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DIARY FOR MAY.

15. Sun..... *5th Sunday after Easter.*
16. Mon.....Easter sittings begin.
19. Thur.....Ascension Day.
21. Sat.....Confederation proclaimed 1867. Lord Lyndhurst born 1772.
22. Sun.....*1st Sunday after Ascension.*
24. Tues.....Queen Victoria born 1819.
27. Fri.....Habeas Corpus Act passed 1679. Sir W. Grant, Master of the Rolls, 1801.
29. Sun.....*Whit Sunday.*
31. Tues .....Parliament of U. C. first met at Toronto, 1797.

TORONTO, MAY 15, 1887.

NUMBER five in the text-book series of the Blackstone Publishing Company is Lord Blackburn's treatise on Contracts of Sale from the second English edition. We presume most of our readers are subscribers to this series by this time. If not they had better begin at once.

WE regret to chronicle the death of Frederick William Jarvis, Esq., until recently Sheriff of the County of York. He succeeded his uncle, the late W. B. Jarvis, in the year 1856, and has occupied the position with credit to himself and much satisfaction to the profession ever since. He was a most kind, estimable, and liberal gentleman in private life, and he performed his duties as Sheriff with unswerving fidelity, and in a manner which will cause his loss to be much felt by all those who had occasion to do business with him. The office is now, we regret to say, divided. We see no use for this except to multiply patronage. It will be inconvenient to the public and the profession, and serves no good purpose.

THE CRIMINAL JURISDICTION OF THE CHANCERY DIVISION.

ALTHOUGH it is now close upon six years since the Judicature Act came into force, it is only quite recently that any criminal case has been brought before the Chancery Division.

At the last sittings of the Divisional Court of the Chancery Division, a case of the *Queen* v. *Fee* was before that Court. An application had been made to Ferguson, J., to quash a conviction of the defendant for an alleged breach of the Canada Temperance Act. Counsel for the magistrate having failed to appear on the return of the order *nisi*, Ferguson, J., disposed of the application in his absence, and following the decision of Galt, J., in *Reg.* v. *Halpin*, 12 Ont. R. 33, quashed the conviction on the ground that the accused had been called as a witness, and had been compelled to prove his own guilt. Subsequently counsel for the magistrate applied to Ferguson, J., to open the order and hear argument, and the application was adjourned by him before the Divisional Court. The Divisional Court entertained the motion and affirmed the conviction, holding that *Reg.* v. *Halpin* had been wrongly decided, and was opposed to the express provisions of the statute which made the accused a competent and compellable witness. This, by the way, was the opinion we expressed on the point shortly after Mr. Justice Galt gave his decision (see *ante*, vol. 22, p. 394).

It has, we think, heretofore been tacitly assumed by a good many members of the profession that notwithstanding the changes in the constitution of the courts, effected by the Judicature Act, the crimi-

nal jurisdiction of the Courts of Queen's Bench and Common Pleas, as those courts existed before the Judicature Act, still remained vested exclusively in the Queen's Bench and Common Pleas Divisions of the High Court of Justice. But the case of the *Queen* v. *Fee* seems to show that this opinion may not be well founded, and that it is possible that the Chancery Division has now co-ordinate jurisdiction with the other Divisions, in criminal, as well as civil proceedings. This point, it is true, was not distinctly adjudicated upon in the *Queen* v. *Fee*, for in that case it appears to have been assumed by both counsel and the Court that the Chancery Division was entitled to exercise jurisdiction in criminal matters. It appears to us, however, to be a question not altogether free from doubt.

The impression to the contrary has probably to some extent arisen from a perhaps too cursory consideration of certain passages in the Judicature Act and Rules. Section 87 of the Judicature Act enacts that "nothing in this Act or in the Schedule thereto affects, or is intended to affect, the practice or procedure in criminal matters, or matters connected with Dominion controverted elections, or proceedings on the Crown or revenue side of the Queen's Bench or Common Pleas Divisions." Rule 484 further provides that "nothing in these Rules shall be construed as intended to affect the practice or procedure in criminal proceedings, or proceedings on the Crown or revenue side of the Queen's Bench or Common Pleas Divisions." The expression "Queen's Bench and Common Pleas Divisions," in both these enactments appears to be a slight anachronism for *qua* "Divisions" that had no previous existence. Its use seems rather to suggest the idea that these two Divisions are still to exercise exclusive jurisdiction in the matters specified. If it is intended to apply to the future practice of the High Court, instead of Queen's Bench and Common Pleas Divisions, the proper expression to have used was "the High Court of Justice."

It will be observed, however, that both the section of the statute and the rule cited above are in terms confined to "practice or procedure." The constitution or jurisdiction of the court does not appear to come under either of those heads; and it seems therefore clear that the section and rule above cited do not really affect the question we are considering. (See per Strong, J., *Mitchell* v. *Cameron*, 8 S. C. R. 135.)

By the British North America Act, s. 92, ss. 14, "the administration of justice in the Province, including the constitution, maintenance and organization of Provincial Courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts" is vested in the Provincial Legislature. It is clear from this that the Provincial Legislature has power to constitute, maintain and organize Provincial Courts of criminal jurisdiction; but the power to constitute a court of criminal jurisdiction does not appear necessarily to include the right explicitly to define the particular criminal jurisdiction to be exercised by it. This proposition may seem to savour of paradox, but a little consideration will show that it is perfectly tenable. There is no necessary inconsistency in saying, that though true it is that the Provincial Legislature has the power to constitute, organize and maintain a court of criminal jurisdiction, yet that the power to determine the precise nature and limits of the criminal jurisdiction which the court so constituted is to exercise, rests with the Dominion Government, and this we think, it may not unreasonably be argued, is the real effect of the B. N. A. Act.

Were it otherwise, it would be possible for the Provincial Legislature to make

every Division Court a court of criminal jurisdiction, and to confer on such courts unlimited powers in criminal cases, *e.g.*, to try capital felonies. We think this would be clearly opposed to the spirit and intention of the B. N. A. Act; and, if so, it goes to show that the right to constitute a court of criminal jurisdiction does not necessarily include the right to define the particular jurisdiction in criminal proceedings which the court may exercise.

Prior to Confederation the Courts of Queen's Bench and Common Pleas had an exclusive criminal jurisdiction, and the Court of Chancery had an exclusive civil jurisdiction. By the B. N. A. Act, s. 129, these courts were continued, subject to being altered by the Provincial Legislature.

Turning to the Judicature Act we find that section 3 provides that the Courts of Appeal, the Court of Queen's Bench, the Court of Chancery, and the Court of Common Pleas shall be united and consolidated together and constituted one Supreme Court of Judicature. Sub-section 2 goes on to provide, that the Supreme Court shall be divided into two permanent divisions; and that the Courts of Queen's Bench, Chancery, and Common Pleas are to constitute one of such divisions, to be called the High Court of Justice for Ontario; and the Court of Appeal is to constitute the other division. Section 9 defines the jurisdiction of the High Court, and it provides that it shall have the jurisdiction which, at the commencement of the Act, was vested in, or capable of being exercised by the Court of Queen's Bench, the Court of Chancery, the Court of Common Pleas and Courts of Assize, Oyer and Terminer, and gaol delivery (whether created by commission or otherwise), and shall be deemed to be, and shall be, a continuation of the said courts respectively (subject to the provisions of the Act), under the name of the High Court of Justice. This jurisdiction by the following sub-section is also defined to include (subject to the exceptions hereinafter contained) the jurisdiction which at the commencement of the Act was vested in, or capable of being exercised by, all or any one or more of the judges of the said courts respectively, sitting in court, or chambers, or elsewhere, when acting as judges, or a judge, in pursuance of any statute or law; and all powers given to any such court, or to any such judges or judge by any statute; and also all ministerial powers, duties, and authorities incident to any and every part of the jurisdiction.

