquired for literary sketches and narratives it preserves pure and untarnished. The Edinburgh still continues the even tenor of its way. The London Quarterly, which was started in opposition to it, still continues the opposition with much pluck and vigor. The Westminster, which by some is not considered orthodox, still continues its career of advanced religious literature. And the North British, without being so offensive to orthodox thinkers as the Westminster, has much to recommend it to the enlightened attention of a wide sphere of readers. The man would be fastidious indeed, who could not find in these Periodicals, or some of them, much to please, and much to learn. The variety afforded is so great as to tempt men of all minds be they ever so different in their idiosyncrasies. In the reading of them one cannot help admiring the advanced thought and its powerful expression which he finds in their pages. No man of culture, of any pretension whatever to literary talents should be without them or any of them.

GENERAL CORRESPONDENCE.

Noncupative Wills.

To the Editors of the Law Journal.

Guelph, Jan. 4th, 1870.

Gentlemen,—Is it essentially necessary that a will of personal estate should be in writing? In England it is rendered necessary by the statute of 7 Wm. 4 and 1 Vict., but I cannot find that any such statute has been passed here, and therefore I conclude that a will of

personalty may still be made by word of mouth, subject of course to the requirements of the Statute of Frauds.

Yours, &c.,

Subscriber.

[Our correspondent should make himself more familiar with Statute Law. See Con. Stat. U. C. cap. 16, sec. 83.]—Eds. L. J.

Costs—Certificate.

To the Editors of the Law Journal.

Gentlemen,—The 143rd Rule relating to Division Courts, made in pursuance of the County Court Amendment Act, 1857, provides: "In any action of the proper competence of a Division Court, it shall not be a sufficient ground to certify at the trial thereof that it is a fit cause to have been withdrawn from a Division Court and commenced in a County Court, or for a County Court Judge to order the allowance of any other than Division Court costs, that the Defendant or Defendants, or any of them, had removed out of the Division or County in which the debt was contracted, or the cause of such suit or action accrued into any other Division or County, or elsewhere out of such County." &c.

Supposing a debtor, to the extent of $40, residing out of the jurisdiction, say Detroit, and the creditor is consequently compelled, if he sues at all, to resort to the County Court; that he obtains the usual judge's order, on affidavit, to effect service by posting up copies in the clerk's office, &c., and he ultimately signs judgment as for want of a plea, the damages being assessed in the manner pointed out in said order; does the above clause in the County Court Rules restrict the Plaintiff's costs to the Division Court Tariff.

If this question may legitimately be addressed to you, an answer will confer a favor upon a number of Law Students, besides

A Subscriber.

[This scarcely comes within our province to answer, but probably some of our readers will discuss the point. Though we cannot undertake to answer all questions on points of law or practice, our columns are always open to free discussion by the profession.—Eds. L. J.]

CHANCERY SPRING SITTINGS, 1870.

The Hon. Vice Chancellor Strong.

Toronto	Tuesday	March	15.

The Hon. Vice-Chancellor Mowat.

Stratford	Tuesday	April	5.
Goderich	Friday	"	8.
Sarnia	Tuesday	"	12.
Sandwich	Friday	"	15.
Chatham	Tuesday	"	19.
London	Tuesday	"	26.
Woodstock	Saturday	"	30.
Simcoe	Friday	May	6.

The Hon. the Chancellor.

Hamilton	Tuesday	April	12.
Brantford	Thursday	"	21.
Lindsay	Thursday	"	28.
Guelph	Thursday	May	5.
Owen Sound	Thursday	"	12.
Barrie	Monday	"	16.
St. Catharines	Friday	"	20.
Whitby	Friday	June	3.

The Hon. Vice-Chancellor Strong.

Ottawa	Thursday	May	5.
Cornwall	Tuesday	"	10.
Brockville	Tuesday	"	17.
Kingston	Friday	"	20.
Belleville	Thursday	"	26.
Peterborough	Wednesday	June	1.
Cobourg	Monday	"	6.

APPOINTMENTS TO OFFICE.

(From the Canada Gazette.)

JUDGES.

The Hon. JOHN GODFREY SPRAGGE, of the City of Toronto, in the County of York, to be Chancellor of the the Court of Chancery for Upper Canada, now Ontario, in the stead of the Hon. P. M. M. S. VANKOUGHNET deceased. (Gazetted January 1st 1870.)

SAMUEL HENRY STRONG, of the City of Toronto, in the County of York, Esq., Q.C., to be one of the Vice-Chancellors of the Court of Chancery for Upper Canada, now Ontario, in the stead of the Hon. J. GODFREY SPRAGGE. (Gazetted January 1st, 1870.)

(From the Ontario Gazette.)

DEPUTY CLERK OF THE CROWN, &c.

JAMES C. MORROW, of Barrie, Esq., to be Deputy Clerk of the Crown and County Court Clerk for the County of Simcoe, in the stead of JONATHAN LANE, Esq., deceased.

NOTARIES PUBLIC.

A. G. McMILLAN, of Elora, Gentleman, Attorney-at-Law; FREDERICK ARTHUR READ, of Petrolia, Esq., Barrister-at-Law; and HORACE THORNE, of Toronto, Esq., Barrister-at-Law. (Gazetted January 1st, 1870.)

CHARLES GREAM, of the Village of Madoc, Esquire. (Gazetted January 15th, 1870.)

JAMES A. MACPHERSON, of the Village of Kincardine, Esq. (Gazetted January 29th, 1870.)

ASSOCIATE CORONERS.

WILLIAM LINDSAY, of Napier, Esq., to be an Associate Coroner within and for the County of Middlesex. (Gazetted January 8th, 1870.)

JOHN MILTON PLATT, of Picton, Esq., M.D., to be an Associate Coroner within and for the County of Prince Edward. (Gazetted January 22nd, 1870.)