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FRANCE, with other continental nations, recognizes the dangers of Nihilism and anarchy. The French Senate has passed a bill imposing the death penalty upon persons convicted of using explosives for unlawful purposes.

THE legislature of Kentucky makes it a misdemeanour for any person holding a municipal or state office to use or accept from any railroad, steamboat company, or other common carrier, a free pass or a reduced rate not common to the public.

THE decision of Mr. Justice Doherty in the Quebec Court of Queen's Bench has had the result of involving the defendants, against whom the decision was given, in an unpleasant multiplicity of suits. It may be remembered that the manager of the Academy of Music in Montreal advertised that Madame Scalchi, the singer, would appear on a certain date with Madame Albani at his Academy, and the manager subsequently discovering that the former could not sing at the concert took no pains to make the fact known to the public. The action taken by the plaintiff, who attended the concert, for the price of his ticket resulted in a verdict in his favour with costs, and a number of similar actions are being taken by indignant Montrealers, who claim that the public is continually deceived by the representations of theatrical and other managers, and in this they certainly have the support of the learned judge, who expressed himself very strongly upon the subject.

COMMENTS ON CURRENT ENGLISH DECISIONS.

(Law Reports for April—*Continued.*)

SHERIFF'S OFFICER, ACTION BY, FOR FEES.

In *Smith* v. *Broadbent* (1892), 1 Q.B. 551, the plaintiff was a sheriff's officer, and brought the action to recover from the defendant, an execution creditor, for expenses incurred by him under the defendant's execution. The County Court judge dismissed the action, and Hawkins and Wills, JJ., upheld his decision, holding that the sheriff alone had the right of action to recover expenses incurred by his bailiffs.

CRIMINAL LAW—SUMMARY CONVICTION—INFORMATION DISCLOSING TWO OFFENCES—DEFECT IN SUBSTANCE—OBJECTION NOT TO BE ALLOWED—SUMMARY JURISDICTION ACT, 1848 (11 & 12 VICT., C. 43), SS. 1, 10 (R.S.C., C. 178, SS. 26, 28).

Rodgers v. *Richards* (1892), 1 Q.B. 555, was a case stated by a magistrate for the opinion of the court. On the hearing of the charge before the magistrate, it was objected that the information disclosed two offences, contrary to the provisions of the Summary Jurisdiction Act, 1848, s. 10 (R.S.C., c. 178, s. 26), and the magistrate allowed the objection, and the question was whether he was right in so doing. Hawkins and Wills, JJ., held that he was not, on the ground that the objection was a defect in substance which, under s. 1 of the Act (R.S.C., c. 174, s. 28), the magistrate had no power to allow, but that he might properly refuse to allow the prosecutor to proceed on both charges, and, if necessary, might adjourn the hearing if the defendant had been misled.

VETERINARY SURGEON—UNQUALIFIED PERSON—"VETERINARY FORGE"—VETERINARY SURGEONS' ACT, 1881 (44 & 45 VICT., C. 62), S. 17, S-S. 1 (R.S.O., C. 39, S. 34, S-S. 3).

The Royal College of Veterinary Surgeons v. *Robinson* (1892), 1 Q.B. 557, was a prosecution instituted against a person for holding himself out as a veterinary surgeon, not being duly qualified, contrary to the provisions of the Veterinary Surgeons' Act, 1881, s. 17, s-s. 1, which is similar in its terms to R.S.O., c. 39, s. 34, s-s. 3. The defendant was a shoeing smith, and was not possessed of the qualification of a veterinary surgeon as specified in the Act: but he had for the last twenty-five years described his place of business as a "veterinary forge," and it was held by Hawkins and Wills, JJ., that these words constituted a description stating that he was qualified to practise a branch of veterinary surgery within the meaning of the statute, and that he was liable to the penalty thereby imposed.

None of the cases in the Probate Division call for any notice here.

COMPANY—DIRECTOR—PRINCIPAL AND AGENT—QUALIFICATION SHARES—AGREEMENT BY PROMOTER TO INDEMNIFY DIRECTOR AGAINST LOSS ON SHARES—SECRET PROFIT.

In re North Australian Territory Co. (1892), 1 Ch. 322, is a decision of the Court of Appeal (Lindley, Bowen, and Fry, L.JJ.), reversing Kekewich, J. which seems to carry the law against directors making secret profit further than any previous decision. The case was shortly this: A Mr. Archer was applied to by the promoter of a company to become a director, and the promoter made a secret agreement with him to take the shares it was necessary for him to purchase in order to qualify himself as a director at the same price which Archer should pay for them. Archer bought fifty shares with his own money, and became a director. The company subsequently became insolvent and the shares worthless. Archer retired, and the promoter took over his shares at the price he had paid for them. The liquidators of the company now claimed to recover from Archer the amount he had thus received for his shares, as being a secret profit made by him to which the company was entitled. Kekewich, J., held that the liquidators were not entitled to recover, but the Court of Appeal con-

sidered they were, and that the case was within the principle laid down in *Hayes' Case*, L.R. 10 Ch. 593.

LUNATIC—SALE OF PROPERTY OF LUNATIC.

re Ware (1892), 1 Ch. 344, the Court of Appeal (Lindley, Bowen, and Fry, L.JJ.) held that under a statute empowering the court to authorize the sale of a lunatic's real estate (see R.S.O., c. 54, s. 11) the court may sanction a sale of real estate in consideration of a perpetual rent charge, if it is shown that such a sale would be for the benefit of the lunatic.

WILL—CONSTRUCTION—"EFFECTS," MEANING OF—REAL ESTATE—INTENTION OF TESTATOR.

In *Hall* v. *Hall* (1892), 1 Ch. 361, the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) affirmed the opinion of Fry, L.J. (1891), 3 Ch. 389 (noted *ante* p. 681), holding that under the word "effects" real estate would pass, there being a sufficient indication that such was the testator's intention from the wording of the will and the circumstances of the estate.

WILL—FORFEITURE CLAUSE—ANNUITY—INTERFERENCE OR ATTEMPT TO INTERFERE IN MANAGEMENT OF ESTATE—FRIVOLOUS ACTION AGAINST TRUSTEES.

Adams v. *Adams* (1892), 1 Ch, 369, shows that a testator may to some extent protect his estate from being wasted by the litigous propensities of those whom he seeks to benefit by providing, as did the testator in this case, that if they interfere or attempt to interfere in the management of the estate their interest under the will shall be forfeited. The plaintiff was entitled to an annuity subject to such a condition; but not having the fear of the consequences before his eyes, he brought this action complaining that his annuity had not been paid, that the trustees were wasting the estate, and that an outstanding mortgage against the estate had not been paid, and claiming an injunction and receiver. Fry, L.J., at the trial, having found that the causes of action were frivolous, dismissed the action, and, upon the counterclaim of the defendants, declared that the plaintiff's annuity was forfeited (see *ante* vol. xxvii., p. 40), and this decision the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) affirmed, also holding that, even assuming the mortgage in question was a debt of the testator's (of which there was no evidence) and that the defendants ought to have paid it off, the plaintiff, having forfeited his annuity, could not maintain the action on that ground. The latter proposition, however, does not seem to be altogether satisfactory, and is obviously *obiter*; for if the plaintiff were prejudiced by the non-exoneration of the estate charged with the payment of his annuity from liability to the mortgage in question, then the action would have been justified and the annuity would not have been forfeited, unless the fact that the preferring other unfounded claims would work a forfeiture even though some *bonâ fide* ground of complaint was actually proved, but that their lordships do not say. Both Lindley and Kay, L.JJ., expressly say that if the plaintiff had *any* reason to complain of his trustees and was seeking the protection of the court to vindicate and establish his rights, that would not be such an interference as would amount to a forfeiture of his interest.

CONVERSION—LAND DEVISED IN TRUST FOR SALE—PARTIAL FAILURE OF TRUSTS—INTESTACY—REAL OR PERSONAL ESTATE.

In re Richerson Scales v. *Heyhoe* (1892), 1 Ch. 379, is a decision of Chitty, J., upon a question which is now not likely to arise very often in Ontario since the Devolution of Estates Act. As regards estates not subject to that Act, however, the case is still of interest. The point was simply this: A testator devised real estate upon trust for conversion into personalty to be held on trusts which, in the result, partially failed. The question was, who was entitled to the proceeds of the land sold, and the land unsold as to which the trust had failed; and the conclusion to which Chitty, J., came was that there was an implied resulting trust in favour of the testator's heir, who would take the property as personalty; and the testator's heir being dead, it passed to his personal representative.

EQUITABLE MORTGAGE BY DEPOSIT—SIX MONTHS' NOTICE—INTEREST IN LIEU OF NOTICE—(51 VICT., C. 15, S. 2 (O.)).

In *Fitzgerald* v. *Mellerish* (1892), 1 Ch. 385, Chitty, J., decides that the rule requiring six months' notice or six months' interest in lieu of notice of payment of a mortgage debt after the time fixed for payment, does not apply to the case of an equitable mortgage by deposit of title deeds, on the ground that the nature of the transaction shows that the loan is intended to be of a mere temporary character, and it is unreasonable to infer that the parties intended notice should be given. In the present case no day was named for payment, and no request was ever made to execute a legal mortgage. Even as regards legal mortgages made after 1st July, 1888, the right to call for six months' notice or six months' interest no longer exists in Ontario unless expressly stipulated for. See 51 Vict., c. 15, s. 2 (O.).

SETTLEMENT—INFANT—ELECTION—MARRIED WOMAN—RESTRAINT ON ANTICIPATION.

Hamilton v. *Hamilton* (1892), 1 Ch. 396, may be regarded as an instance of the application of the equitable maxim that "he who seeks equity must do equity." By an antenuptial settlement made in 1879, while the plaintiff was an infant (and to which the sanction of the court was not obtained), she covenanted to settle after acquired property. She was, among other benefits, given certain life interests without power of anticipation. She was divorced, and brought the present action to obtain a declaration that the covenant was inoperative. Pending the action, she married again. North, J., held that the bringing of the action was not of itself an election to avoid the covenant, but that as it was merely voidable she was bound to elect whether she would avoid it or not, and could not be permitted to defer her election until the result of events should show whether it would be more beneficial for her to do so or not, and he made a declaration that if she elected to avoid the covenant, her interests in other property under the settlement, and also in a house settled by a deed or even date recited in the settlement, ought to be impounded to compensate those who should lose by her election, but that such declaration was not to affect, during her existing coverture, the income she was restrained from anticipating.

COMPANY—WINDING UP—PETITION FOR WINDING UP BY SHAREHOLDER IN DEFAULT—CONTRIBUTORY—CALLS IN ARREAR—(52 VICT., C. 32, S. 5 (D.)).

In re Crystal Reef Gold Mining Co. (1892), 1 Ch. 408, shareholders of a company who were in default for non-payment of calls, presented a petition for the winding up of the company. It was objected that by reason of their default the petitioners had no *locus standi*, and that the petition ought to be dismissed on that ground; but North, J., held that although the court ought not under such circumstances, as a general rule, to hear the petition until the calls in arrear have been paid, or at all events paid into court, yet on the undertaking of the petitioners to submit to any order the court might make as to the payment of the calls in arrear he heard the petition; and having dismissed it on the merits, he then made an order enforcing the payment of the calls due by the petitioners.

MORTGAGOR AND MORTGAGEE—FIXTURES—MORTGAGE OF FIXTURES "NOW OR HEREAFTER TO BE PLACED" ON MORTGAGED PREMISES.