The effect of this Act was therefore to make the Court of Chancery, which was formerly a court of civil jurisdiction only, a part of a court having criminal jurisdiction. It was, no doubt, within the power of the Provincial Legislature to have made the Court of Chancery a court of criminal jurisdiction. It could, no doubt, have legislated in this respect for the Court of Chancery alone, and could have enacted that henceforth it should be a court not only of civil but also of criminal jurisdiction. Such legislation, however, in order to give the Court of Chancery the same powers in criminal matters as the Queen's Bench and Common Pleas had, would have to have been supplemented, it appears to us, by an Act of the Dominion Parliament defining the nature of the criminal jurisdiction which the Court of Chancery might exercise. If this is correct, then it seems to follow that the same kind of legislation is equally necessary in order to confer criminal jurisdiction on the Chancery Division of the High Court of Justice. In other words, if the Ontario Legislature could not, as we think it could not, by its own unaided efforts give the Court of Chancery co-ordinate criminal jurisdiction with the former Courts of Queen's Bench and Common Pleas, it seems to

follow that it could not do so by the mere process of amalgamating that court with the other two courts.

The High Court, so far as the addition of the Chancery Division is concerned, is not only in name, but also as far as criminal jurisdiction is concerned, in substance to all intents and purposes a new court of criminal jurisdiction; and though the process of amalgamation might very reasonably be held not to deprive the Queen's Bench and Common Pleas Divisions of any criminal jurisdiction which they possessed before the amalgamation, it would not by any means follow that the amalgamation had the effect of extending the jurisdiction those two courts possessed to the Court of Chancery. It is true the Judicature Act assumes to give to the Court of Chancery, as one of the component parts of the High Court, the like jurisdiction in all respects as that previously exercised by the other two divisions of the High Court, but whether that was not *ultra vires* of the Ontario Legislature, so far as criminal jurisdiction is concerned, seems open to the doubt we have expressed.

No Act has been passed by the Dominion Parliament since the Judicature Act conferring on the Chancery Division the same co-ordinate criminal jurisdiction as that exercised by the other two divisions. The Revised Statutes of Canada, however, appear to recognize the High Court of Justice generally as having criminal jurisdiction. In chap. 174, s. 2, the High Court of Justice for Ontario is defined to be the court for Crown cases reserved. Sec. 3 enacts that every Superior Court of criminal jurisdiction shall have power to try any treason, felony, or other indictable offence, and if this were the consolidation of any Act passed subsequent to the Judicature Act, it would undoubtedly confer on the Chancery Division jurisdiction to try such offences. This latter provision, however, is a consolidation of prior enactments, and it is open to argument whether it has the effect of conferring on a court constituted subsequent to the passing of the enactments here consolidated a criminal jurisdiction which it did not previously have. In other words, "every Superior Court of criminal jurisdiction" might be argued to mean every such court existing when the Acts consolidated were passed, and not necessarily every such court thereafter constituted, or existing at the time of the consolidation of the statutes. See 49 Vict. c. 4, s. 8 (R. S. ch. xii.), which provides that the Revised Statutes are not to be held to operate as new laws.

R. S. C. ch. 174, s. 269, provides that any judge of the High Court may reserve his decision at a trial; section 270 provides that the practice and procedure in all criminal cases in the High Court shall be the same as before the establishment of the High Court: and section 271 provides that if any commissions are issued for holding assizes they shall contain the names of the justices of the Supreme Court; these provisions are the consolidation of 46 Vict. c. 10, an Act passed subsequent to the Judicature Act, and so far as they go no doubt have the effect of conferring on the individual judges of the Supreme Court the particular criminal jurisdiction therein expressed. But the doubt we have is whether as a court or part of the High Court, the Chancery Division has, by any statutory enactment of the Dominion, yet had vested in it a general co-ordinate jurisdiction in criminal matters with that of the other two divisions.

Considering the importance of the question, this is a point which deserves careful attention, and if there be any technical defect in the legislation on the subject it should be remedied ere it has occasioned a failure of justice.

RECENT ENGLISH DECISIONS.

The *Law Reports* for April comprise 18 Q. B. D. pp. 449-572: 12 P. D. pp. 105-118, and 34 Chy. D., pp. 423-581.

Practice—Interpleader—Jus tertii.

The case of *Richards* v. *Jenkins*, 18 Q. B. D. 451, is one of some importance on the practice in interpleader proceedings by the Sheriff. This case has been already noted when before the Divisional Court (vol. 22, p. 376). The decision now reported is that of the Court of Appeal (affirming the Queen's Bench Division). The facts were simple. The claimant had let the goods in question for hire, and subsequently became bankrupt. He did not inform the trustee in bankruptcy that he owned the goods, and the hirer, in ignorance of the bankruptcy, continued to pay the claimant for their hire. While in possession of the hirer the goods were taken in execution under a judgment against him. And the question was whether the execution creditor could set up the right of the trustee in bankruptcy in order to defeat the claimant. This, the Court of Appeal decided in the affirmative, holding that, even assuming the execution debtor was estopped from denying the title of the claimant to the goods, such estoppel did not bind the execution creditor.

Though affirming the decision, the Court of Appeal did not altogether adopt the reasoning of the court below. In the latter court the right of the execution creditor to set up a *jus tertii* was put on the ground that as against the claimant he was to be deemed to be in possession, but Lord Esher, M.R., repudiates that reasoning as untenable; and the judgment of the Court of Appeal proceeds on the ground that the goods being in possession of the execution debtor at the time of seizure, they were *prima facie* his property, and the question in the issue being whether the goods were the goods of the claimant as against the execution creditor, the claimant could not succeed unless he showed a good title.

Criminal prisoner—Statutory offence how far a crime.

Osborne v. *Milman*, 18 Q. B. D. 471, is a decision of the Court of Appeal reversing the judgment of Denman, J., which we noted vol. 22, p. 376. The question was whether a person who had been committed to gaol on a summary application for practising as a solicitor without being duly qualified, contrary to a Statute, was to be deemed a criminal prisoner. Denman, J., held that as his imprisonment had been ordered on a summary application without indictment he was not a criminal prisoner; but this conclusion the Court of Appeal was unable to accede to. In the view of the Court of Appeal, the procedure by which the punishment was awarded was immaterial. The question was governed by the consideration whether the offence was or was not a crime, and the offence in question being one which would clearly have been indictable as a misdemeanour, and punishable by imprisonment, it was held to be a crime.

Criminal law—Evidence—Attempt to commit rape—Evidence of previous connection between prosecutrix and prisoner.

The case of *The Queen* v. *Riley*, 17 Q. B. D. 481, sets at rest a question of evidence, which Mr. Justice Stephen left in doubt in his work on Evidence. (See "Stephen's Evidence," art. 134.) The prisoner was indicted for an assault with intent to commit rape. The prosecutrix denied on cross examination having voluntarily had connection with the prisoner prior to the alleged assault, and a case was reserved on the point whether evidence on the part of the prisoner could be received to contradict her by proving such prior connection. Mr. Justice Stephen laid it down that in such a case "She *probably* may be contradicted." This case determines definitely that such evidence is admissible.

Foreign negotiable instrument—Conflict of laws—Bona fide holder—Right of.

Picker v. *The London and County Banking Co.*, 18 Q. B. D. 515, was an action of detinue to recover possession of certain Prussian bonds, which, by the law of Germany, were negotiable instruments. The bonds were stolen from the plaintiff, and subsequently came into the possession of the defendants *bona fide*. It was held by the Court of Appeal (affirming A. L. Smith, J.,) that in the absence of evidence to show that such bonds were by the custom of merchants treated as negotiable instruments in England, a *bona fide* transferee thereof could not acquire a good title thereto

as against a rightful owner from whom they had been stolen.

CRUELTY TO ANIMALS—OPERATION FOR PURPOSE OF IMPROVING ANIMAL—12 & 13 VICT. c. 92, s. 2 (R.S.C. c. 172, s. 2).

In *Lewis* v. *Fermor*, 18 Q. B. D. 532, the defendant was prosecuted for alleged cruelty to animals. The alleged offence consisted in his having performed the operation of "spaying" on five sows. This operation consists in cutting out the uterus and ovaries, and removing them through an incision made in the flank of the sow for the purpose. It is performed on sows because it is believed to increase their weight and development. It is attended with considerable pain to the animal. The justices before whom the charge was brought having stated a case for the opinion of the court, it was held by Day and Wills, JJ., that the defendant had not been guilty of any offence within the Statute. (See R.S.C. c. 172, s. 2.)

