DIARY FOR MAY.

1. Tues... Assessors in Cities and Towns to comp. Roll by this date. Clerks of Mun. to make return to County Treasurer lands taken up during last year, and certify taxes due thereon.
3. Sat.... Candid. for Att'y to leave Art., &c., with Sec. of Law Soc. Co. Treasurers to make up arrears of taxes on lands.
4. SUN... *3rd Sunday after Easter.*
6. Tues... Siege of Quebec raised, 1776. Primary examination of Articled Clerks and Students.
10. Sat.... Treaty of peace bet. France and Germany, 1871.
11. SUN... *4th Sunday after Easter.*
15. Thurs.. Last day for ser. for Co. Ct. Exam. for call with Honors. Candidates for call to pay fees and leave papers.
16. Fri.... Examination of Law Students for call to the Bar.
17. Sat.... Exam. of Articled Clerks for admission as Attorneys.
18. SUN... *5th Sunday after Easter.*
19. Mon... Easter Term begins. Articled Clerks and Students to give notice for inter-examination.
22. Thurs.. Inter-examination Law Students and Articled Clerks.
23. Fri.... Paper Day, Q.B. New Trial Day, C.P.
24. Sat.... New Trial Day, Q.B. Paper Day, C.P.
25. SUN.... *1st Sunday after Ascension.* Fenian skirmish at Eccles Hill, 1870.
26. Mon.... Pap. Day, Q.B. N.T. Day, C.P. Last d. to decl. for Co. Ct.
27. Tues... New Trial Day, Q.B. Paper Day, C.P.
28. Wed... Paper Day, Q.B. New Trial Day, C.P.
29. Thurs.. Open Day, Q.B. Paper Day, C.P.
30. Fri..... New Trial Day, Q.B. Open Day, C.P.
31. Sat..... Open Day, Q.B. Open Day, C.P.

CONTENTS.

THE

Canada Law Journal.

Toronto, May, 1873.

Lord Romilly, Master of the Rolls, has retired from the Bench after serving in that capacity for twenty-two years. He was in many respects an admirable Judge, but had the unfortunate peculiarity of leaving a large percentage of his decisions on important points reversed or varied on appeal. It is said that Sir George Jessel, the Solicitor General, will succeed him.

The distinguished position which a very large proportion of the Reporters in the English Courts have attained in the profession, is illustrated in the case of Sir Chas. Marshall who died in February of this year, at the age of 84 years. He edited an edition of Marshall on Insurance, and was the author of the reports in the Common Pleas cited by his name. During his life, he was for some years Chief Justice of Ceylon, and was knighted at the time of his appointment.

A valued correspondent reminds us that we need not go out of our own country to award the palm of long service on the Bench. The late Mr. Bowen was appointed a Puisne Judge of the then Court of Queen's Bench for Lower Canada in 1812, and he died Chief Justice of the Superior Court for Lower Canada, in 1866. He therefore sat as a judge for a period of fifty-four years. He had been Attorney-General for some few years before he was appointed to the Bench.

In a recent appeal to the Privy Council from the Province of Quebec, we notice

that Mr. Dorion, Q. C. (of the Canadian Bar), appeared for the respondents. It appears from the report (*Herse* v. *Dufaux*, 21 W. R., 313,) that he was accorded precedence in like manner as is granted to members of the English Bar who wear silk. It is worth while noting the fact that the English Judges respected the dignity conferred by the Colonial Government, and granted pre-audience to Mr. Dorion in consequence thereof.

In the Colony of Victoria, the Parliament, finding that a salary of £2,600 was not sufficient to secure the best legal talent for the Bench, has raised the salary of Puisne Judges to £3,000 and that of the Chief Justices to £3,500. Here is an example which may well be imitated in the Dominion of Canada. We are glad to notice from the remarks of Sir John Macdonald and the concurrent observations of Mr. Blake, that the attention of both sides of the House has been called to the question of making some addition to judicial salaries, and we trust that the Session will not be allowed to pass without an amendment of the law in this respect.

We are comforted by observing, in a Philadelphia exchange, an advertisement of the Law Librarian requesting the return of missing books, in number about one hundred and fifty. The Librarian of the "City of Brotherly Love" puts it very nicely indeed, by requesting gentlemen who have borrowed books from the Library to examine their book-shelves and return any volumes that may have been overlooked theretofore. The pilferings from the Law Library in this city were at one time tolerably extensive, but by the admirable supervision of Mr. Esten, the present librarian, the loss of a volume is becoming quite an exceptional occurrence.