Cumberland Union Banking Co. v. *Maryport H. I. & S. Co.* (1892), 1 Ch. 415, involves a simple question under the law of mortgage. The plaintiff held a mortgage on the property of a limited company who were lessees of a colliery. The mortgage covered all fixtures then "or thereafter to be placed" on the mortgaged lands. After the execution of the mortgage the mortgagors contracted for the erection of some additional machinery on the premises, which contract was subject to a stipulation that the machinery should continue to be the property of the vendors until paid for. On a contest between the mortgagees and the vendors, who were unpaid, as to this machinery, it was held that the vendors were entitled to remove it, and that the mortgagors could not confer any better title to it on the mortgagees than they had themselves.

SPECIFIC PERFORMANCE—COVENANT BY LESSOR TO EMPLOY RESIDENT PORTER FOR SERVICE OF TENANT—INJUNCTION—LESSOR AND LESSEE—FLATS.

In *Ryan* v. *Mutual T. W. Chambers Association* (1892), 1 Ch. 427, A. L. Smith, J., granted an injunction to compel the specific performance of a covenant by a lessor of apartments whereby he agreed to employ a resident porter for the service of the plaintiff and other tenants. The learned judge appears to have had some doubt whether a covenant of that kind can thus be specifically enforced; and in the event of the Court of Appeal coming to the conclusion that he was wrong in granting an injunction, he assessed the damages which the plaintiff was entitled to for breach of the covenant. We are inclined to think the learned judge's doubt was not without a good foundation.

COMPANY—DEBENTURE-HOLDERS—CHARGE ON COMPANY'S ASSETS—RECEIVER—SOLICITOR'S LIEN ON TITLE DEEDS OF COMPANY—PRIORITY—MORTGAGOR AND MORTGAGEE—"FLOATING SECURITY."

Brunton v. *Electrical Engineering Company* (1892), 1 Ch. 434, was a contest for priority between the debenture-holders of a company, whose debentures were a charge on all its property, and the solicitor of the company, who claimed a lien as solicitor on the title deeds of the company. The debentures provided that they were to rank *pari passu* as a first charge, and to be a "floating security," but so that the company should "not be at liberty to create any mortgage or

charge in priority to said debentures." An order was made in a debenture-holder's action, appointing a receiver, and the company was ordered to deliver up to him all documents in its possession relating to the property covered by the debentures. The title deeds of the company were in the hands of its solicitor, who claimed a lien thereon for costs incurred prior to the appointment. Kekewich, J., held that so long as the debentures constituted a "floating security," *i.e.*, up to the time of the appointment of a receiver, the company had power to carry on its business in the ordinary way and to employ solicitors; and though the company could not expressly give the solicitors employed a charge on the property of the company, the solicitors were not prevented from acquiring under the general law the ordinary lien of a solicitor, and that a lien so acquired was not a charge created by the company, and therefore he upheld the lien as against the debenture-holders.

COMPANY—WINDING UP—DEBENTURE-HOLDERS—CUSTODY OF BOOKS AND DOCUMENTS—LIQUIDATOR AND RECEIVER AND MANAGER, RIGHTS OF, INTER SE.

In *Engel* v. *South Metropolitan Brewing Co.* (1892), 1 Ch. 442, we have another decision on company law by Kekewich, J. In this case the contest was between the liquidator of a company ordered to be wound up and the receiver and manager of the company appointed at the suit of debenture-holders, whose debentures were a charge on the property of the company, as to the right to the custody of the books and documents of the company, and it was held that the liquidator was entitled to the custody of such of the books and documents of the company as related to its management and business and were not necessary to support the title of the debenture-holders. By the order appointing the receiver and manager it had been directed that all the books and documents relating to the property of the company should be delivered to him, and under it he had taken possession of all the books of the company and had the custody; but Kekewich, J., held that on the application of the liquidator the court might from time to time vary the order as might be deemed expedient, and he varied it accordingly by directing the receiver to deliver to the liquidator certain of the documents, subject to an undertaking by the latter to produce them to the receiver when required.

ADMINISTRATION—EXAMINATION—LAND DEVISED LIABLE TO EXECUTION—LOCKE KING'S ACT—DEVISE CUM MERE—(R.S.O., c. 109, s. 37).

In re Anthony, Anthony v. *Anthony* (1892), 1 Ch. 450, Kekewich, J., decided that where land has been delivered in execution under an elegit against a testator the devisee of the land takes it *cum onere*, and is not entitled to have the land exonerated from the execution by the personal estate. It is perhaps questionable whether this decision would apply in Ontario, owing to the narrower wording of R.S.O., c. 109, s. 37, which appears merely to apply to lands subject to mortgage. Since the Devolution of Estates Act the right to claim exoneration of land devised, from the charges thereon, would seem to extend, wherever it exists, not exclusively to the personal estate, but generally to the undisposed of estate, real or personal, as personal estate can, we apprehend, no longer be deemed the primary fund for the payment of debts.

Notes and Selections.

EMPLOYERS' LIABILITY ACT—"WAY"—The word "way" in s. 1., s-s. 1 (R.S.O., c. 141, s. 3, s-s. 1), means not a mere right of way, but a path defined and marked out in some way for the use of the work people. *Willetts* v. *Watt*, 4 L.G. 190.

RECOMMENDATION TO MERCY.—A French jury has seen its way to adding to a verdict of guilty against the anarchist Ravachol the words "under extenuating circumstances," with the legal result that the court has been bound to gi e effect to the qualification and to sentence him to penal servitude for life instead of to death. This qualified French verdict is, of course, the counterpart of the "recommendation to mercy" over here; but it is worth while to point out that the recommendation to mercy is entirely outside the law, and that, though it is customary to "forward the recommendation to the proper quarter," the judge is under no obligation to do so or pay any attention whatever to the recommendation. And, as a matter of fact, prisoners capitally convicted have been more than once hanged in quite recent times in spite of the recommendation.—*Law Journal.*

INTEREST ON TRADESMEN'S ACCOUNTS.—In the days of cash versus credit it is not uncommon for tradesmen to append to an account rendered a note to the effect that interest will be charged after twelve months' credit. A notice of this kind came before the court in *Re Lloyd Edwards* (61 L.J., c. 23), and it was argued on the authority of *Bruce* v. *Hunter* (15 East 223) that "not objecting to a charge of interest amounts to a promise to pay"—an alarming proposition whether the silence which gives consent relates to a tradesman charging interest or an alleged promise to marry (*Wiedemann* v. *Walpole*, '91, 2 Q.B. (C.A.) 534), or a railway company's warning that it is going to transfer your stock (*Barton* v. *London & N.W. Ry. Co.*, 24 Q.B.D. 77). Adopted as a legal maxim it would, as Lord Esher said, "make life unbearable." Even Lord Justice Bowen's limitation of the proposition to circumstances rendering it more reasonably probable than not that a man would answer seems a somewhat dangerous dictum; for the true inference to be drawn from silence depends on a variety of special circumstances too complex to admit of any rule. The reasonableness of a proposed term like that of paying interest is an element, but only an element, of evidence. —*Law Quarterly Review.*

SLANDER OF MUNICIPAL COUNCILLOR.—The Court of Appeal has just refused to extend the scope of the law of slander in an important particular. In *Alexander* v. *Jenkins* (4 L.G. 271), the plaintiff was a member of the Salisbury Town Council and a teetotaller. Shortly after his election the defendant stated, as the plaintiff alleged, that the latter was never sober and was an unfit man to be upon the council.

The jury at the trial found that the defamatory words were used, but it was contended on behalf of the defendant that the imputation of drunkenness was not actionable in the case of the occupant of an office without emolument, and from which the imputation, if true, would not be a ground for removing him. The judge at the trial held that the slander was actionable, and entered judgment for the plaintiff. This ruling was reversed by the Court of Appeal. Lord Herschell, pronouncing judgment, remarked that, as regarded a man's business or calling or an office of profit held by him a mere imputation of want of ability was sufficient to support an action of slander without any suggestion of immorality or crime. In the case, however, of offices, not of profit, the law was different, and he felt very strongly that the courts ought not to extend the limits of such actions beyond the lines at present laid down. No case had been cited wherein slander had been held maintainable by a man holding an office of credit as distinguished from an office of profit, unless the imputation would be a ground for removing him from that office. The law was, that where the office was one of credit and honour, and the defamatory statement was not of misconduct in that office, slander would not lie in absence of proof of special damage where the charge was one which, if true, would not lead to exclusion from the office. The court was now asked to extend the law to a case in which the act alleged would not involve exclusion from the office. This was a step in advance which his lordship thought ought not to be taken.—*London Law Times.*

ANIMALS FERÆ NATURÆ—RIGHTS OF TRESPASSER.—While the rights to animals *feræ naturæ* as between the owner of the soil and others have been fairly settled by a considerable series of cases, the relative rights of parties, both of whom acknowledge the superior right of the owner of the soil, seem never to have been precisely described. In a recent Rhode Island case (*Rexworth* v. *Com.*, 23 Atl. Rep. 37) the plaintiff, without permission, placed a hive upon the land of a third person. The defendant, also a trespasser, removed the bees and honey which had collected in the hive. The court find no cause of action, holding that neither title nor right to possession is shown either to the bees or to the honey. The discussion, especially in a case where the precise point is clearly new, is unfortunately general and largely irrelevant. Most of it is given up to showing, on the basis of *Blades* v. *Higgs* (11 H.L. Cas. 621), that the right of the owner of the soil, uncertain as it is, cannot be terminated by the act of a trespasser, as no title to such animals can be gained except by a legal act. While this is undoubted law, it scarcely need follow that a trespasser cannot maintain, on the basis of mere possession, an action against a later trespasser. There may have been a possible doubt as to the plaintiff's having reduced the animals to possession by collecting them in his hive, but in the preceding cases that would seem to give him actual physical possession, enough for this action. About the honey there would seem to be even less doubt; but, strange to say, neither in this case nor elsewhere does the question seem to have been discussed—how far the law about animals *feræ naturæ* applies to their produce, as eggs or

honey. The reason on which the law about the animals is founded is wholly inapplicable to the honey, but this case tacitly assumes that no distinction is to be drawn.

The judge gaily cites all the cases he can find on the subject, but the only one near enough to draw an analogy from (*Adams* v. *Burton*, 31 Vermont 36) seems to favour the defendant's contention. There both parties were on the land without permission, though with the knowledge of the owner, who made no objection. The defendant interfered after the plaintiff had begun to cut the tree, and the plaintiff recovered in trespass. A dictum is in point: " . . . these parties stood, as between themselves, and as respects the legal principles applicable to the case, in precisely the same position as though neither had any authority from the owner of the tree, and both were trespassers upon his rights." The law of the bee-trade thus seems, slight as it is, to be in a state even more unsatisfactory than the general law as to the relative rights of trespassers.—*Harvard Law Review.*

AUTHOR AND PUBLISHER.—The *Author* calls attention to a recent advertisement in the *Times*, in which a firm of publishers, having more MSS. of novels in their possession than they can for some time publish, offer to part with the contracts relating to several MSS. by good authors (some being subject on publication to a royalty), and point out that "this is an admirable opportunity for a young firm who want to start with a good lot of publications without any loss of time," the advertisement being addressed to "Young Publishing Firms or others commencing a publishing business." The *Author* "has always been of opinion that a contract by one author with one publisher, except in the case of sale, could not be passed on to another publisher without the author's consent," but thinks that the question is one for lawyers to consider. The general rule as to assignability of contracts is that all contracts are assignable by either party on notice to the other, but without the consent of the other, except in cases where the individual skill or other personal qualifications of the assigning contractor were relied on by the party contracting with him, and the modern tendency of the courts appears to be in favour rather of extending than narrowing the assignability of contracts (see "Chitty on Contracts," 12th edit. at p. 862, citing *The British Waggon Company* v. *Lea*, 44 Law J. Rep. Q.B. 321). In two cases, however—that of *Stevens* v. *Benning*, 5 De G. M. & G. 223, and *Hole* v. *Bradbury*, 48 Law J. Rep. Chanc. 673—contracts between author and publisher have been held not to be assignable. In *Stevens* v. *Benning*, a complicated case arising out of "Forsyth on the Law of Composition with Creditors," it was held that an agreement on the half-profit system was of a personal nature on both sides, so that the benefit of it was not assignable by either party without the other's consent. In *Hole* v. *Bradbury*, another half-profit agreement between Canon Hole and Messrs. Bradbury & Evans for the production of "A Little Tour in Ireland, with Illustrations by John Leech," was held also to be personal, and to be put an end to by a complete change of partnership in the publishing firm.