CRIMINAL LAW—TRIAL—MISRECEPTION OF EVIDENCE

The Queen v. *Gibson*, 18 Q. B. D. 537, is a decision upon a Crown case reserved by a chairman of quarter sessions. The court (Lord Coleridge, C.J., Pollock, B., and Stephen, Mathew, and Wills, JJ.,) holding that when evidence not legally admissible against a prisoner is left to the jury, and they find him guilty, the conviction is bad, and this, notwithstanding that there was other evidence before them properly admitted, sufficient to warrant a conviction. The inadmissible evidence in this case consisted in a statement alleged to have been made to the prosecutor by a passer-by who was not called as a witness, and it was not shown that the statement had been made in the presence of the prisoner. The prisoner's counsel had not objected at the time the evidence was given to its reception, but, on the chairman charging the jury, he insisted that this statement should be withdrawn from their consideration, which the chairman refused to do, on the ground that the objection came too late. It was held, however, by the Judge that the conduct of counsel for the prisoner did not affect the question; that it is the duty of the Judge to take care that a prisoner is not convicted upon any but legal evidence.

ELECTION PETITION—TRIAL—CHANGE OF VENUE.

In *Arch* v. *Bentinck*, 18 Q. B. D. 548, an application was made to change the venue for the trial of an election petition. It was admitted that the only witness required to be called would be the respondent, and that the question in controversy was a question of law, and it was held that "special circumstances" existed within the meaning of the 31 & 32 Vict. c. 125, which warranted ordering the petition to be tried in London.

STATUTE OF LIMITATIONS—RIGHT OF REMAINDERMAN—RULE IN SHELLEY'S CASE.

In *Pedder* v. *Hunt*, 18 Q. B. D. 565, the Court of Appeal reversed a judgment of Manisty, J., giving a very obviously erroneous interpretation of the Statute of Limitations. A testator devised certain land to his sons successively for life, beginning with the youngest, and after their death "to be forever enjoyed by the oldest surviving heir of his oldest surviving son for their life or lives forever." The eldest surviving son being in possession, executed more than six years before his death a conveyance in fee to the defendant. He left one son who, more than six, but within twelve years, after his father's death brought this action to recover possession, claiming as devisee under the will of the testator. The heir-at-law of the testator was also joined as a co-plaintiff. Manisty, J., held that the eldest surviving son of the testator was the person last entitled to the particular estate upon which the plaintiffs' estate in remainder was expectant, within the Real Property Limitation Act, 1874, s. 2 (R.S.O. c. 108, s. 6); and that as he was not in possession at the time of his death in 1877, and more than six years had elapsed since his right had first accrued, the plaintiff had only six years from 1877 to bring the action, and consequently the plaintiffs' claim was barred. The Court of Appeal, however, point out that the conveyance by the eldest surviving son to the defendant, though purporting to be in fee, was a valid conveyance of the sons' life estate, and that the defendant himself therefore became the person entitled to the particular estate, and being in possession section 2 did not apply, and therefore the plaintiffs' action was in time. The claim of the plaintiffs was sought to be defeated on the ground that, under the rule in

Shelley's case, the eldest surviving son took an estate tail, which was barred by the conveyance to the defendant. But as to this point the Court of Appeal said the argument could not prevail, because where the limitation shows the testator's intent to have been that the heir shall take for life only, then the word "heir" is not to be treated as a word of limitation, and the rule does not apply. The intention of the will in question the Court of Appeal held to be to create a series of life estates for ever, each of such estates vesting in the heir for the time being of the last surviving son of the testator. But whether this disposition was valid in law the court omits to state, and the judgment, though in favour of the plaintiffs, is silent as to the rights of the plaintiffs *inter se*. It would appear from the case of *Seaward* v. *Willock*, 5 East. 198, that the disposition in remainder was invalid, and consequently that the heir-at-law of the testator would take. (See *Peterborough Investment Co.* v. *Patterson*, per Wilson, C.J., at p. 151.)

WILL—CODICIL EXECUTED ON MARGIN OF WILL—WILLS ACT (1 VICT. C. 26 S. 9), (R.S.O. C. 106 S. 12).

The only case in the Probate Division we think it necessary to notice is *Re Hughes*, 12 P. D. 107. In this case a testator executed a will prepared by a solicitor which was written on the first side of a sheet of paper. Desiring shortly before his death to make an alteration in the disposition of his property, he called in the aid of a neighbour, who wrote a codicil on the third page of the sheet of foolscap, beginning "The following alterations having been first made," and ending with an attestation clause in due form. The mark of the testator, however, and the signatures of the attesting witnesses, were written opposite the body of the will on the margin of the first page, the person who prepared the codicil being under the impression that as it was an alteration of the will it ought to be attested on the margin. (See. R.S.O. c. 106, s. 23.) It was held by Sir Jas. Hannen that the codicil was not duly executed, and probate was refused.

WILL—CONSTRUCTION—GIFT TO TITLED PERSON—LAPSE.

Proceeding now to the cases in the Chancery Division, *In re Whorwood*, *Ogle* v. *Sherborne*, 34 Chy. D. 446, deserves a brief notice. A testator, by his will, bequeathed his "Cromwell Cup," a silver cup which had originally belonged to the Protector, to Lord Sherborne and his heirs as an heirloom. The Lord Sherborne, who was living at the date of the will, predeceased the testator. Evidence was given showing that the testator had heard of his death, and also that he had had no personal acquaintance with him. His successor in the title claimed to be entitled to the bequest, but it was held by the Court of Appeal (affirming North, J.), that the bequest lapsed.

SOLICITOR AND CLIENT—STATUTE OF LIMITATIONS.

The case of *In re Bell*, *Lake* v. *Bell*, 34 Chy. D. 462, is one in which the principle unsuccessfully invoked in *Coyne* v. *Broddy*, 13 Ont. R. 173, was held to apply. In 1868, one Bell, acting for Willoughby, a mortgagee, effected a sale of the mortgaged premises, and retained in his hands the surplus after payment of the mortgage debt. The mortgagor died intestate and without heirs, or next of kin, and no administration was ever granted to his estate. Willoughby, the mortgagee, died in 1877, leaving his property to his widow whom he appointed his executrix. She died in 1878, having appointed Bell and one Ranshaw her executors. Upon the death of Bell in 1881, Ranshaw as being through Mrs. Willoughby the legal personal representative of Willoughby the mortgagee, claimed as against Bell's estate the surplus proceeds of the sale in 1868 of the mortgaged property. And it was held by Chitty, J., that Bell, having received this balance in a fiduciary character as agent for the mortgagee, and with full knowledge that the mortgagee was an express trustee of the surplus for the mortgagor, and in the circumstances, liable to a claim by the Crown, had brought himself within the principle laid down in *Burdick* v. *Garrick*, L. R. 5 Chy. 233, and that, therefore, the Statute of Limitations could not be set up in bar of the claim.

MARRIED WOMAN, INCAPACITY OF, TO ACT AS NEXT FRIEND—MARRIED WOMAN'S PROPERTY ACT, 1882, S 1.

In re Somerset, *Thynne* v. *St. Maur*, 34 Chy. D. 465, Chitty, J. decided that notwithstanding the *Married Woman's Property Act*, 1882, s. 1, (47 Vict. c. 19, s. 2, ss. 2), which enables a married woman to sue and be sued as if she were a *feme sole*, she is not rendered capable of acting as a next friend or guardian *ad litem* to infants.

Recent English Decisions.

PRACTICE—RECTIFICATION OF ORDER MADE UNDER MISTAKE — TRUSTEE — SUMMARY ORDER FOR PAYMENT AGAINST TRUSTEES' SOLICITOR.

In *Staniar* v. *Evans*, 34 Chy. D. 470, an order had been made directing a trustee to pay a balance of the trust fund amounting to £1,596 found to be in his hands into court, and authorizing his solicitors to deduct their costs from a sum of £660, part of the £1,596 which had come to their hands. This order was made on the supposition that the trustee was solvent, but it subsequently appeared that at the time the order was made the trustee was hopelessly insolvent, and an application was then made in the cause, and in the matter of the solicitors to compel the solicitors to pay the trust fund in their hands into court without any deduction for costs, which application North, J., granted, holding that the former order was erroneous in authorizing a deduction for costs, as that could only be properly directed when the trustees was solvent and able to pay the balance into court, and notwithstanding the former order, he made the order asked against the solicitors.

ADMINISTRATION OF ESTATE—PAYMENT OF DEBTS—DEFICIENCY OF GENERAL PERSONAL ESTATE—CONTRIBUTION—PORTIONS CHARGED ON REAL ESTATE.