THE ADMINISTRATION OF JUSTICE ACT, 1873.

The Administration of Justice Act is now on the statute book, and we believe it will effectually serve the purpose for which it was designed. Several alterations in the Bill as published by us were made in committee before it finally passed, some clauses were added, one was struck out, and the numbering of the clauses was in part changed. The following sections (according to numbering in *bill*) passed without alterations, viz:—1 to 12, 14 to 16, 19, 20, 22, 27, 29, 30, 32, 34, 39, 41, 43 to 45, 47 to 55, 57 and 58. All the other sections are altered, some of them very materially. There will be ample time for the examination of all the sections, for the body of the Act does not come into force till the 1st January, 1874. There are nine sections which come into force at once, viz:—46, 47, 51, 56, 57, 58, 62, 63, and so much of 59 as relates to County Court sittings in September. These we subjoin. The numbering is as in the Act:

46. All issues of fact and assessments of damages in actions in any county court may be tried and assessed at the sittings of assize and *nisi prius* for any county other than that in which the venue is laid, upon an order being obtained for that purpose; and such order may be granted upon similar grounds to those upon which an order changing the place of trial would be granted in the superior courts of common law.

47. In case of there being a junior judge for the county, such junior judge may preside over all or any of the courts of the county, when the senior judge is not present, and shall, as regards any such courts, have the same duties, powers and authority as the senior judge.

51. The judges of the Superior Courts of Common Law, or any four of them, of whom the chief justices shall be two, shall have the like power of making general rules or orders for the effectual execution of this Act, as are conferred upon them by the three hundred and thirty-third, three hundred and thirty-fourth and three hundred and thirty-eighth sections of

the Common Law Procedure Act with reference to matters contained in the said Act: and the judges of the Superior Courts of Common Law, or any three of them, of whom one of the chief justices shall be one, shall have the like power of making general rules or orders, with reference to matters contained in this Act, as are conferred upon them by the three hundred and thirty-ninth and three hundred and fortieth sections of the Common Law Procedure Act with reference to matters therein contained; provided that it shall not be necessary that any general rules or orders made under the powers conferred by this Act, or any general rules, orders, or regulations hereafter made under the powers conferred by the Common Law Procedure Act be transmitted to the Governor, in the manner directed by the three hundred and thirty-fifth section of the last mentioned Act.

56. When the judge of the county court, or the junior or the deputy judge (as the case may be) officiating in the office of county court judge, is present, it shall not be necessary, in order to constitute a court or sittings of the general sessions of the peace, or a quorum at any sittings thereof, that any associate or other justice of the peace should be present at such court or sittings.

57. The judge of every county court, or the junior or deputy judge thereof, authorized to act as chairman of the general sessions of the peace for any county, is constituted a court of record for the trial, out of sessions and without a jury, of any persons committed to gaol on a charge of being guilty of any offence for which such person may be tried at a court of general sessions of the peace, and for which the person so committed consents to be tried out of sessions, and without a jury; and the court so constituted shall have the powers and duties which the Act passed in the session of the Parliament of Canada held in the thirty-second and thirty-third years of Her Majesty's reign, and chaptered thirty-five, purports to give, so far as the Legislature of this Province can give the same; and every judgment, proceeding, act, matter, or thing heretofore had or done under or by virtue of the said Act, shall be held to be as valid as if the said Act had been an Act of the Legislature of this Province.

58. The court constituted by the preceding section shall be called "The County Judge's Criminal Court" of the county in which the same is held.

59. In addition to the sittings of the courts of general sessions of the peace and of the county court of the County of York, now held in and for the County of York, there shall be held in each year a fourth sittings thereof respectively, to be held on the second Tuesday in September of each and every year; and the sittings of the said general sessions of the peace and of the county court of the County of York now by law directed to be held on the second Tuesday in the month of June, shall be held on the second Tuesday in the month of May, including the present year, and all provisions of law relating to jurors and juries, and other matters shall apply to such additional and altered sittings respectively, in the same manner as to the present sittings heretofore held of such courts respectively.

62. Section five of the twenty-seventh chapter of the Consolidated Statutes for Upper Canada is hereby repealed, and the following substituted therefor:

(5.) Such notice may contain any number of modes in which title is set up: Provided always that the opposite party shall be at liberty to apply to the court or a judge to strike out any mode upon the ground of embarrassment or delay; and at the trial the claimant shall be confined to proof of the title set up in the notice; but the claimant shall not be required to set out in such notice the date or particular contents of any letters patent, deed, will or other instrument or writing which shows or supports his title, or the date of any marriage or death, unless it be specially directed by order of the court or a judge.