From the language of Lord Justice Fry in delivering judgment, it is clear that that learned and literary judge was of opinion that, except where the copyright passes, the contract between author and publisher is personal and not assignable, but that there is a great distinction arising if the copyright is sold to the publisher, and in such a case we cannot but think that as a copyright is assignable *ad infinitum*, a contract to produce copyright must be assignable *ad infinitum* also, but assignable by the publisher only, and not by the author also. At any rate authors would do well, in contracting to produce a work of which they sell the copyright and receive no further remuneration, to restrain the assignability of the contract in some reasonable manner, as it is obvious that publishers must differ very much from one another in capability to get a book sold.—*Law Journal.*

ENGLISH JUDGES OF TO-DAY.—The following few details concerning the present English judges may be of interest to those who are obliged to read their decisions:

The head of the English judicial system, the Lord Chancellor, is Lord Halsbury. As Sir Hardinge Giffard he was a noted advocate in *nisi prius* and criminal cases. Later he became a politician and orator, was Solicitor-General under Disraeli, and in 1885 obtained the woolsack as a political reward, the salary being £10,000. He is known among scholars as a noted Hebrew scholar.

Of the three Lords of Appeal in Ordinary, with salaries of £6,000, Lord Watson, formerly Lord Advocate under Beaconsfield, represents the Scotch law. He is considered one of the soundest and most brilliant of the judges, with a complete mastery of the law. Lord Hannen was counsel in the great Shrewsbury case before the House of Lords, and late President of the Divorce Court; he also presided over the Parnell Commission.

Of the judges in the House of Lords who usually sit, Lord Bramwell is the best known as well as the oldest, having been born in 1808. He was made Baron of the Exchequer in 1856; he is a Liberal in politics, and actively interested in political economy. His opinions are generally forcible and full of common sense. [The death of Baron Bramwell was recorded only a few days ago.—ED. C.L.J.] A writer in the *Law Quarterly* speaks of his style as "slashing sword-thrusts." Lord Herschell was Lord Chancellor under Gladstone. He is a well-known philanthropist, and interested in education. Lord Field earned his reputation as a puisne judge in Queen's Bench, to which he was appointed in 1875. Other well-known judicial peers are Earl Selborne, formerly Sir Roundell Palmer, who was one of the counsel in the Geneva Arbitration in 1871, and author of the Judicature Act of 1873, and Sir William Grover.

Of the Court of Appeal the head, *ex officio*, is Lord Chief Justice Coleridge, with a salary of £8,000. He very seldom sits in this court, but generally in his own court at jury trial, or as senior of a divisional court of the Queen's Bench Division. He was Solicitor-General under Gladstone in 1868, and later Attorney-General. In 1873 he was offered the position of Master of the Rolls, but re-

fused it, Sir George Jessel obtaining it. He then became Chief Justice of Common Pleas, and in 1880 Lord Chief Justice. He administers the law with great boldness and f. edom, and between him and Lord Esher there is great rivalry. In the absence of Coleridge, Lord Esher presides over the Court of Appeal, with a salary of £6,000. He was formerly Mr. Justice Brett, and is a Conservative in politics; he has little patience for theory and innovation, but is opposed to fine distinctions, basing his decisions on common sense; he was a great oarsman at college, and has a large knowledge of nautical and mercantile affairs. He was made Lord Esher in 1880, and Master of the Rolls in 1883.

Of the judges of Court of Appeal, with a salary of £5,000, Lindley, L.J., is author of "Lindley on Partnership." Bowen, L.J., is typical scholar, well known as a translator of Virgil. Lopes, L.J., who was a member of Parliament until 1876, is a solid judge, without a brilliant reputation, and has served his fifteen years, after which time a judge becomes entitled to a pension. Kay, L.J., is the latest judge appointed, having had a great reputation as a puisne Chancery justice.

Of the fourteen judges of the Queen's Bench Division of the High Court of Justice, with a salary of £5,000, Mr. Justice Hawkins is of most varied talents, with a shining reputation for political oratory, a lover of sport, and with a keen sense of humor. He is always expected to act with some disregard of ordinary rules. He was formerly counsel in the famous Tichborne case. Mr. Justice Denman, who succeeded Mr. Justice Wills, was member of Parliament from 1859 to 1872. Baron Pollock, who is a son of the Lord Chief Baron of the Exchequer, succeeded Baron Channell in 1873. He, Lord Esher, and Lord Coleridge are the only ones of the present judges who sat in the old courts of Westminster. Of the five Chancery judges, Mr. Justice Romer and Mr. Justice Stirling were distinguished scholars and senior wranglers. Mr. Justice Chitty is well known as an athlete, and has for some years been judge of the university boat races.—*Harvard Law Review.*

STATUTE OF FRAUDS: ACCEPTANCE.—The meaning of "acceptance and actual receipt" in the Statute of Frauds (29 Car. II., c. 3), s. 17, has never been very clear, and recent decisions have not tended to elucidate it. In *Marvin* v. *Wallis*, 25 Law J. Rep. Q.B. 369, the clause was severely criticized by Mr. Justice Erle, who said, according to one report: "I believe that the party who inserted the words had no idea what he meant by 'acceptance.' That opinion I found on the everlasting discussion which has gone on, as if possession according to law could mean only manual possession." In "The Contract of Sale" (p. 23) Lord Blackburn acknowledged the difficulty of reconciling the cases, and put the matter clearly thus: "If he (the buyer) refuses the goods, assigning grounds false or frivolous, or assigning no reasons at all, it is still clear that he does not accept the goods, and the question is not whether he ought to accept, but whether he *has* accepted them." If this view had always been adopted no difficulty would have arisen, but attempts have again and again been made to weaken

the force of the statute, and even the latest decision has not finally disposed of the question; indeed, Lord Justice Lindley gave it as his opinion that Chief Justice Erle was "quite right about 'the party who inserted the words.'"

Before considering its exact state at present, it will be well to note the change which has come over the law during the present century. It is a double one; the meaning of "acceptance" was first severed, and then almost, if not quite, eliminated. As will be shown presently, the statute has now regained its force, as the decision in *Taylor* v. *Smith* (to be reported) will do much to restore its plain meaning, and to weaken the effect of *Kibble* v. *Gough*, 38 L.T. (N.S.) 205, and *Page* v. *Morgan*, 54 Law J. Rep. Q.B. 434; L.R. 15 Q.B. Div. 228, confining those decisions, and indeed the remarkable judgments delivered, to the facts of the particular cases. The principle seems to be at last again established that an acceptance must be an acceptance, and not a mere rejection.

It has always been the law that an acceptance, to satisfy the statute, must be something additional to an actual receipt; but before the severance of its meanings, it was held that to be valid it must be final (*Kent* v. *Huskisson*, 3 B. & P. 233; *Smith* v. *Surman*, 9 B. & C. 561; *Norman* v. *Phillips*, 14 M. & W. 277). After this a gradual change is noticeable, and *Morton* v. *Tibbett* (1850), 19 Law J. Rep. Q.B. 382; L.R. 15 Q.B. Div. 428, settled the rule that has never since been disturbed, that to satisfy the statute the acceptance need not be final; *Grimoldby* v. *Wells* (1875), 44 Law J. Rep. C.P. 203. In *Morton* v. *Tibbet* Lord Campbell appreciated the difficulty of reconciling the cases, and said that the exact words of the section had not always been kept in recollection. His lordship also said: "We are of opinion that there may be an acceptance and receipt, within the meaning of the Act, without the buyer having examined the goods, or done anything to preclude him from contending that they do not correspond with the contract." This is now said to be only a *dictum*, and not involved in the decision, and we find that the Court of Exchequer did not entirely adopt the view of the Court of Queen's Bench, for it was held in *Hunt* v. *Hecht* (1853), 22 Law J. Rep. Exch. 293, that there can be no acceptance unless the buyer has the opportunity of judging whether the goods sent correspond with the order; and Baron Martin said that *Morton* v. *Tibbett* only decided that where the buyer exercises dominion over the goods, there is evidence to justify a jury in finding that there has been an acceptance and actual receipt. Again, in *Coombs* v. *The Bristol and Exeter Railway Company*, 27 Law J. Rep. Exch. 401, the learned baron adhered to his previous decision that there must be an opportunity of exercising an option or a waiver of it. *Hunt* v. *Hecht* was also followed in *Smith* v. *Hudson* (1865), 34 Law J. Rep. Q.B. 145; and Lord Blackburn's judgment in this case was quoted with approval by Lord Justice Kay in *Taylor* v. *Smith*. However, in 1878, *Kibble* v. *Gough* was decided in the Court of Appeal, and seemed to suggest that all the acceptance necessary to satisfy the statute would be an inspection followed by a rejection. *Morton* v. *Tibbett* was approved, and Lord Justice Cotton said: "All that is wanted is a receipt and such an acceptance of the goods as shows that it has regard to the contract; but the contract may yet be left open to objection, so that it would not preclude a man from

exercising such a power of rejection." But since the decision in *Taylor* v. *Smith* it must be taken that all *Kibble* v. *Gough* decided was that there was some evidence to justify the jury in having found that there was an acceptance of the goods by the defendant. Its authority was, however, fully recognized in *Page* v. *Mor[illegible]n*, which carried the process of "whittling away the statute" to its utmost limit, the Master of the Rolls (Brett) saying: "I rely, for the purposes of my judgment in the present case, on the fact that the defendant *examined the goods to see if they agreed with the sample.*" What was actually decided was, as in the earlier case, that there was evidence of acceptance to go to the jury, but the *dicta*, as is seen, go far beyond this. The judgments delivered in *Taylor* v. *Smith* (February 26) give back to the words of the statute their ordinary meaning, and, without overruling any previous case or disagreeing in any way with *Morton* v. *Tibbett*, emphatically state that the statute is more binding on the court than any decisions, and that an acceptance is an act accepting. The facts were these: The defendant was sued in respect of a verbal contract for the sale of certain timber, price £100, delivered to his carrier by the plaintiffs; other questions arose as to the existence of a memorandum in writing and as to delay in refusal, but the substantial issue was the question of acceptance. The defendant received an advice-note from the carriers, looked at the timber twice, and then rejected it, writing a few days later to the plaintiff to say that it was not equal to representation. Now, having regard to the *dicta* in *Page* v. *Morgan*, there seems to have been an acceptance; but Mr. Justice Wright, sitting without a jury at the trial, and Lord Herschell and Lord Justice Lindley and Lord Justice Kay, on appeal, held that there was, in fact, no acceptance, although there might have been *some* evidence to go to a jury. Lord Herschell intimated that no previous decision was overruled, but that the words of the statute must have some meaning, and that earlier cases had gone as far as possible in the direction of leaving it none. As his lordship said, the statute, if it is bad, must be amended or repealed; at present it is in force. It is worth remarking that in the Sale of Goods Bill, which his lordship has twice introduced into the House of Lords, not only is the Statute of Frauds, section 17, retained unaltered, but the following clause is added: "There is an acceptance of goods within the meaning of this section when a buyer does any act in relation to the goods which recognizes a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not." This seems to be derived from *Page* v. *Morgan*, and, looking at the judgments in *Taylor* v. *Smith*, it is not easy to say with confidence what alteration this will make in the law, if and when the bill is passed. At the present time, the only obvious moral in a case of this kind is that it is better for the plaintiff to have a jury, and for the defendant not to have one.—*Ibid.*

DRUNKENNESS.—The following general remarks on the extent to which legal relations are affected by drunkenness, apart from the special provisions of the Licensing Acts, may have some interest for our readers.