In *Re Saunders-Davies*, *Saunders-Davies* v. *Saunders-Davies*, 34 Chy. D. 482, is a decision of North, J., upon a question arising in an administration action. The testator devised his real estates to his widow for life, remainder to trustees to raise £5,000 a piece for each of his younger children, remainder in strict settlement. The general personal estate was insufficient to pay the debts, and consequently the specifically bequeathed personal estate, and the real estate specifically devised had to contribute to make good the deficiency, and it was held that as between the portioners and the persons entitled to the real estate, the former was not bound to contribute to make good the deficiency, and that as between the real estate and the specifically bequeathed personalty, the former must contribute in proportion to its full value without any deduction in respect of the portions.

PAWNBROKER—REDEEMABLE PLEDGES—EXECUTION.

The short point decided by North, J. *In re Rollason*, *Rollason* v. *Rollason*, 34 Chy. D. 495, is, that a pawnbroker's interest in redeemable pledges may be taken in execution under a *fi.-fa.*

SOLICITOR—COMMON ORDER TO TAX—RETAINER.

In re Herbert, 34 Chy. D. 504, it was held by North, J.; that although under the common order to tax a solicitor's bill obtained by the client, the latter cannot dispute the retainer as to the whole bill, yet he may do so as to particular items or heads. In this case the bill of costs was divided into general costs, and costs relating to a particular matter. On the taxation the whole of the latter costs, except two small items, were taxed off as having been incurred without proper authority, and the taxation was upheld.

PRACTICE—SPECIAL INDORSEMENT—SPEEDY JUDGMENT—ORD. XIV. R. 1 (ONT. RULE 80).

Imbert-Terry v. *Carver*, 34 Chy. D. 506, was a motion for judgment under Ord. xiv., r. 1 (Ont. Rule 80). The writ was indorsed with claims for foreclosure or sale, and a receiver, besides payment of the debt and interest, and it was held by North, J., that it was not a specially indorsed writ within the meaning of Ord. xiv., r. 1, and the motion was refused.

POLICY OF LIFE INSURANCE—WIFE AND CHILDREN.

In re Seyton, *Seyton* v. *Satterthwaite*, 34 Chy. D. 511, North, J., dissented from a decision of Chitty, J., *In re Adams*, 23 Chy. D. 525. The point for decision was the proper construction of a policy of life assurance taken out on the life of the assured, for the benefit of his wife and children. It was contended that the wife was entitled to the whole amount of the policy for life with remainder to the children, but North, J., held that the wife and children were equally entitled as joint tenants.

WILL—CONSTRUCTION—MISDESCRIPTION.

In re Knight, *Knight* v. *Burgess*, 34 Chy. D. 518, is another case of construction. A testator by his will gave the lease of the house in which he should be living at the time of his decease to his wife. At the date of the will he was living in a house which he held for a short term at a rack rent; about six years afterwards he purchased a freehold house, to which he removed, and in which he died. It was claimed by the widow that the freehold house passed under the devise of the lease, but North, J., held that it did not.

CHARITABLE BEQUEST—SCHEME.

A question arose *In re Lea*, *Lea* v. *Cooke*, 34 Chy. D. 528, whether a legacy of £4,000 be-

queathed to "General" Booth—the head of the Salvation Army—"for the spread of the Gospel," could properly be paid to him without a scheme being first settled by the court for its application; and it was held by North, J., that it was not necessary to settle any scheme, but that its application might properly be left at the "General's" discretion.

GARNISHEE—EXECUTION CREDITOR—PRIORITY—PARTNER—RIGHTS OF PRINCIPAL AND SURETY.

Several points of law were decided by Stirling, J., in *Badely* v. *Consolidated Bank*, 34 Chy. D. 536. It is, however, necessary to notice only some of them here. In the first place he held, following the principle laid down in *Eyre* v. *McDowell*, 9 H. L. C. 619, and *Ex p. Whitehouse*, 32 Chy. D. 512, that a garnishee order only binds the beneficial interest of the debtor in the debt attached, and that where a valid charge has been created on the debt attached, prior to the garnishee order, the charge is entitled to priority over the garnishee order, even though the chargee have not previously notified the garnishee of his charge. On the same principle he also held that execution creditors were not, under their executions, entitled to seize the property of a third person, which such third person had permitted the execution creditor to retain in his possession and deal with as his own. He also held that where it was agreed by deed that a lender should advance money to a railway contractor; and the contractor, by way of security, assigned to him the benefit of his contract with the railway company and all the materials employed by him; and covenanted to repay all advances within six months, and the lender was to receive interest and one tenth of the profits, that upon the construction of the whole deed and the correspondence between the parties, the deed was a device and that the lender was a partner with the contractor, and as such was liable to indemnify a person who had a claim against the contractor, arising out of a guarantee given in connection with the contract. He further held that the rights of a surety against his principal are not exactly the same as those of the creditor to whom the surety is liable, and that although a creditor who has recovered judgment against one partner cannot sue another partner, yet that rule does not take away the rights of a surety of one partner as against another partner.

STATUTE OF LIMITATIONS, 3 & 4 W. 4, c. 27, s. 6—(R. S. O. c. 108, s. 7)—ADMINISTRATOR—CHATTEL REAL.

In re Williams, Davis v. *Williams*, 34 Chy. D. 558, is a decision of Stirling, J., upon the construction of the Statute of Limitations (see R. S. O. c. 108, s. 7), relating to chattel interests. This section provides that an administrator claiming chattel interests of the deceased shall be deemed to claim as if there had been no interval of time between the death of the deceased and the grant of letters of administration. The question raised was, whether under this section the time began to run under the Statute, from the death of the intestate, or the grant of letters of administration. Stirling, J., held the time ran from the death, and, but for this case, we should have thought the point too plain for argument. Counsel for the plaintiff ingeniously but unsuccessfully argued that the effect of the expression "no interval of time" must be, to bring the two events together, and, that therefore, time only runs from the grant. An important point was also decided *In re Bronson & Smith*, which is reported in a note to this case on p. 560, viz.: that where a legacy is charged on land in favour of a person who has died an infant, sec. 7 applies, and the time will begin to run under the Statute from the death of the legatee, and the legacy will be barred at the end of the statutory period, whether administration has been granted to the deceased legatee's estate or not.

STATUTE OF LIMITATIONS—ACKNOWLEDGEMENT OF DEBT.

In re Bethell, Bethell v. *Bethell*, 34 Chy. D. 561, was an action commenced in 1885, for the administration of C. Bethell's estate. A person brought in a claim for £541 16*s.* 7*d.*, of which £441 16*s.* 7*d.* was for commission and moneys lent before March, 1878, and £100 was in respect of a cheque undated, given by C. Bethell in March, 1878, and accepted by the claimant in discharge of a larger sum. The debtor went to the Cape of Good Hope in 1878, and died there in 1884. While on shipboard he wrote a letter asking the claimant to make out his account, and send it to him, and said: "I will send it you as soon as possible." The account was sent in March, 1878, and he afterwards wrote letters to the claimant, in which he said: "I will send you

a cheque as soon as I can," and "I will send some coin home as soon as ever I can." It was held by Stirling, J., that as to the £441 16*s.* 7*d.*, there had not been an acknowledgment sufficient to enable the court to infer an absolute promise to pay; and as to the cheque, it appeared that at the time of drawing it C. Bethell had not sufficient funds at his bank to meet it, and was negotiating a loan which he expected shortly to complete, and out of which the cheque would be paid. The loan was not completed, and the claimant was informed of the fact. The cheque remained undated, and was never presented, and it was held that the six years began to run when the letters was received stating that the contemplated loan would not be carried out, and that the claim was therefore barred.

SPECIFIC PERFORMANCE—POWER TO WITHDRAW—LAND INDEFINITE—LAND BELONGING TO ANOTHER—CONTRACT BY LETTERS.

Wylson v. *Dunn*, 34 Chy. D. 569, is the only case which remains to be noted. In this case Kekewich, J., had to consider several difficult questions arising out of the law regulating the specific performance of contracts. A proposal having been made that the two plaintiffs should buy a field of three acres, and that the defendant should then buy half an acre of it from them, one of the plaintiffs met the defendant on the field. The defendant wished to have a piece in one of the angles, and the plaintiff stepped so as to mark where a base line would cut off half an acre. Some days afterwards the same plaintiff wrote to the defendant asking her to let them have a letter agreeing to purchase the half-acre she had selected for £350, and, without expressly referring to this letter, the defendant wrote back stating that she was willing to take half an acre of the land as agreed upon for £350. The plaintiffs three months afterwards, on 4th November, obtained a contract with the owner for the purchase. On the 13th November the defendant threatened to withdraw, and on the 20th November her solicitors wrote that she did withdraw from the contract.