Drunkenness affects the right of a man to the lawful and uninterrupted exer-

cise of his bodily freedom, both as a reason for waiver and as a cause of forfeiture. Not that the mere fact of being drunk amounts to a waiver in itself of the right to bodily freedom, but the law provides that the habitual drunkard may, for the space of twelve months at the most, sign away his liberty for the purpose, if possible, of accomplishing the cure of his degrading habit. This provision is made by the Inebriates Acts, 1879 and 1888. Under those statutes are habitual drunkards, that is to say, a person who, not being amenable to any jurisdiction in lunacy, is, notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or to others, or incapable of managing himself and his affairs, may be admitted into a duly licensed retreat, on his own application, for a specific time not exceeding a twelvemonth, and be detained there against his will, and compelled to conform to the rules of the place. The statutes contain precautions against the misuse of this curtailment of the liberty of the subject by requiring, first, that the application for admission shall be accompanied by the statutory declaration of two persons that the applicant is an habitual drunkard, and, secondly, that the signature of the applicant shall be attested by two justices of the peace, who must previously satisfy themselves that the applicant is an habitual drunkard, and must explain to him the effect of his application, and see that he understands its effect. As a cause of forfeiture of the right to bodily freedom, drunkenness probably stands on much the same footing at common law as madness. It is probable that any person may justify at common law such restraint of a drunken man as may be necessary for preventing him from doing an injury to himself or to others if there is reasonable cause to believe that such injury will be done.

To proceed to the consideration of the legal effects of drunkenness in regard to domestic relations. It happens, even frequently at the present day, that parties appear for the purpose of contracting marriage, the source of all domestic relations, whilst under the influence of drink. One of the reasons why the canons of the Church formerly required that marriages should be solemnized between the hours of eight in the forenoon and twelve noon was in order to avoid, to some extent, the giving opportunity for such scandalous exhibitions. And though now, indeed, the hours have been extended by statute (49 & 50 Vict., c. 14) to any time between eight in the forenoon and three in the afternoon, in reliance upon improvement in habits of social decorum, it still happens too frequently, especially in the lower ranks of the people, that the bridegroom is more or less drunk. A case of the kind quite recently gave rise to a question and answer in this paper. (*Ante*, p. 492.) It is said in a modern text-book that drunkenness at the time of the marriage may or may not be a ground for nullity; and it depends upon the circumstances surrounding the inception of the contract whether the results flowing from it are or are not modified by them. A person intoxicated, though not absolutely dead-drunk, may enter into a valid contract, provided fraud and trickery were not used to accomplish it. (*Gore* v. *Gibson*, 13 M. & W. 623.) Drunkenness producing *delirium tremens* from time to time, but not proper or permanent insanity, does not throw upon those who desire to support the marriage the burden of proof that the person so affected was capable

of forming the contract (*Le Geyt* v. *O'Brien*, Milw. Ir. Eccl. Rep. 325; *Parker* v. *Parker*, 2 Lee, 382). The case is different where the marriage is celebrated, and one of the parties is in a state of frenzy or *delirium tremens* produced by excessive drinking. (*Le Geyt* v. *O'Brien*.) Another recent text-writer says that intoxication being, in truth, temporary insanity, mental incapacity produced by it would, it is presumed, have the same effect as insanity. This, he says, may be inferred from a passage in the judgment of Lord Stowell in *Sullivan* v. *Sullivan*, 2 Hagg. Cons. Rep. 246, in which he stated that if the party was in a state of disability, natural or artificial, which created a want of reason or volition amounting to an incapacity to consent, the court would not hesitate to annul the marriage. The authorities referred to by the above cited text-writers are more at large as follows: *Parker* v. *Parker* (1757), 2 Lee 382, was a claim by a widow to the administration of her husband's goods, opposed by his relations on the ground of his being a lunatic at the time of the marriage. It appeared that the husband had a very weak understanding from his infancy, and by hard drinking was at times lunatic, and did many mad and frantic acts, but no commission of lunacy was taken out, nor was he constantly mad, but only by fits; and as it appeared he married with previous deliberation and intention, and went through the ceremony with as much propriety as any man could do, and there was no evidence of his doing any mad acts about the time of his marriage, Sir George Lee, the judge of the Prerogative Court of Canterbury, was of opinion that he had a sufficient capacity to contract a legal marriage. *Le Geyt* v. *O'Brien* (1834) was a case of much the same kind. It was a suit for the revocation of letters of administration granted to a widow on the ground that the deceased was at the time of the alleged marriage incapable from mental derangement of entering into any valid contract. The mode in which it was attempted to prove the unsoundness of mind at the time of the marriage was by endeavoring to prove previous insanity, and then, by relying on the presumption of law that it continued, unless it was proved by the widow, on the other hand, that it had wholly ceased at the time of the marriage, or had at least intermitted, so that the deceased was then in a lucid interval. It was admitted that the deceased had been addicted to the immoderate use of spirits from a time long before the marriage, and used to be at times grossly intoxicated at all hours of the day. He had also had two attacks of *delirium tremens*, and did many wild actions; but these, the judge thought, were the temporary effects of the excitement caused by the immoderate use of spirituous liquor grown into a habit, and not acts of proper insanity or mental failure, nor even constant habitual derangement from bodily disease, the deceased having none. The only witness of the actual ceremony stated that the deceased had not taken liquor, except his usual grog, on the morning of the marriage, and was not intoxicated, nor was he so on the night before. The judge therefore held that the marriage was not void.

With regard to the relationship of parent and child, it may be noted that in the old Court of Chancery constant habits of drunkenness and blasphemy in the parent were held a ground for interfering to take away the custody and tuition of the child, being a ward of court (per Lord Eldon, C., in *De Manneville* v. *De*

Manneville, 10 Ves. 61; see also *Carnegie's case*, cited in 11 Ch.D. 512, for a more modern instance), although occasional intemperance as opposed to habitual drunkenness is not considered a sufficient ground for the like interference. (*Re Goldsworthy*, 2 Q.B.D. 75; *Re Halliday*, 17 Jur. 56.) The like distinction would probably be observed by the court in case of any question arising as to the removal of a guardian from the guardianship of his ward.

As between master and servant, it is certain that the habitual drunkenness of the servant, if it interferes with the due discharge of the servant's duties, is a justifiable cause for his discharge by his master, without notice or wages in lieu of notice. (*Speck* v. *Phillips*, 5 M. & W. 279; see *Wise* v. *Wilson*, 1 C. & K. 662.) The English cases do not, however, contain much discussion of the limitation of the principle. But there has been a considerable amount of discussion in Scotch cases as to when intoxication is a ground for dismissal (see *McKellar* v. *Macfarlane*, 15 D. 2nd ser. 246; *Edwards* v. *Mackie*, 11 D. 2nd ser. 67); and the true rule seems to be indicated by a Scotch text-writer, who says that in all such cases it is for the jury to say, in view of the position occupied by the servant and the particular circumstances of the case, whether his discharge is reasonable. For instance, a minister who should become intoxicated on any occasion would of course be subject to instan dismissal, because it is inconsistent with his position: but a farm laborer or a clerk when off duty upon a holiday would not. In Admiralty Law it is well understoood that a seaman may wholly forfeit his right to wages by habitual drunkenness, though not by merely occasional intemperance. (*New Phœnix*, 1 Hagg. Adm. 198; *Malta*, 2 Hagg. Adm. 168; *Gondolier*, 3 Hagg. Adm. 190; *Blake*, 1 W. Rob. 73.) A master, it may be added, incurs the most serious responsibility by employing a drunken servant, as he will be liable in damages to any person who may be injured by the carelessness or negligence of the tipsy servant whilst employed in his master's business. (*Wanstall* v. *Pooley*, 61 Cl. & F. 910 *n.*)

The law with regard to contracts made with persons in a state of intoxication may be said to be now settled as follows:—The contract of a drunken man is voidable at his option if it can be shown that at the time of making the contract he was absolutely incapable of understanding what he was doing, and that the other party knew of his condition. To an action by the endorsee against the endorser of a bill of exchange, the defendant pleaded that when he indorsed the bill he was so intoxicated that he was unable to comprehend the meaning, nature, or effect of the endorsement, and it was held that this was a good answer to the action. (*Gore* v. *Gibson*, 13 M. & W. 623.) But if a drunken man when he becomes sober ratifies a contract made by him whilst he was drunk, even so drunk as to be incapable of transacting business or knowing what he was doing, such state being then well known to the other party, the contract may be enforced against him. For instance, where a man so drunk as to be incapable of transacting business or knowing what he was doing, as the other party well knew, bid at an auction for certain land and houses, which were knocked down to him, and afterwards when he was quite sober ratified and confirmed the agreement, he was held to his bargain. (*Matthews* v. *Baxter*, L.R. 8 Exch. 132; 42 L.J. Ex. 73.)

In tort, as lawyers say, that is, in relation to civil wrongs, drunkenness is no excuse for a wrongdoer. In fact, if due to his own voluntary act, it only makes the case worse, as in crime. And as regards the plaintiff, if drunk, it may be imputed to him for contributory negligence, or give the alleged wrongdoer ground for justifying an assault or imprisonment with a view of preventing impending mischief to himself or to others. The only aspect in which the fact of being drunk may tell in a wrongdoer's favour is in regard to the question whether he did the act complained of with wrongful intent in cases where the intent is material.

As regards crimes, much the same line is taken by the law. Plowden says, in his Commentaries 19*a*, "If a person that is drunk kills another, this shall be felony, and he shall be hanged for it, and yet he did it through ignorance, for when he was drunk he had no understanding or memory; but inasmuch as that ignorance was occasioned by his own act and folly, and he might have avoided it, he shall not be privileged thereby." And Aristotle says that such a man deserves double punishment, because he was doubly offended, viz., "in being drunk to the evil example of others, and in committing the crime of homicide." Lord Coke, too (Co. Litt. 247*a*), says, "As for a drunkard, who is *voluntarius dæmon*, he hath (as hath been said) no privilege thereby, but what hurt or ill soever he doth his drunkenness doth but aggravate it. *Omne crimen ebrietas et incendit et detegit.*" And, again, in 4 Rep. 125*a*: "Lastly, although he who is drunk is for the time *non compos mentis*, yet his drunkenness does not extenuate his act or offence, nor turn to his avail; but it is a great offence, and does not derogate from the act which he did during that time, and that as well in cases touching his life, his lands, his goods, as any other thing that concerns him." Lord Hale (1 Hale, P.C. 32) gives the following more extended explanation: "The third sort of *dementia* is that which is *dementia affectata*, namely, drunkenness. This vice doth deprive men of the use of reason, and puts many men into a perfect, but temporary phrenzy, and therefore, according to some civilians, such a person committing homicide shall not be punished simply for the crime of homicide, but shall suffer for his drunkenness, answerable to the nature of the crime occasioned thereby; so that yet the formal cause of his punishment is rather the drunkenness than the crime committed in it: but by the laws of England such a person shall have no privilege by this voluntary contracted madness, but shall have the same judgment as if he were in his right senses. But yet there seems to be two allays to be allowed in this case:—1. That if a person, by the unskilfulness of his physician, or by the contrivance of his enemies, eat or drink such a thing as causeth such a temporary or permanent phrenzy, as *aconitum* or *nux vomica*, this puts him into the same condition in reference to crimes as any other phrenzy, and equally excuseth him. 2. That although the *simplex* phrenzy occasioned immediately by drunkenness excuse not in criminals, yet if by one or more such practice an habitual or fixed phrenzy be caused, though this madness was contracted by the vice and will of the party, yet this habitual and fixed phrenzy thereby caused puts the man into the same condition in relation to crimes as if the same were contracted involuntarily at first.'

To which ancient, but excellent, authorities we may add the following modifications, viz.: If the existence of a specific intention is essential to the commission of a crime, the fact that the party was drunk when he did the act which, if coupled with that intention, would constitute such crime should be taken into account by the jury in deciding whether he had that intention. For instance, if A. is indicted for inflicting on B. an injury dangerous to life with intent to murder B., the fact that A. was drunk at the time ought to be taken into account by the jury in deciding whether A. intended to murder B. or not. (*Reg.* v. *Cruse*, 8 C. & P. 546.)—*Justice of the Peace.*

Reviews and Notices of Books.

Reports of the Exchequer Court of Canada. Reported by Charles Morse, LL.B., and published by L. A. Audette, LL.B., Registrar of the Court.

No. 4 of the second volume of these reports, which is just published, contains an appendix comprising all the important decisions respecting patents and trade marks of the Department of Agriculture since the year 1869. These decisions include that of *Barter* v. *Smith*, wherein is the opinion of Dr. Tache, D.M.A., on the important questions of manufacture in Canada, and importation into Canada of patented inventions. In view of the jurisdiction now exercised by the court in such matters, this collection of cases should be valuable to the profession at large.

Bills, Notes, and Cheques. The Bills of Exchange Act, 1890, *Canada, and the Amending Act of* 1891, *with notes and illustrations from Canadian, English, and American decisions, and references to ancient and modern French law.* By J. J. Maclaren, Q.C., D.C.L., LL.D., member of the Bar of Ontario and Quebec, Law Examiner of Victoria University, and Honorary Lecturer on Comparative Jurisprudence in the University of Toronto. Toronto: The Carswell Co. (Ltd.), Law Publishers, 1892.

This is the third annotated edition of the Bills of Exchange Act of 1890. Being the last, it should be the best; and we think that it may properly be so described, and this without any invidious comparison between it and the previous works of Mr. Hodgins and Mr. Smythe. The author has had the benefit of the labours of his predecessors. He has, moreover, brought the subject before us in a comprehensive shape and down to the latest date by waiting until the Act of 1891 was passed. This statute effected some changes necessary to make the Act of 1890 consistent with itself and reintroduced the provision which was a part of the code as originally prepared, but which was struck out by the Senate—namely, that the rules of the common law of England, including the law merchant, shall apply to Canada, except in so far as they are inconsistent with the express provisions of the Canadian Act. As the author

explains, this provision was desirable in view of the object of the measure, which, as the Minister of Justice said, in 1889, in introducing it, was "to render uniform in almost every particular the laws throughout the Dominion with respect to these contracts." Without this provision unprovided cases would be governed by differing rules of construction in the various Provinces, and the uniformity sought for unattainable.

Mr. Maclaren has certainly done his work well and thoroughly, and has given the profession an accurate exposition, as well as a most readable volume. His style is easy and simple, and his views clearly expressed in scholarly language.

We have, in his introduction and a chapter on former legislation in Canada and the Provinces, a very interesting sketch of the history of the law merchant as to negotiable instruments from the earliest period down to the present time, and its development into the shape it now takes. He shows also the position of the various Provinces of the Dominion in relation to the law on that subject, and to the outcome of that law in the modern system of business and banking as covered by the words bills, notes, and cheques.

As to the construction of the book, Mr. Maclaren gives, first, the section of the act, then such remarks as he considers appropriate, and then "illustrations" from decided cases, grouping them with much care and judgment, and giving a bird's-eye view of the subject treated of.

So far we have found nothing to add to the author's "addenda et corrigenda," which, though it has a page to itself, consists only of eight short lines of unimportant matter. We have also a table of cases overruled, questioned, or distinguished, which is very complete and must have been the result of much study and labour.

The work of the publishers is well done, and the printing and paper excellent, though we think it would have been better if more distinction had been made in the types used respectively for the text and the original matter. The index is full and complete. Having before them the result of the labours of Mr. Hodgins, Mr. Smythe, and Mr. Maclaren, the profession cannot now have much excuse for ignorance on the subject of bills, notes, and cheques.

Commentaries on the Law of Sales and Collateral Subjects. By Jeremiah Travis, L.L.B., Harv. '66; recently judge of the High Court of Justice of the Canadian Northwest Territories; First Prize Essayist of Harvard University of 1866; author of "A Treatise on Canadian Constitutional Law"; annotator of "Parsons on Partnership," etc. Boston: Little, Brown & Co.; London: Sweet & Maxwell (Ltd.); Toronto: The Carswell Co. (Ltd.), 1892.

This book is a peculiar one, and its author peculiar in his style and form of expression. A reviewer in a contemporary in the United States seems to have been so impressed by the preface as to have given but little attention to the

matter of the work, contenting himself with some very amusing observations on the decidedly vehement remarks of the author upon certain judicial utterances to which he takes exception.

It rather shocks one's sense of the eternal fitness of things to hear a text writer, made of the same clay as the rest of us, speak of judgments as being absurd, unmitigated nonsense, ridiculous, etc., nor is one thereby favorably impressed at the start. The preface shows that whilst the author has an utter contempt for the opinion of some of the judges he has occasion to review, he has unbounded confidence in his own opinions. He is quite right in saying, "The work is an absolutely new one on the subject; not a rehash of Blackburn, Benjamin, or any other writer." That it is not a rehash is not in itself a matter of regret, rather the reverse. We have too much of that sort of thing, and it is refreshing to find an author who is prepared to do and does his own thinking, and who, whether right or wrong, has the courage of his opinions, and seeks to expose what he thinks fallacies, even though he may use his pepper-pot of adjectives with unnecessary and very unusual freedom.

Whilst we feel bound to make these observations, an examination of the books shows that there has been much patient research and hard work, as well as a consideration of principles involved; the latter being a feature which is not very generally a marked one in English text-books, though more observed by authors in the United States. This perhaps is partly by reason of the utter impossibility (in truth, a useless endeavour) of reconciling and explaining the multitude of conflicting decisions of the innumerable courts to the south of us.

Book I. is divided into three parts under the headings of: What is a sale?; Gifts distinguished; Bailments distinguished. Book II. takes up the subject of Special Sales, in reference to infants, mental disabilities, married women, ship-masters, corporation sales, sales where fiduciary relations exist, partners' sales and agency. Book III. gives a dissertation of the subject of sales as affecting railways, and in it are collected many very valuable railway cases including that very important one with which this book opens. Book IV. treats of the subject of frauds.

Though it cannot be said that Mr. Travis has given an exhaustive dissertation on the subject of sales, he has, as he says, been complete and exhaustive within the limits laid down, and has also given valuable commentaries on various topics connected with the subject; and, though presenting his views in his own peculiar style, gives food for thought, and his book will thus be a valuable addition to, although it may not take the place of the works of the authors to which reference has been made. There are some subjects discussed that perhaps do not come strictly within the law of sales, but rather are collateral to it. We are told, however, that he proposes to issue two additional volumes covering a variety of other questions connected with it, left over for later consideration. When he has done this, he should have pretty well covered the ground. May we hope that in these succeeding volumes Mr. Travis may be somewhat more moderate in his language and more careful in his choice of expressions, and thus avoid giving cause for offence against good taste and a fair opening to a

clever critic to throw discredit on the result of much valuable thought and patient research?

The work is valuable to us in Canada as a reference to a number of cases in our own courts, and will, we expect, soon be found, where it ought to be, in the libraries of all who desire the most recent, and to us probably the most valuable, work on this subject.

Correspondence.

THE APPEAL GRIEVANCE.

To the Editor of THE CANADA LAW JOURNAL:

In your now last number (2nd May instant) I find a very interesting editorial about the Ontario system of the administration of justice and the courts and judges composing it, and I agree with you in that it would be greatly improved by the adoption of the changes you suggest. Some time ago you inserted a letter of mine in which I denounced the great abuses arising from heaping appeals on appeals and making it so easy to multiply them on trifling grounds, and so increasing the expenses in a suit to an extent amounting to little less than a denial of justice, and the probability of a suitor's being ruined by having obtained a judgment in his favour, and cited an article from a leading London paper to the same effect, of which I sent you a copy, and now inclose another. The writer, evidently a lawyer who knows well the matters he deals with, says: "The expense of litigation is enormously increased by the facilities which the law still gives for appeals, and appeals not only from the ultimate decision, but also on minor and interlocutory points. Before a case gets into court at all it is possible for half a dozen appeals to have been made and heard, decided and overruled, on the question of whether the plaintiff who has brought an action to recover fifty thousand pounds for breach of a trade contract shall be forced to disclose some highly unimportant particulars connected with some subsidiary part of his claim. The retention of two courts of appeal is another fruitful cause both of delay and expense. When the Judicature Acts were framed it was proposed to take away the appellate jurisdiction of the House of Lords, and to create one strong court of final appeal instead. The spirit of compromise intervened, with the result that we have both the Court of Appeal and the appellate jurisdiction of the House of Lords—a profusion of judicial blessings which is more than the litigant expects, and a good deal more than he in any way desires." Would not Ontario be better for a reduction of the number of appeals and of courts of appeal, and for the adoption of the provision in the English Judicature Acts, that the judges shall meet from time to time and point out the defects found in them, and suggest amendments for simplifying and cheapening the administration of justice? Your editorial very clearly answers this question in the affirmative.