This action was brought to compel specific performance. As to the description of the half-acre, it was contended that it was uncertain; but Kekewich, J., was of opinion that the parties must be considered as having determined the exact piece of land to be taken, and that the exact location of the boundary was a mere question of measurement. He was also of opinion that the two letters together constituted a valid contract under the Statute of Frauds, and that the fact that the first letter was signed by only one of the plaintiffs was immaterial, because it was binding on the plaintiff who signed it, and it might be proved by parol that he was acting as agent for his co-plaintiff. He further held that, although on the ground of want of "mutuality" the defendant could have withdrawn from the contract at any time before the plaintiffs had actually purchased the property from their vendor, yet, that as soon as that contract had been concluded, the defendant's right of withdrawal on that ground was at an end: and that the doctrine of want of mutuality being a bar to specific performance does not apply to a contract, which to the knowledge of both parties, cannot be enforced by either, until the occurrence of a contingent event.

SELECTIONS.

LIABILITY OF PULLMAN CAR COMPANY.

In *Whitney* v. *Pullman Palace Car Co.*, Massachusetts Supreme Judicial Court, Jan. 6, 1887, the plaintiff, who had purchased a ticket to ride in a day parlour car of the Pullman Palace Car Company, had in her possession, and kept under her own personal control, a satchel containing valuables, and on reaching a station on the railroad on which the car was run, she, with her husband, left the car for a period of several minutes, leaving the satchel upon the window-sill in the car, from which it could be reached from the outside through an adjoining window, from which place it was stolen. *Held*, that the plaintiff was guilty of negligence in the care of her property, and

that the car company was not liable. And in *Lewis* v. *New York Cent. Sleeping-Car Co.*, Massachusetts Supreme Judicial Court, Jan. 7, 1887, it was held that a sleeping-car company is bound to use reasonable care to guard a passenger on its cars from theft, and if through want of such care the personal effects of a passenger, such as he might reasonably carry with him, are stolen, the company is liable. Also that the fact that the company has posted a notice in its cars in which it disclaimed liability for the loss of valuables by passengers cannot be availed of by way of a defence to an action by a passenger whose money, which he had placed beneath the pillow in his berth on going to sleep, was stolen, where it appears that the passenger did not see or know of such notice. So, in an action against a sleeping-car company by a passenger for money stolen from his berth while he was asleep, the fact that another passenger lost a sum of money in a similar manner at the same time is itself some evidence of the want of proper watchfulness by the porter of the car; and where there was evidence that the porter was found asleep in the early morning, and that he was required to be on duty for thirty-six hours continuously, which included two nights, a case is presented which must be submitted to the jury to determine whether or not there was negligence on the part of the company in guarding its passengers. The court said: "Where a person buys the right to the use of a berth in a sleeping-car it is entirely clear that the ticket which he receives is not intended to and does not express all the terms of the contract into which he enters. Such ticket, like the ordinary railroad ticket, is little more than a symbol intended to show to the agents in charge of the car that the possessor has entered into a contract with the company owning the car, by which he is entitled to passage in the car named on the ticket. Ordinarily, the only communication between the parties is that the passenger buys, and the agent of the car company sells, a ticket between two points; but the contract thereby entered into is implied from the nature and usages of the employment of the company. A sleeping-car company holds itself out to the world as furnishing safe and comfortable cars, and when it sells a ticket it impliedly stipulates to do so. It invites passengers to pay for and make use of its cars for sleeping; all parties knowing that during the greater part of the night the passenger will be asleep, powerless to protect himself or to guard his property. He cannot, like the guest of an inn, lock the door and guard against danger. He has no right to take any such steps to protect himself in a sleeping-car, but by the necessity of the case is dependent upon the owners and officers of the car to guard him and the property he has from danger, from thieves or otherwise. The law raises the duty on the part of the car company to afford him this protection. While it is not liable as a common carrier, or as an innholder, yet it is its clear duty to use reasonable care to guard the passengers from theft, and if through want of such care the personal effects of a passenger, such as he might reasonably carry with him, are stolen, the company is liable for it." See *Illinois Cent. R. Co.* v. *Handy*, 63 Miss. 609; *Bevis* v. *Balt. and Ohio R. Co.*, St. Louis Circ. Ct., 1 Ry. & Cory. L. J. 103.—*Albany Law Journal.*

SYMPATHY WITH CRIME AND CRIMINALS.

Our attention has been attracted to a communication to the *Nation* in which the writer says:

"I have a psychological question to propose: What is the exact state of mind under analysis of the small newspaper writer who always speaks of crime jocosely? Everybody must have observed it as one of the many ways in which the vulgar newspaper tends to vulgarize the public. For example why 'boodle alderman?'"

He then suggests that, perhaps, the cause of this peculiar predilection is that these jocose and slangy writers have a "secret and constitutional sympathy with crime." This is a hard saying and a harsh judgment. We freely acquit the witlings of the gallows and "pen" school of journalism of anything worse than a "plentiful lack of wit" (in every sense) and execrable taste. They offend in this sort, simply because they do not know any better, and yet their folly bears its evil fruit. The familiar and *quasi* funny

manner in which crimes are spoken of in the public prints tends to lessen in many minds the abhorrence in which should be held the offence and the offender. The defaulting cashier is, in point of fact, and in the language of sober sense, a fugitive from justice, an absconding felon whose deliberate thefts have brought suffering upon many, and ruin upon not a few innocent people. By these silly scribes he is denominated a "gay and festive cuss" who has "skipped" to Canada with his "boodle."

There is prevalent, however, a mode of manifesting sympathy, not with crime, but with criminals, which is far more detrimental to the interests of justice and the due administration of the law than the facetious folies of the funny man of the newspaper.

It often happens that as soon as a notorious criminal has been convicted, especially if he is a man of any note or of respectable antecedents, a reaction sets in, and the righteous indignation of an outraged community sensibly abates. The pendulum swings farther in the reverse than in the primary direction, and the next thing in order is a petition for the pardon of the offender, or at least for a mitigation of his punishment. The responsibility of people who sign these petitions is much graver than they usually realize. It is true that the executive is the actual pardoning power, but governors are *ex vi termini*, politicians, and the chief function of a politician, as he understands it, is to please the people. When, therefore, a petition of this description, signed by a large number of respectable citizens, is presented to the average governor, he will believe, or affect to believe, that the petitioners really mean what they say, and that the case presents a suitable occasion for the exercise of executive clemency. Everybody knows how easily such petitions are gotten up, that many sign thoughtlessly, many from indifference, many because they cannot say "no" to anything, many because they fear to offend the promoters of the proposed pardon, many because they are willing to "give the poor devil another chance," and not one in a hundred because he really believes, from even approximate knowledge of the facts, that the case is such as the petition represents it to be, or such as will justify executive interposition. And so the governor shifts the responsibility to the broad back of the "sovereign people," in the persons of the petitioners, justice is defeated, and the administration of the law is put in open shame.

That the pardoning power is often abused by undue leniency has long been a matter of complaint in many of the States. In some of them a remedy has been applied in the shape of a pardoning board, the procedure of which is of a judicial character. The fact remains, however, that much of the miscarriage of justice growing out of undue clemency is chargeable to the misplaced sympathy with criminals of impulsive and ill-balanced people. Such men sometimes swing from one extreme to the other, and although before conviction they may have been ready to violate the law themselves by lynching the offender, they afterwards became active workers for his pardon. The responsibility of undeserved pardons and mitigations of punishment should rest scarcely less upon indiscreet and unreasoning sympathizers than upon the executive himself.—*Central Law Journal.*

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

PRACTICE.

Boyd, C.] [April 22.

REGINA v. HALL.

Canada Temperance Act—Conviction—Adjournment to consider of judgment—32 & 33 Vict. c. 31, s. 46—Evidence—Certiorari.

Upon an information for an offence against the Canada Temperance Act a police magistrate heard all the evidence within the proper time, and at the close of the evidence announced in presence of the parties that judgment would be reserved for two weeks from that day—at which appointed time judgment was duly pronounced.