Another thing of which the English writer complains is that "for some reason or

another commerce spurns the law," and that "some time ago it was recognized in judicial circles with dismay that merchants and bankers and city men generally were conspiring to give the courts a wide berth." Your article agrees with this, and notices the tendency towards arbitration as the best means of adjusting differences, and gives excellent reasons why it should be so. The courts are necessarily bound by the letter of the law when it is clear, and when it is doubtful can only interpret it within very narrow limits; and though they no doubt strive to make their interpretation consistent with substantial justice and the moral law, they can only effect this in a very small degree; and, though it is said by good authority that Christianity is part of the law of England, a judge seldom cites the Sermon on the Mount, or the Ten Commandments, or even the last four of them. Sir John Thompson's new criminal law bill of 1007 clauses in 310 pages is certainly an earnest endeavour to state their intention in detail, so that the courts may be able to apply and enforce them in what are called criminal cases, though they are, in fact, equally applicable to civil ones. Arbitrators can, or ought, to be enabled so to apply and enforce them, and to a great extent they do so by taking into consideration circumstances, customs, practices, and understandings, all important to decisions consistent with equity, good conscience, and Christianity; and therefore arbitration courts of conciliation, boards of trade, and like institutions, are preferred, not only by commerce, but for the settlement of disputes of any kind in which both sides really wish that justice may be done. And this arises, not from any fault of the courts or judges, but from the impossibility of making laws that shall clearly provide for all possible cases in any way but by the arbitrament of honest men perfectly competent *experts* in the matters submitted to them. It is but natural that commerce should prefer such arbitrament to the doubtful experiment of a lawsuit, which may be prolonged indefinitely by the ingenuity of brilliant advocates holding it their duty to raise every possible objection to the arguments on the opposite side, and by the doubts which the most able and impartial judge must often feel amongst the vast multitude of cases and precedents bearing more or less on the case before him. Equity is said to *follow* the law, and it certainly does not seem well calculated to outstrip it in speed. Might not some hints for improvement be found in the newer United States, in which it is said that the distinction between the two sister faculties is not admitted, nor separate courts provided for administering them?

Indeed, English law seems to stand alone in Europe in its estrangement from its more amiable and generally esteemed relative. In your reconstruction of the Ontario courts, can you not abolish their supposed difference and make them one in name, practice, and spirit? Try.

W.

DIARY FOR MAY.

1. Sun.....*2nd Sunday after Easter.* St. Philip and St. James.
2. Mon.....J. A. Boyd, 4th Chancellor, 1881.
4. Wed.....Mr. Justice Henry died, 1888.
6. Fri.....Lord Brougham died, 1868, at 90.
8. Sun.....*3rd Sunday aft r Easter.* York vacated by United States troops, 1813.
10. Tues.....Supreme Court of Canada will sit. Court of Appeal sits. General Sessions and County Court sittings for trial in York.
14. Sat.....First Illustrated Newspaper, 1842.
15. Sun .....*4th Sunday after Easter.*
16. Mon.....Easter Term begins. Q.B. & C.P. Divisions of H.C.J. sittings begin.
21. Sat.....Confederation proclaimed, 1867.
22. Sun.....*Rogation Sunday.* Earl Dufferin Governor-General, 1872.
24. Tues ....Queen Victoria born, 1819.
25. Wed .....Princess Helena born, 1846.
26. Thur. ...Ascension day.
27. Fri.....Habeas Corpus Act passed, 1679. Battle of Fort George, 1813.
29. Sun ..... *1st Sunday after Ascension.* Battle of Sackett's Harbour, 1813.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Chancery Division.

FERGUSON, J.] [March 31.

THE CANADA SOUTHERN RAILWAY CO.

The corporation of the town of Niagara Falls et al.—Incorporated companies—Railway company—Grant of easement by—User—Ultra vires—Title by prescription.

A company incorporated for any particnlar purpose has only power to do acts which are authorized by its charters or can be derived therefrom by reasonable implication as incidental to the purpose for which the company was created.

Held, that a railway company had no power to grant the privilege of laying pipes along its right of way for the conveyance of water to the town, and that any user of such short of forty years would not estop the company from objecting to its further use.

H. Symons for plaintiffs.

Moss, Q.C., and *Alex. Fraser* for defendants.

ROBERTSON, J.] [April 5.

RE TORONTO STREET R. W. ARBITRATION.

Toronto Street R. W. Co.—Franchise—Property—Roadbed.

Held, that under the agreement and statutes relating to the Street Railway Company, their "privilege" could not be properly said to have been limited to thirty years only, because there was no obligation on the part of the city to assume the ownership of the railway at the expiration of that term.

Held, however, that this privilege or franchise could not be construed to be "property" the value of which was intended to be taken into account by the arbitrators when the city assumed the ownership of the railway. No provision was made for its valuation, either as to the basis on which it was to be ascertained, or otherwise indicating that it was not contemplated by the respective parties that the city should in money pay to the company for that which they, with the sanction and authority of the legislature, had granted for a term which they had the right to terminate after a fixed period.

Held, also, that the arrangement between the Street Railway Company and the city as to the roadbed did not entitle the former to have this roadbed treated as part of its railway property, to be valued and paid for by the city, which had at its own expense constructed it.

Held, lastly, that the franchise having been terminated by the city it no longer constituted a property of the company to be valued by the arbitrators.

McCarthy, Q.C., *Moss*, Q.C., and *Shepley*, Q.C., for the Street R. W. Co.

C. Robinson, Q.C., and *S. H. Blake*, Q.C., for the city.

ROBERTSON, J.] [April 11.

CORNELL *v.* ASSIGINACK.

Contempt—Injunction—Notice of intended application.

In this action the writ was issued to restrain the sale of lands in the District of Manitoulin at a tax sale. The writ, with a notice of motion for an interim injunction, was served on the defendants in Manitoulin on Oct. 22. The motion was made on Oct. 29th, and an injunction

granted. The earliest possible way of communicating with the defendants was by mail, reaching Manitoulin Island on Nov. 1. The sale sought to be restrained was advertised for Oct. 31st. The defendants, nothwithstanding the service of the writ and notice of motion, proceeded with the sale.

Held, that they were guilty of contempt in so doing, and must pay all costs, and it was no excuse for them to say that if they had not sold on October 31st they could not have done so till June of the following year, nor had the merits of the action anything to do with the matter.

Johnston, Q.C., for plaintiff.

W. M. Douglas for defendants.

FERGUSON, J.] [April 16.

MEARNS *v.* ANCIENT ORDER OF UNITED WORKMEN ET AL.

Life insurance—Benevolent society—Certificate payable to "legal heirs"—Effect of, between their children and subsequent wife.

A widower, having two children, insured in a benevolent society and took out his certificate payable "to his legal heirs," and subsequently married a second time. At the time of his death he left his wife surviving, but no other children than the two by the first wife.

Held, that the two children took the whole fund payable under the certificate to the exclusion of the wife.

Totten, Q.C., for the wife.

E. T. Malone for the guardians of the infants.

BOYD, C.] [April, 27.

BANNAN *v.* CITY OF TORONTO.

Municipal corporations—Victualling houses—By-law to forfeit license invalid.

The power given to municipal corporations under s. 285 of R.S.O., c. 184, to "determine the time during which victualling licenses shall be in force," does not confer any power to forfeit such licenses, but merely to fix the duration of the license.

The power to create a forfeiture of property is one which must be expressly given to a corporation by parliament, and such an extraordinary power is least of all to be inferred when parliament has provided other means of enforcing by-laws by means of fine and amercement, as in this case.

Practice.

Div'l Court.] [March 29.

FRENCH *v.* LAKE SUPERIOR MINERAL CO.

Sheriff—Poundage—Fi. fa. lands—Sale.

A sheriff cannot have poundage under a writ of *fi. fa.* lands until there has been a sale of lands under the writ.

Merchants Bank v. *Campbell*, 32 C.P. 170, followed.

Although in matters of practice the decisions of one court are not binding upon others of co-ordinate jurisdiction, yet where the practice has become well settled by decisions, those decisions, should be followed.

Bissicks v. *Bath Colliery Co.*, 2 Ex.D. 459, specially referred to.

D. W. Saunders for the sheriff of Thunder Bay.

Douglas Armour for the defendants.

MACMAHON, J.] [April 2.

DOUGLAS *v.* BLACKEY.

Bond — Surety — Affidavit of justification — Cross-examination—Partnership.

A surety on a bond who is a member of a mercantile partnership, but justifies on his own individual property, not on his share in the partnership, is not compellable, upon cross-examination on his affidavit of justification, to disclose the liabilities of the partnership.

J. J. Warren for the plaintiff.

Alan Cassels for the defendants.

GALT, C.J.] [April 25.

ATTORNEY-GENERAL *v.* VAUGHAN ROAD CO.

Parties — Counterclaim — Exclusion of — Rule 374 — Action at suit of Attorney General — Damages against relators — Pleading.

In an action brought in the name of the Attorney-General upon the relation of certain persons to restrain the defendants from collecting tolls or keeping their toll gates closed upon their roads, the defendants alleged by way of defence certain wrongful acts of the relators, and by way of counterclaim asked damages against them.

Held, by WINCHESTER, official referee, that the relators were not in any sense plaintiffs; and the allegations against them must be stricken out.

Held, by GALT, C.J., on appeal, that the defendants' counterclaim was properly excluded under Rule 374.

Lawrence for the plaintiff.

Kappele for the defendants.

MR. WINCHESTER.] [April 26.

CASSELMAN *v.* BARRIE.

Writ of summons — Special indorsement — Interest — Rules 245, 739 — Summary judgment.

The writ of summons was indorsed with a money claim for the value of a certain quantity of logs at certain prices, and an additional claim for interest on the price.

Held, that as interest was not claimed as arising under a statute or by contract the writ was not especially indorsed under Rule 245, and an order for summary judgment could not be made under Rule 739.

Wilks v. *Wood*, W.N., 1892, p. 58, followed. *Mackenzie* v. *Ross*, 14 P.R. 299, and *Hay* v. *Johnston*, 12 P.R. 596, distinguished.

Semble, if the plaintiff abandoned all claim to interest, he might be entitled to judgment in a proper case.

J. A. MacIntosh for the plaintiff.

Aylesworth, Q.C., for the defendant.

Appointments to Office.

CORONERS.

County of Huron.

Alexander Taylor, of the Town of Goderich, in the County of Huron, Esquire, M.D. : to be an Associate-Coroner within and for the said County of Huron.

County of Middlesex.

William Telfer Robson, of the Village of Vanneck, in the County of Middlesex, Esquire, M.D. : to be an Associate-Coroner within and for the said County of Middlesex.

County of Wellington.

William Cormack, of the City of Guelph, in the County of Wellington, Esquire, M.D. : to be an Associate-Coroner within and for the said County of Wellington, in the room and stead of Thomas A. Keating, Esquire, M.D., deceased.

Angus MacKinnon, of the City of Guelph, in the County of Wellington, Esquire, M.D. : to be an Associate-Coroner within and for the said County of Wellington.

County of York.

William John Hunter Emory, of the City of Toronto, in the County of York, Esquire, M.D. : to be an Associate-Coroner within and for the said County of York.

POLICE MAGISTRATE.

Town of Leamington.

John McRobie Selkirk, of the Town of Leamington, in the County of Essex, Esquire, to be Police Magistrate in and for the said Town of Leamington, without salary.

DIVISION COURT BAILIFFS.

County of Middlesex.

William Guest, of the Village of St. John's, in the County of Middlesex, to be Bailiff of the Eighth Division Court of the said County of Middlesex, in the room and stead of W. H. Brock, resigned.

County of Peterborough.

John Elmhirst, of the Village of Apsley, in the County of Peterborough, to be Bailiff of the Fifth Division Court of the said County of Peterborough, in the room and stead of Richard Elmhirst, resigned.

Law Students' Department.

EXAMINATION BEFORE HILARY TERM: 1892.

CERTIFICATE OF FITNESS.

Hawkins on Wills.

Examiner: M. G. CAMERON.

(1) A devise is made to the children of A., a living person, for their lives as tenants in common with remainder after their respective deaths to their children respectively, and the heirs of the bodies, with cross remainders amongst them. What interest would the children of A. who were born during the lifetime of the testator and those who were born after the testator's death take? Explain.