Held, that 32 & 33 Vict. c. 31, s. 46, which is to be read with the Canada Temperance Act by virtue of s. 107, applies only to an adjournment of the hearing or the further hearing of the information or complaint, which is quite a distinct thing from the adjudication or determination of the charge after the hearing is completed. Justices are not obliged to fix the fine or punishment at the instant of conviction, but may take time either for the purpose of informing themselves as to the legal penalty or the amount proper to be imposed, or taking advice as to the law applicable to the case.

Notwithstanding the adjournment after the close of the hearing for fourteen days in order to consider of and give judgment, the police magistrate had jurisdiction, and the conduct of the proceedings was not even irregular.

Regina v. *French*, 13 O. R. 80, distinguished.

There was an amendment of the original information by changing the date of the offence from the 10th to the 23rd of February, and the parties agreed that the evidence taken should stand for the purposes of the amended charge instead of having a needless repetition of it.

Held, that this course was unobjectionable.

The defendant's application for a *certiorari* was refused with costs.

Walter Read, for the defendant.

Aylesworth, for the magistrate.

Boyd, C.] [April 25.

MCCARTHY v. COOPER ET AL.

Costs—Set-off—Rule 436—Solicitor's lien.

Under Rule 436 a discretion is allowed as to whether or not there shall be a set-off of costs in the same action where costs are awarded to and against the parties; equitable considerations are allowed to enter into the disposal of the contention, and there is no strict right in the matter.

A direction to set-off costs was properly refused under the following circumstances: The plaintiff succeeded at the trial of the action, which was for specific performance of a contract for the sale of land and was given costs up to trial; on reference to a Master the plaintiff failed to shew title, and was ordered to pay to the defendant his costs subsequent to the trial, and to repay $500 of the purchase money which had been paid by the defendant; the defendant's solicitor asserted a lien upon the sum due by the plaintiff for costs, which could be recovered upon the bond given by the plaintiff for security for costs, whereas the $500 could not be recovered against the plaintiff, who was worth less.

W. H. Blake, for the plaintiff.

E. T. English, for the defendant.

Mr. Dalton, Q.C.] [April 25.

TOWN OF PETERBORO' v. MIDLAND RY. CO. ET AL.

Pleading—"Not guilty by statute"—Action for specific performance of contract.

"Not guilty by statute" cannot be pleaded to an action for specific performance of a contract; and the defence of not guilty irrespective of statutory authority is not admissible under the Judicature Act.

Watson, for the plaintiffs.

Aylesworth, for the defendants.

MUNICIPAL CASES.

RE HILBORN AND THE MUNICIPALITY OF PICKERING.

Ditches and Watercourses Act—Award of engineer—Parties affected by Act notified—Setting aside—Costs.

DARTNELL, J.J.—The award of the engineer directing the construction and maintenance of a ditch, the discharge from which would injuriously affect the interests of others, was set aside, because the parties so affected were not notified of the proceedings.

DIVISION COURTS.

CENTRAL BANK v. HODGSON; BICKLE, Claimant.

Interpleader—Claim for exemption—Chattel ordinarily used in the debtor's occupation.

DARTNELL, J.J.—A buggy used by a miller might be a chattel ordinarily used in his occupation, but the debtor having ceased to work at his employment,

Held, that he was not entitled to its exemption.

NOTES FROM UNITED STATES REPORTS.

BULLARD v. BOSTON & M ··· RAILROAD.

Trial—Statements by counsel not in evidence.

When counsel in argument makes a statement of a material fact not in evidence, against the objection of the other party, he violates the right of a fair trial, and his client assumes the burden of presenting and proving his claim that the decision was not affected thereby.—New Hampshire Supreme Court.—*Albany L. J.*, Nov. 13, 1886.

FOLLMAN v. CITY OF MANKATO.

Negligence—Contributory negligence of driver of private carriage—Injury to guest.

One who while riding in the private carriage of another, at his invitation, is injured by the negligence of a third party (a municipal corporation), may recover against the latter, notwithstanding the negligence of the owner of the carriage in driving it may have contributed to produce the injury, the plaintiff being without fault, and having no authority over the driver.—Minnesota Supreme Court.—*Ib.*

COLE v. MCKEY.

Landlord and tenant—Defect in premises—Liability of landlord to repair.

In the absence of any secret defect, deceit, warranty, or agreement on the part of the landlord to repair, he cannot be held liable to the tenant, or any one rightfully occupying under him, for an injury caused by the leased premises getting out of repair during the term, unless it be by reason of his own wrongful act, or failure to perform a known duty. This principle extends to cases where premises are leased to several tenants, and the injury has been caused by a defect in parts used by all of them in common, like halls and stairways.

Where a landlord has been guilty of some wrongful act or breach of positive duty in not repairing leased premises, he is not liable for an injury caused thereby to one occupying the premises without rightful authority, as to a subtenant in possession contrary to the terms of the original lease.—Wisconsin Supreme Court.—*Ib.*, Nov. 20.

SAGINAW GAS LIGHT CO. v. CITY OF SAGINAW.

Municipal corporation—Regulations for lighting streets—Grant of monopoly.

Authority "to cause the streets of a city to be lighted," and to make "reasonable regulations" with reference thereto, does not empower the city government to grant to one company the exclusive right to furnish gas for

thirty years, and such right is not legally "impaired" by a subsequent contract with another company to light the streets with electricity. Mich. Circuit Ct.—*Ib.*

COMMONWEALTH v. BRIANT.

Sale of intoxicating liquors to minor by agent.

Defendant, who was duly licensed to sell liquors to be drunk on the premises, was indicted for selling to a minor. It was claimed that the sale was made by the bartender without defendant's authority. On the trial the court instructed the jury that a sale by a bartender in his master's shop, and in the regular course of his master's lawful business, is *prima facie* a sale by the master, although the sale is an illegal sale; but that such a sale may be explained by showing that it was unauthorized. *Held*, error; that although it was evidence for the jury to consider, and which might warrant it in inferring that the sale was authorized by the defendant, yet that it was going too far to hold that it raised a presumption of fact that such was the case. The fact that a man employs a servant to conduct business expressly authorized by statute, and that the servant makes the unlawful sale in the course of it, do not necessarily overcome the presumption of innocence merely because the business is liquor selling, and may be carried beyond the statute limits. *Com.* v. *Putnam*, 4 Gray, 16; *Com.* v. *Dunbar*, 9 id. 298. It is true that a master would be liable civilly for such a sale as supposed in the instruction, but his civil liability exists even when he prohibits the sale, and therefore it does not stand upon a presumption that he authorized the sale, but upon the general ground of a master's liability for the unauthorized torts of his servants, whatever they may be. *George* v. *Goodey*, 128 Mass. 289; *Roberage* v. *Burnham*, 125 id. 277; Pub. Stat., ch. 100, § 24; *Byington* v. *Simpson*, 134 Mass. 169, 170. *Com.* v. *Holmes*, 119 id. 195, cited for the prosecution, went no further than to decide evidence that the defendant's son and clerk sold intoxicating liquors in a public house kept by the defendant was evidence of sale by the defendant sufficient to be submitted to the jury. See *Com.* v. *Edes*, 14 Mass. 406. N hin was said as to a presumption of fact. The evidence too was stronger than the case at bar. For there the defendant set up no license, and any sale was unlawful, and the question was whether the defendant gave authority to his clerk to sell at all. It might well be thought that the clerk would hardly undertake to sell in the way of business in his employer's house without some authority. But it is obviously much more likely that a servant employed to make lawful sales should occasionally go beyond his authority, which he might do by his taking a minor for an adult, than that he should go into a wholly unauthorized business. *Com.* v. *Nichols*, 10 Metc. 259, probably suggested the ruling of the court, and is perhaps a little nearer the case at bar than *Com.* v. *Holmes*, as the defendant seems to have sold liquors wholesale, and to have employed his clerk in that business, although not licensed to sell at retail. The court, in sustaining the defendant's exceptions, said a sale at retail by the clerk was only *prima facie* evidence of a sale by the master. It hardly said, and could not have decided, that such a sale was *prima facie* a sale by the master, or that it raised a presumption of fact. Moreover, if it were held that there was such a presumption of fact, in cases like *Com.* v. *Holmes* and *Com.* v. *Nichols*, it would not follow that there was the same presumption in the present case, still less that it was so plain that the jury could be instructed to act on it. Such presumptions are questions of fact and of degree. Mass. Sup. Jud. Ct.—*Ib.*, Nov. 27.