(2) A makes a bequest to B., and in case of B.'s death to C. What interest would B. or his representatives take

(*a*) If B survived A.?

(*b*) If A. survived B.?

(3) A bequest is made to A. in trust for B. during his life, and after his death to pay and divide among his children, C., D., and E. C. and D. die before attaining their majority and during the lifetime of B., and E. survives B. Who take? Explain.

(4) A bequest is made to the children of B., viz., C., D., and E., when the youngest attains twenty-one. C. dies at eighteen and D. dies at twenty-two, and E. attains his majority. Who take?

(5) A. bequeaths to B. $500 to be charged upon all his real estate. He also specifically devises certain land, a portion of his real estate, to C. Would the land devised to C. be charged with the legacy payable to B.? Would it make any difference if the testator had charged his real estate with not only the legacy, but with his debts? Explain.

Armour on Titles, Statute Law, and Pleading and Practice.

Examiner: M. G. CAMERON.

(1) Define what is meant by a perfect abstract.

(2) When is priority of registration intended to be determined, and explain the duties of the Registrar with respect to registration?

(3) A., being the owner thereof, conveys a parcel of land to B. B. does not register his deed. A. afterwards conveys to C., who registers his deed, but is aware, prior to registration, that B. has executed a quit claim of the property to D., and that D. is in possession. How, if at all, is C.'s title affected? Explain.

(4) Where a deed is executed by an attorney, what should a conveyancer require before passing a title to a property conveyed by the attorney?

(5) What evidence is sufficient to raise the presumption of intestacy?

(6) A. brings an action against B. for slander. The jury give a verdict of $2,000. B. is dissatisfied with the verdict, and desires a new trial. What steps must he take, and has he any choice of courts?

(7) What is the limit as to the time within which a jury notice in an action must be given?

(8) When, if at all, is a defendant entitled to an order for security for costs on *præcipe?* If entitled at all, draft the form of order to which he is entitled.

(9) A. makes an assignment to B. under the Act respecting Assignments and References by insolvent persons. A meeting of creditors is called by the assignee, and certain of the creditors desire to test the claim of one C., but the majority of the creditors vote down a motion made by those desiring the contestation. What remedy, if any, have the dissatisfied creditors, and what steps must they take?

(10) Is there any, and, if so, what exception to the rule that the costs of and incident to all proceedings in the High Court shall be in the discretion of the court?

Benjamin on Sales.

Examiner: A. W. AYTOUN-FINLAY.

(1) A. & Co., having a quantity of steel rails on hand, offer to B., a contractor, to sell them

for "$16, net cash, open till Saturday." On Saturday morning B. telegraphs to A. & Co.: "Please wire whether you would accept sixteen for delivery over two months, or, if not, longest limit you would give."

A. & Co. pay no attention to the telegram, and, in the afternoon of Saturday, B. telegraphs an acceptance of the offer of A. & Co.

Action is afterwards brought by B. to compel specific performance. Have A. & Co. any defence, and, if so, how far is it a valid one?

(2) A. attends an auction sale of dry goods and purchases a number of lots, the value of which aggregate $320, not one of the lots singly being of the value of $40.

How far is there a valid contract of sale under the Statute of Frauds?

(3) A. agrees with B. to purchase a quantity of goods. The agreement is not in writing. After the agreement A. goes to B.'s warehouse and asks for samples of the goods he has agreed to purchase, and which he promises to pay for when he takes the bulk.

The samples so taken are weighed and are entered against A. in B.'s sale book. B. afterwards refuses to complete the sale.

How far is the bargain a complete one?

(4) A valid contract for sale of goods under the Statute of Frauds is entered into. How far is evidence of a verbal agreement to abandon it in part, or to add to or omit, or modify any of its terms, admissible?

(5) A. enters into a contract to deliver to B. a large amount of machinery, in exchange for certain barges, to be turned over to A. after delivery of the machinery.

A. actually does deliver, not all, but a considerable portion of the machinery to B., who accepts it.

On action being brought by A. to obtain possession of the barges, B. defends, on the ground that the delivery of the whole of the machinery is a condition precedent to A.'s obtaining the barges.

How far is this a valid defence, and why?

Contracts—Mercantile Law.

Examiner: F. J. JOSEPH.

(1) A. purchases a ticket for a seat in the opera. The seat is subsequently sold to another. Has A. a right of action against the manager who sold him the ticket?

(2) Under what circumstances can you show that a contract in writing has been subsequently varied by parol?

(3) An executed consideration must be founded on a previous request. Mention any cases in which a previous request is implied.

(4) Where there are words in a contract of a particular meaning, followed by words of a general meaning, how are the general words to be construed?

(5) How may an agent be appointed who is to perform acts for his principal under the Statute of Frauds?

(6) Distinguish between "joint ownership" and "partnership."

(7) A. sells his business to B., allowing B. to use his (A.'s) name. B., using A.'s name, purchases goods from C., who is unaware of the change in the business. B. fails, owing C. Can C. recover against A. (1) if he (A.) had (when in business) never traded with C.; (2) if C. knew that A. had retired from the business and had merely lent the use of his name to B?

(8) Where an authority is given to three persons jointly and severally, can one or a majority bind the principal?

(9) A. overdraws his bank account $5,000. The bank had previously lent A. $5,000 on a warehouse receipt, for which A. gave them as collateral security B.'s note. The note falls due and is paid by B. Can the bank apply the proceeds of B.'s note to A.'s overdrawn account? Supposing the bank had a chest containing plate which A. had left with them for safe-keeping; would the bank have a lien upon it for A.'s indebtedness?

(10) A. gives B. a note for $500. Under what circumstances (if any) can A. set up the defence, in an action by B. for non-payment of the note, that B. had agreed to renew the note?

Taylor's Equity.

Examiner: A. W. AYTOUN-FINLAY.

(1) A., in accordance with an agreement, transfers a bill of exchange to B., but through oversight neglects to indorse it, and before he has an opportunity of doing so he dies.

Will equity grant any, and, if so, what relief to B.?

(2) "Ignorance of the law excuses no one."

What is the extent and limitation of the application of this maxim?

(3) A. purchases from B. the estate of Broadacres. His legal adviser has, in examining the title, overlooked a fatal defect, by reason of which A. is evicted by a third party soon after his purchase.

Has A. any equity against B. to recover his purchase money?

(4) In a form of application for life assurance occur the following: "Q. 7. (*a*) Are you temperate in your habits, and (*b*) have you always been strictly so?"

To this the applicant replies: "Ans. (*a*) Temperate, (*b*) Yes."

As a matter of fact, these statements are untrue.

How far are they matters of opinion or a warranty?

(5) A. annexes to certain devises, of both realty and personalty, to his widow B., a condition that they shall become inoperative in the event of the remarriage of B.

How far is the condition a valid one?

(6) What is a *post obit* bond, and how far will equity give effect to it?

(7) A., residing in England, where gold is the standard of coinage, but also possessing estates in the United States, where silver is the standard, leaves legacies payable to parties—some resident in England, some in the United States—and charges the estates in the latter country with the payment of the said legacies. In what currency will the legatees be entitled to demand payment?

(8) How does the sale of land for taxes, under the Assessment Act, affect the right of the owner's widow to dower?

(9) Will courts of equity ever compel specific performance of agreements for separation between husband and wife?

(10) How far does the doctrine of satisfaction apply to bequests to illegitimate children?

May an illegitimate child ever claim a double provision? Explain.

FIRST INTERMEDIATE.

Smith's Equity.

(1) In a transaction between A. and B., a solicitor usually employed by A. acts for both parties.

A circumstance connected with a third party, and affecting the validity of the present transaction, is within the knowledge of the solicitor, as having been agent for A.

How far does the fact of his acting for both A. and B. constitute him the agent of each, so as to affect them with knowledge of the facts?

(2) A., on the marriage of his daughter, covenants that on his death he will leave her a full and equal share of his personal estate.

Notwithstanding this, he afterwards transfers the bulk of his personal property to another child, retaining the annual income thereof for his life.

Is there any remedy against A.? State reasons of your answer.

ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

Joint Stock Companies Legislation. *Bankers' Journal*, January.

Cross-Examination. *Nineteenth Century*, February.

Criminal Responsibility in Insanity. *Cape Law Journal*, Feb. 15.

The Jury and its Development. *Harvard Law Review*, March.

Statute of Frauds—Acceptance. *Law Journal*, Mar. 19.

Parol Gift of Real Estate. *Albany Law Journal*, Mar. 26.

Seals. *Central Law Journal*, April 1.

Reform of Legal Administration. *Law Quarterly Review*, April.

Malice in the Law of Torts. *Ib.*

Registration of Title and Forged Transfers. *Ib.*

Chapters in the Law of Life Insurance. *Law Journal.*

The Reform of Legal Administration. *Law Quarterly Review*, April.

Registration of Title and Forged Transfers. *Ib.*

Donatia Mortis Causa of Negotiable Paper. *Harvard Law Review*, April.

Subterranean Water. *Central Law Journal* April 29.

Jurors as Witnesses. *Albany Law Journal*, April 30.

Stockbrokers Pledges of Customers Securities. *Banking Law Journal*, May 1.

"*In forma pauperis.*" *Law Gazette.*

Tramcar Conductors and the Law of Negligence. *Irish Law Times*, May 7.

Flotsam and Jetsam.

INDIGNANT LAWYER: If we can't get justice in this court, we shall carry the case up. Your honour may mark my words.

THE JUDGE: I have marked them, sir. They will cost you ten dollars.

ANY one who had prosecuted a man to death for a criminal offence used to obtain a "Tyburn ticket," which conferred upon him and his heirs male future exemption from serving on a jury. These tickets passed, like a freehold estate, from father to son.—*Green Bag.*

WHEN Mr. Justice Day was raised to the Bench, and the customary honour of knighthood was proposed to him, it is said that the learned judge at first demurred to receiving the accolade because, he said, "it was against his principles to turn day into night." His scruples on this ground were, however, happily overcome.

THE following holograph will of a simple testator, and made a little over a year ago, has just been proved in a Surrogate Court in Manitoba: "Before leaving this world I would like to leave things so as there would be no noise about my property. The widow's cattle must be kept just the same as the rest all winter. . . . See that A. S. gets something to please him, and not grumble; and all I ask is a tombstone over me and my wife. So that is all I have to say. The last of Jemsie."

AN AUTOMATIC VOTING MACHINE.—A machine has been patented, and authorized for use at municipal elections by the New York State Legislature, by which the act of polling is confined to the pressing of a knob marked with the name of the candidate favoured by the voter. A vote is thereupon automatically registered for that candidate, and it is claimed that an immense saving of time is effected in the counting as well as in the polling of votes. The machine has now passed out of the merely experimental stage, and has been actually used at the municipal elections of Lockport, when the votes given for sixty-four candidates were counted in ten minutes at the close of the poll.—*Law Journal.*

Law Society of Upper Canada.

LEGAL EDUCATION COMMITTEE.

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THE LAW SCHOOL.

Principal, W. A. REEVE, M.A., Q.C.

Lecturers: E. D. ARMOUR, Q.C.; A. H. MARSH, B.A., LL.B., Q.C.; R. E. KINGSFORD, M.A., LL.B.; P. H. DRAYTON.

Examiners: FRANK J. JOSEPH, LL.B.; A. W. AYTOUN-FINLAY, B.A.; M. G. CAMERON.

ATTENDANCE AT THE LAW SCHOOL.