PEOPLE v. MONDON.

Criminal law—Evidence — Prisoner's testimony at coroner's inquest.

Defendant was an Italian labourer, having an imperfect understanding of the English language. He was under arrest, without warrant, charged with murder. A coroner's inquest was being held. The prisoner was taken by the sheriff, in whose custody he was, and whose power he could not resist, before the coroner's inquest then engaged in an investigation against himself. He did not go there voluntarily. He was sworn by the coroner as a witness: was without counsel, and without means to employ counsel. He was

not informed that he could not be compelled to be a witness against himself, nor that he need not give an answer which would tend to criminate himself.

Held, that the prisoner's attendance before the coroner was compulsory, and the testimony taken was involuntary and inadmissible under the Constitution. New York Court of Appeals, Oct. 5, 1886.—*Ib.*, Nov. 27.

ANNES v. MILWAUKEE & N. R. Co.

Carriers—Limitation of liability by contract—Free pass—Ordinary negligence.

Where the acceptance of a gratuitous pass from a railroad company "assumes all risks of accident, and especially agrees that the company shall not be liable, under any circumstances, whether of negligence of their agents or otherwise, for any injury to his person," the contract relieves the company from liability for injury to him by reason of a want of ordinary care of its servants, unless the same is expressly made a crime, but not from liability for gross negligence.—Wisconsin Supreme Court.—*Ib.*, Jan. 22, 1887.

UNITED STATES v. RAUSCHER.

Extradition—Trial for another crime.

The defendant, being charged with murder on board an American vessel on the high seas, fled to England, and was demanded of the Government of that country, and surrendered on this charge. The Circuit Court of the United States for the Southern District of New York, in which he was tried, did not proceed against him for murder, but for a minor offence not included in the treaty of extradition.

Held, 1. That a treaty to which the United States is a party is a law of the land, of which all courts, State and National, are to take judicial notice, and by the provisions of which they are to be governed, so far as they are capable of judicial enforcement.

2. That on a sound construction of the treaty under which the defendant was delivered to this country, and under the proceedings by which this was done, and acts of Congress on that subject, he cannot lawfully be tried for any other offence than murder.

3. The Treaty, the acts of Congress, and the proceedings by which he was extradited, clothe him with the right to exemption from trial for any other offence, until he has had an opportunity to return to the country from which he was taken for the purpose alone of trial for the offence specified in the demand for his surrender. The national honour also requires that good faith shall be kept with the country which surrendered him.—Supreme Ct. U. S.—*Ib.*, Feb. 5.

COTTRELL v. BABCOCK PRINTING PRESS MANUFACTURING COMPANY.

Good-will—Sale of—Solicitation of trade.

A partner, who upon dissolution of the partnership purchases the good-will, secures merely the right to conduct the old business at the old stand, and in the absence in the contract of dissolution of stipulations to the contrary the retiring partner may lawfully establish a similar business, even in the neighbourhood, and by advertisement, circular, card and personal solicitation invite the public generally, including the customers of the old firm, to come there and purchase of him.

But trade must be so solicited as not to lead any one to believe that the machinery offered for sale is manufactured by the partner who purchased the good-will, or that he is the successor to the old firm, or that the owner of the good-will is not carrying the business formerly conducted by the old firm.—Supreme Court, Connecticut.—*Ib.*, Feb. 12.

CORRESPONDENCE.

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45 *VICT. CH.* 11, *SEC.* 6, *ONT.*

To the Editor of the LAW JOURNAL:

SIR,—Will any of your learned readers explain why 45 Vict. cap. 11, sec. 6, Ont., was enacted? What is the effect of the enactment?

Yours truly, INQUIRER.

Kingston, April 29, 1887.

ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

Negligence in imminent peril.—*American Law Register*, October 1886.

Warranties and conditions in sales.—*American Law Review*, September—October, 1886.

Should trial by jury be abolished in civil cases.—*Ib.*

The legal aspects of industrial copartnership.—*Ib.*

Assignments of patents.—*Ib.*

An attorney's general or retaining lien (1. Introductory; 2. Upon papers and property; 3. Upon moneys collected).—*Ib.*

An attorney's special lien on judgments.—*Ib.*, November—December, 1886,

Limited partnerships.—*Ib.*

Foreclosure of railway mortgages —*Ib.*

The responsibility of banks and bankers for their correspondents and their notaries.—*Ib.*

Equity of partnership creditors.—*Albany Law Journal*, November 6.

The labour question.—*Chicago Law Times*, November, 1886.

The legal aspects of the boycott.—*Ib.*

Our Grand Jury system.—*Criminal Law Magazine*, December, 1886.

The boycott and its methods.—*Ib.*, January, 1887.

Homicide by mob—Evidence of motive—Conspiracy.—*Ib.*

Distribution of assets on mistaken construction of will.—*Irish Law Times*, October 23, 1886.

Unauthorized expenditure by directors.—*Ib.*, November 6.

Negligence of railway passenger in immediate peril.—*Ib.*, November 13.

Are shares in companies choses in action.—*Ib.*, December 11.

The fiduciary position of company promoters.—*Ib.*, *et seq.*

Attaining majority.—*Ib.*, February 5, 1887.

Construction of covenants in restraint of trade.—*Ib.*, February 12.

The currency of post office orders.—*Law Journal*, England, February 12.

Jurisdiction over estates of insane persons.—*American Law Review*, January—February.

Strikes and boycotts as indictable conspiracies at common law.—*Ib.*

The principle of *stare decisis* considered.—*American Law Register*, December, 1886.

The law of subscriptions (Consideration for voluntary subscriptions—Whether a payee must be named—Withdrawal—Joint or several—Dependent on, or independent of total amount being subscribed—Misrepresentation—Release of unpaid subscriptions—Conditions precedent to recovery on).—*Ib.*, January, 1887.

Limitations on legislative contracts.—*Ib.*, Feb.

Sale of personal property to defraud creditors.—*Central Law Journal*, November 5, 1886.

The doctrine of imputed negligence as applied to children.—*Ib.*, November 12.

The rule as regards fixtures as between vendor and vendee.—*Ib.*, November 19.

Nuisance by noise in a private house.—*Ib.*, November 26.

Names of corporations (Must have name—More than one—How acquired—Failure to name—Change of—Protected in use of—Suits—Misnomer and variance—Deeds, grant, devises).—*Ib.*, December 3.

Liabilities of railway companies for injuries to their employees.—*Ib.*, December 10.

Duress (Definition of—Who may avail himself of—Classes of—Criminal cases).—*Ib.*, January 28, 1887.

Covenant by railway company to do certain things in consideration of grant of right of way—What runs with land.—*Ib.*

Power of a corporation to remove directors for cause.—*Ib.*, February 4.

Municipal liability for defective sewerage.—*Ib.*, February 11.

Liability of joint executors.—*Ib.*, February 18.

Implied warranties in the letting of premises.—*Ib.*

Libels on the dead.—*Irish Law Times*, Feb. 26.

The English County Court system.—*Law Quarterly Review*, January.

The international copyright union.—*Ib.*

Possession in the Roman law.—*Ib.*

Compensation for misdescription in sales of land.—*Ib.*

ALL who know Judge Bleckley and recall his long waving hair and beard will appreciate this story: He was on his way to the Supreme Court one morning, when he was accosted by a little street gamin, with an exceedingly dirty face, with a customary "Shine, sir?" He was quite importunate, and the judge, being impressed with the oppressive untidiness of the boy's face, said: "I don't want a shine, but if you will go wash your face I will give you a dime." "All right, sir." "Well, let me see you do it." The boy went over to an artesian hydrant and made his ablution. Returning, he held out his hand for the dime. The judge said: "Well, sir, you've earned your money, here it is." The boy said: "I don't want your money, old fellow; you take it and have your hair cut," saying which he scampered off. The judge thought it so good a story that he told it himself.—*Augusta Chronicle.*

FLOTSAM AND JETSAM.