This School was established on its present basis by the Law Society of Upper Canada in 1889, under the provisions of rules passed by the Society in the exercise of its statutory powers. It is conducted under the immediate supervision of the Legal Education Committee of the Society, subject to the control of the Benchers of the Society in Convocation assembled.

Its purpose is to secure as far as possible the possession of a thorough legal education by all those who enter upon the practice of the legal profession in the Province. To this end, with certain exceptions in the cases of students who had begun their studies prior to its establishment, attendance at the School, in some cases during two, and in others during three terms or sessions, is made compulsory upon all who desire to be admitted to the practice of the Law.

The course in the school is a three years' course. The term or session commences on the fourth Monday in September, and ends on the first Monday in May, with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's day.

Admission to the Law Society is ordinarily a condition precedent to attendance at the Law School. Every Student-at-Law and Articled Clerk before being allowed to enter the School must present to the Principal a certificate of the Secretary of Law Society, showing that he has been duly admitted upon the books of the Society, and has paid the prescribed fee for the term.

Students, however, residing elsewhere, and desirous of attending the lectures of the School, but not of qualifying themselves to practise in Ontario, are allowed, upon payment of usual fee, to attend the lectures without admission to the Law Society.

The students and clerks who are exempt from attendance at the Law School are the following:

1. All students and clerks attending in a Barrister's chambers, or serving under articles elsewhere than in Toronto, and who were admitted prior to

Hilary Term, 1889, so long as they continue so to attend or serve elsewhere than in Toronto.

2. All graduates who on June 25th, 1889, had entered upon the second year of their course as Students-at-Law or Articled Clerks.

3. All non-graduates who at that date had entered upon the fourth year of their course as Students-at-Law or Articled Clerks.

Provision is made by Rules 164 *(g)* and 164 *(h)* for *election* to take the School course, by students and clerks who are exempt therefrom, either in whole or in part.

Attendance at the School for one or more terms, as provided by Rules 155 to 166 inclusive, is compulsory on all students and clerks not exempt as above.

A student or clerk who is required to attend the School during one term only must attend during that term which ends in the last year of his period of attendance in a Barrister's chambers or service under articles, and may present himself for his final examination at the close of such term, although his period of attendance in chambers or service under articles may not have expired. In like manner, those who are required to attend during two terms must attend during those terms which end in the last two years respectively of their period of attendancein chambers or service, as the case may be.

Those students and clerks, not being graduates, who are required to attend the first year's lectures in the School, may do so at their own option, either in the first, second, or third year of their attendance in chambers or service under articles, upon notice to the Principal.

By a rule passed in October, 1891, students and clerks who have already been allowed their examination of the second year in the Law School, or their second intermediate examination, and under existing rules are required to attend the lectures of the third year of the Law School course during the school term of 1892-93, may elect to attend during the term of 1891-92 the lectures on such of the subjects of said third year as they may name in a written election to be delivered to the principal, provided the number of such lectures shall, in the opinion of the principal, reasonably approximate one-half of the whole number of lectures pertaining to the said third year, and may complete their attendance on lectures by attending in the remaining subjects during the term of 1892-3, presenting themselves for examination in all the subjects at the close of the last-mentioned term, and paying but one fee for both terms, such fee being payable before commencing attendance.

The course during each term embraces lectures, recitations, discussions, and other oral methods of instruction, and the holding of moot courts under the supervision of the Principal and Lecturers.

Friday of each week is devoted exclusively to moot courts, one for the second year students and another for the third year students. The first year students are required to attend, and may be allowed to take part in, one or other of these moot courts. They are presided over by the Principal or the Lecturer whose series of lectures is in progress at the time, and who states the case to be argued, and appoints two students on each side to argue it, of which notice is given at least one week before the day for argument. His decision is pronounced at the next moot court, if not given at the close of the argument.

At each lecture and moot court the roll is called, and the attendance of students carefully noted, and a record thereof kept.

At the close of each term the Principal certifies to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student is to be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series, delivered during the term and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal makes a special report upon the matter to the Legal Education Committee. The word "lectures" in this connection includes moot courts.

Two lectures (one hour) daily in each year of the course are delivered on Monday, Tuesday, Wednesday, and Thursday. The moot courts take the place of lectures on Friday. Printed schedules showing the days and hours of all the lectures in the different subjects will be distributed among the students at the commencement of the term.

During his attendance in the School, the student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions, or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance. As far as practicable, students will be provided with room and the use of books for this purpose.

The fee for attendance for each term of the course is $25, payable in advance to the Sub-Treasurer, who is also the Secretary of the Law Society.

The Rules which should be read for information in regard to attendance at the Law School are Rules 154 to 167 both inclusive.

Examinations.

Every applicant for admission to the Law Society, if not a graduate, must have passed an examination according to the curriculum prescribed by the Society, under the designation of "The Matriculation Curriculum." This examination is not held by the Society. The applicant must have passed some duly authorized examination, and have been enrolled as a matriculant of some University in Ontario, before he can be admitted to the Law Society.

The three law examinations which every student and clerk must pass after his admission,

viz., first intermediate, second intermediate, and final examinations, must, except in the case to be presently mentioned of those students and clerks who are wholly or partly exempt from attendance at the School, be passed at the Law School Examinations under the Law School Curriculum hereinafter printed, the first intermediate examination being passed at the close of the first, the second intermediate examination at the close of the second, and the final examination at the close of the third year of the school course respectively.

Any student or clerk who under the Rules is exempt from attending the School in any one or more of the three years of the school course is at liberty, at his option, to pass the corresponding examination or examinations under the Law Society Curriculum instead of doing so at the Law School Examinations under the Law School Curriculum, provided he does so within the period during which it is deemed proper to continue the holding of examinations under the said Law Society Curriculum as heretofore. It has already been decided that the first intermediate examination under that curriculum shall not be continued after January, 1892, and after that time therefore all students and clerks must pass their first intermediate examination at the examinations and under the curriculum of the Law School, whether they are required to attend the lectures of the first year of the course or not. Due notice will be hereafter published of the discontinuance of the second intermediate and final examinations under the Law Society Curriculum.

The percentage of marks which must be obtained in order to pass an examination of the Law School is fifty-five per cent. of the aggregate number of marks obtainable, and twenty-nine per cent. of the marks obtainable upon each paper.

Examinations are also held in the week commencing with the first Monday in September for those who were not entitled to present themselves for the earlier examination, or who, having presented themselves, failed in whole or in part.

Students whose attendance upon lectures has been allowed as sufficient, and who have failed at the May examinations, may present themselves at the September examinations, either in all the subjects or in those subjects only in which they failed to obtain fifty-five per cent. of the marks obtainable in such subjects. Those entitled, and desiring, to present themselves at the September examinations must give notice in writing to the Secretary of the Law Society, at least two weeks prior to the time of such examinations, of their intention to present themselves, stating whether they intend to do so in all the subjects, or in those only in which they failed to obtain fifty-five per cent. of the marks obtainable, mentioning the names of such subjects.

The time for holding the examinations at the close of the term of the Law School in any year may be varied from time to time by the Legal Education Committee, as occasion may require.

On the subject of examinations reference may be made to Rules 168 to 174 inclusive, and to the Act R.S.O. (1887), cap. 147, secs. 7 to 10 inclusive.

Honors, Scholarships, and Medals.

The Law School examinations at the close of the term include examinations for Honors in all the three years of the School course. Scholarships are offered for competition in connection with the first and second intermediate examinations, and medals in connection with the final examination.

In connection with the intermediate examinations under the Law Society's Curriculum, no examination for Honors is held, nor Scholarship offered. An examination for Honors is held, and medals are offered in connection with the final examination for Call to the Bar, but not in connection with the final examination for admission as Solicitor.

In order to be entitled to present themselves for an examination for Honors, candidates must obtain at least three-fourths of the whole number of marks obtainable on the papers, and one-third of the marks obtainable on the paper on each subject, at the Pass examination. In order to be passed with Honors, candidates must obtain at least three-fourths of the aggregate marks obtainable on the papers in both the Pass and Honor examinations, and at least one-half of the aggregate marks obtainable on the papers in each subject on both examinations.

The scholarships offered at the Law School examinations are the following :

Of the candidates passed with Honors at each of the intermediate examinations the first shall be entitled to a scholarship of $100, the second to a scholarship of $60, and the next five to a scholarship of $40 each, and each scholar shall receive a diploma certifying to the fact.

The medals offered at the final examinations of the Law School and also at the final examination for Call to the Bar under the Law Society Curriculum are the following :

Of the persons called with Honors the first three shall be entitled to medals on the following conditions :

The First: If he has passed both intermediate examinations with Honors, to a gold medal, otherwise to a silver medal.

The Second: If he has passed both intermediate examinations with Honors, to a silver medal, otherwise to a bronze medal.

The Third: If he has passed both intermediate examinations with Honors, to a bronze medal.

The diploma of each medallist shall certify to his being such medallist.

The latest edition of the Curriculum contains all the Rules of the Law Society which are of importance to students, together with the necessary forms, as well as the Statutes respecting Barristers and Solicitors, the Matriculation Curriculum, and all other necessary information. Students can obtain copies on application to the Secretary of the Law Society or the Principal of the Law School.

THE LAW SCHOOL CURRICULUM.

FIRST YEAR.

Contracts.
Smith on Contracts.
Anson on Contracts.
Real Property.
Williams on Real Property, Leith's edition.
Deane's Principles of Conveyancing.
Common Law.
Broom's Common Law.
Kerr's Student's Blackstone, Books 1 and 3.
Equity.
Snell's Principles of Equity.
Statute Law.
Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.

Criminal Law.
Kerr's Student's Blackstone, Book 4.
Harris's Principles of Criminal Law.
Real Property.
Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Personal Property.
Williams on Personal Property.
Contracts.
Leake on Contracts.
Torts.
Bigelow on Torts—English Edition.
Equity.
H. A. Smith's Principles of Equity.
Evidence.
Powell on Evidence.
Canadian Constitutional History and Law.
Bourinot's Manual of the Constitutional History of Canada.
O'Sullivan's Government in Canada.
Practice and Procedure.
Statutes, Rules, and Orders relating to jurisdiction, pleading, practice, and procedure of Courts.
Statute Law.
Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.

Contracts.
Leake on Contracts.
Real Property.
Clerke & Humphrey on Sales of Land.
Hawkins on Wills.
Armour on Titles.
Criminal Law.
Harris's Principles of Criminal Law.
Criminal Statutes of Canada.
Equity.
Underhill on Trusts.
Kelleher on Specific Performance.
De Colyar on Guarantees.
Torts.
Pollock on Torts.
Smith on Negligence, 2nd ed.
Evidence.
Best on Evidence.
Commercial Law.
Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.
Private International Law.
Westlake's Private International Law.
Construction and Operation of Statutes.
Hardcastle's construction and effect of Statutory Law.
Canadian Constitutional Law.
British North America Act and cases thereunder.
Practice and Procedure.
Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.
Statute Law.
Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

THE LAW SOCIETY CURRICULUM*

Examiners: FRANK J. JOSEPH, LL.B.
A. W. AYTOUN-FINLAY, B.A.
M. G. CAMERON.

Books and Subjects prescribed for Examinations of Students and Clerks wholly or partly exempt from attendance at the Law School.

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, 2nd edition; the Ontario Judicature Act; R.S.O., 1887, cap. 44; the Rules of Practice, 1888, and Revised Statutes of Ontario, chaps. 100, 110, 143.

FOR CERTIFICATE OF FITNESS.

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

*The First Intermediate Examination under this Curriculum has been discontinued since January, 1892.