THE case of a would-be suicide refusing to pay the doctor who saved his life, is matched by an incident which occurred in Berlin, and which is now just going the round of the German medical journals, concerning a man who went into a beer-shop and poisoned himself there. The landlord despatched his daughter for a doctor, who did what he could for the man, and sent him to the hospital. When he recovered he refused to pay the doctor on the ground that he had not desired his services. The police, too, declined to settle the account, as also did the landlord. It amounted only to the modest sum of four shillings. The Berlin Medical Defence Society then took the matter up and sued the landlord, who in turn was defended by the Publicans' Society; and, though the matter has now been in litigation for more than four years, the doctor, instead of getting his four shillings, has had to pay the costs, which, to us, considering the circumstances, appear little enough, being only £2 7s. 3d., yet, nevertheless, too much good money to throw after bad.—*Central Law Journal.*

A DAILY paper publishes the following:

"The famous Blue Grotto of Capri has given rise to one of the most curious lawsuits which have ever been heard. The *Vita Napolitana*, writing on the subject, says that some years ago an American became possessor of that part of Capri under which the Blue Grotto is situated, and the owner asserts now that as the surface of the ground belongs to him, he is also the owner of everything below it, which in this case happens to be the grotto, which, however, is at present the possession of the little town of Capri, the administration of which has not the slightest inclination of giving up what is its own to the Yankee. The latter, on being informed of this, has begun a lawsuit, the consequences of which, whether he wins or loses the case, may be very serious. In the former case he can permanently injure the grotto by making a hole through the ceiling, by which the marvellous reflections in the interior will be lost forever. If he wins it, the chances are that he will close it to the public."

We have not the pleasure of having the *Vita Napolitana* among our exchanges, but we have no doubt our Canadian *confrère* has cited its paragraph correctly. What the Italian law on the subject may be we do not know; but we should think that if the American plaintiff has not the right to the grotto, he can hardly have the right to bore a hole into it, which would utterly destroy its value, and do him no good. His countrymen would hardly wish to kill all the fish within the three-mile limit—a parallel case.

Law Society of Upper Canada.

OSGOODE HALL.

CURRICULUM.

1. A graduate in the Faculty of Arts, in any university in Her Majesty's dominions empowered to grant such degrees, shall be entitled to admission on the books of the society as a Student-at-Law, upon conforming with clause four of this curriculum, and presenting (in person) to Convocation his diploma or proper certificate of his having received his degree, without further examination by the Society.

2. A student of any university in the Province of Ontario, who shall present (in person) a certificate of having passed, within four years of his application, an examination in the subjects prescribed in this curriculum for the Student-at-Law Examination, shall be entitled to admission on the books of the Society as a Student-at-Law, or passed as an Articled Clerk (as the case may be) on conforming with clause four of this curriculum, without any further examination by the Society.

3. Every other candidate for admission to the Society as a Student-at-Law, or to be passed as an Articled Clerk, must pass a satisfactory examination in the subjects and books prescribed for such examination, and conform with clause four of this curriculum.

4. Every candidate for admission as a Student-at-Law, or Articled Clerk, shall file with the secretary, four weeks before the term in which he intends to come up, a notice (on prescribed form), signed by a Bencher, and pay $1 fee; and, on or before the day of presentation or examination, file with the secretary a petition and a presentation signed by a Barrister (forms prescribed) and pay prescribed fee.

Law Society of Upper Canada.

5. The Law Society Terms are as follows:

Hilary Term, first Monday in February, lasting two weeks.

Easter Term, third Monday in May, lasting three weeks.

Trinity Term, first Monday in September, lasting two weeks.

Michaelmas Term, third Monday in November, lasting three weeks.

6. The primary examinations for Students-at-Law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity and Michaelmas Terms.

7. Graduates and matriculants of universities will present their diplomas and certificates on the third Thursday before each term at 11 a.m.

8. The First Intermediate examination will begin on the second Tuesday before each term at 9 a.m. Oral on the Wednesday at 2 p.m.

9. The Second Intermediate Examination will begin on the second Thursday before each Term at 9 a.m. Oral on the Friday at 2 p.m.

10. The Solicitors' examination will begin on the Tuesday next before each term at 9 a.m. Oral on the Thursday at 2.30 p.m.

11. The Barristers' examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2.30 p.m.

12. Articles and assignments must not be sent to the Secretary of the Law Society, but must be filed with either the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

13. Full term of five years, or, in the case of graduates of three years, under articles must be served before certificates of fitness can be granted.

14. Service under articles is effectual only after the Primary examination has been passed.

15. A Student-at-Law is required to pass the First Intermediate examination in his third year, and the Second Intermediate in his fourth year, unless a graduate, in which case the First shall be in his second year and his Second in the first six months of his third year. One year must elapse between First and Second Intermediates. See further, R.S.O., ch. 140, sec. 6, sub-secs. 2 and 3.

16. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive certificates of fitness, examinations passed before or during Term shall be construed as passed at the actual date of the examination, or as of the first day of Term, whichever shall be most favourable to the Student or Clerk, and all students entered on the books of the Society during any Term shall be deemed to have been so entered on the first day of the Term.

17. Candidates for call to the Bar must give notice, signed by a Bencher, during the preceding Term.

18. Candidates for call or certificate of fitness are required to file with the secretary their papers and pay their fees on or before the third Saturday before Term. Any candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

19. No information can be given as to marks obtained at examinations.

20. An Intermediate Certificate is not taken in lieu of Primary Examination.

FEES

Notice Fees	$1 00
Students' Admission Fee	50 00
Articled Clerk's Fees	40 00
Solicitor's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fee	1 00
Fee in special cases additional to the above	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

BOOKS AND SUBJECTS FOR EXAMINATIONS.

Primary Examination Curriculum for 1887, 1888, 1889 and 1890.

1. *Students-at-law.*

CLASSICS.

1887.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. I.
- Cæsar, Bellum Britannicum.

1888.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. IV.
- Cæsar, B. G. I. (1-33.)
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. I.

1889.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. V.
- Cæsar, B. G. I. (1-33)

1890
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cicero, In Catilinam, II.
- Virgil. Æneid, B V.
- Cæsar, Bellum Britannicum.

Translation from English into Latin Prose, involving a knowledge of the first forty exercises in Bradley's Arnold's Composition, and re-translation of single passages.

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

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.

Critical reading of a Selected Poem:—
1887—Thomson, The Seasons, Autumn and Winter.
1888—Cowper, the Task, Bb. III. and IV.
1889—Scott, Lay of the Last Minstrel.
1890—Byron, the Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek:—

FRENCH.

A paper on Grammar.
Translation from English into French Prose.
1886, 1888, 1890 } Souvestre, Un Philosophe sous le toits.
1887, 1889 } Lamartine, Christophe Colomb.

or, NATURAL PHILOSOPHY.

Books—Arnott's Elements of Physics and Somerville's Physical Geography; *or* Peck's Ganot's Popular Physics and Somerville's Physical Geography.

ARTICLED CLERKS.

In the years 1887, 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidates, as noted above for Students-at-Law.
Arithmetic.
Euclid, Bb. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography—North America and Europe.
Elements of Book-Keeping.

RULE RE SERVICE OF ARTICLED CLERKS.

From and after the 7th day of September, 1885, no person then or thereafter bound by articles of clerkship to any solicitor, shall, during the term of service mentioned in such articles, hold any office or engage in any employment whatsoever, other than the employment of clerk to such solicitor, and his partner or partners (if any) and his Toronto agent, with the consent of such solicitors in the business, practice, or employment of a solicitor.

First Intermediate.

Williams on Real Property, Leith's Edition; Smith's Manual of Common Law; Smith's Manual of Equity; Anson on Contracts; the Act respecting the Court of Chancery; the Canadian Statutes relating to Bills of Exchange and Promissory Notes; and cap. 117, Revised Statutes of Ontario and amending Acts.

Three scholarships can be competed for in connection with this intermediate by candidates who obtain 75 per cent. of the maximum number of marks.

Second Intermediate.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada; the Ontario Judicature Act. Revised Statutes of Ontario, chaps. 95, 107, 136.

Three scholarships can be competed for in connection with this intermediate by candidates who obtain 75 per cent. of the maximum number of marks.

For Certificate of Fitness.

Taylor on Titles; Taylor's Equity Jurisprudence; Hawkins on Wills; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and Pleading and Practice of the Courts.

For Call.

Blackstone, vol. 1, containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris' Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, the Statute Law and Pleadings and Practice of the Courts.

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

Copies of Rules, price 25 cents, can be obtained from Messrs. Rowsell & Hutchison, King Street East, Toronto.