63. The Lieutenant-Governor in Council may appoint that sums not in any case exceeding six hundred dollars nor less than one hundred dollars yearly shall be paid out of moneys to be hereafter voted by the Legislature for this purpose, as and for the salaries of the deputy clerks of the Crown respectively.

DIVISION COURT ACCOMMODATION.

It is satisfactory that provision has at length been made respecting Division Court accommodation. A clause in the Consolidated Municipal Act, which has just been passed, makes it the duty duty of Municipalities in which Division Courts are held to furnish a Court Room and "necessary accommodations" for holding the Court, *not in connection with any Hotel.*

Hitherto when Municipalities did not

properly appreciate the importance of giving accommodation, a little gentle pressure had to be brought to bear, but it was not pleasant to the judge to find it necessary to say "if you do not furnish a room for holding the Court, and an office for the Clerk and fuel, &c., in the winter season, I will move the Court to another place where they will."

Now it is made a statutory duty, and we hope Municipalities will make decent, nay, generous provision for the accommodation of "The People's Courts."

"SINGLE SEATED JUSTICE" IN CRIMINAL CASES.

We have in this Province peculiar and unique Criminal Courts of recent creation. In a former number of the *Law Journal*, we entered very fully into the nature of these Courts, and pointed out in detail the benefits likely to spring from their operation. We could only at the time reason in a general way on the subject, for the law had not then been tested. Several of the judges took the same favorable view in addressing the grand jurors. We are now able to speak upon actual returns of the work they have been doing.

In the Province of Quebec similar tribunals exist, but they have not yet been created in the Provinces of Nova Scotia, New Brunswick, British Columbia, or Manitoba, and before therefore noticing the work done by them in Ontario, we would in general terms and without regard to technical details briefly refer to the jurisdiction and procedure in these Courts in Ontario.

The chief feature is that jurisdiction is given to *a single Judge without a jury* to hear and determine, with some three or four exceptions, all indictable offences, felonies and misdemeanors, known to the law, excepting offences punishable with death.

The procedure is simple and speedy. After a prisoner has been fully committed for trial, the Sheriff of the locality reports the case to the Crown attorney, a resident barrister appointed by the crown in each county for the purposes of criminal justice. Upon this report the Crown attorney applies to the resident judge for his order to bring up the prisoner at some convenient day, usually within a week, by which time the information and examinations will have come into his hands. Upon these the Crown attorney frames an "Act of Accusation," in the nature of an indictment or criminal information, and the prisoner being brought before the judge sitting in open court on the day appointed, the accusation is read to him, and he, the prisoner, has the right to elect how he will be tried, by the judge alone or by a jury. If he desires to be tried by a jury, he is remanded for trial till the next sittings of the ordinary criminal courts; if he elects to be tried by the judge his plea is taken. If he pleads guilty sentence is at once passed; if he pleads not guilty, an early day is appointed for the trial, which always takes place at the court house, in open court. At the trial the Crown is represented by the Crown attorney, and the prisoner is entitled to his defence by counsel. Only barristers have audience in the court. The trial is conducted according to the practice at the ordinary courts, and the punishment on conviction is the same; indeed the only difference is that there is no jury, the judge alone hearing the evidence and determining the facts, &c., of the case. If the prisoner be convicted "the sentence of the court" is usually prayed at the time, and at once passed.

A return to the Legislature of Ontario for the year 1871, of prisoners committed for trial in this Province, shows the nature of the offences, the cases tried by the judge without jury, those tried by a jury, and the result under each head.

Judge Gowan, in a recent address to the grand jury in the County of Simcoe, gave a very full exposition and analysis of this return, and the figures he brought out, which we use, present some interesting features. Looking at the learned judge's figures, we are able to say, that the opinion we hazarded as to the value of these new tribunals has been very fully sustained, and the return incidentally furnishes proof that trial by jury is not so popular even in criminal cases, as some would have us to suppose. Of 936 persons committed for trial during the year, no less than 742 or say 80 per cent. preferred to be tried by a judge rather than by a jury. No doubt allowance must be made for the fact that in some cases the prisoner could within a week or ten days after being committed obtain his trial instead of waiting perhaps for three months for the regular sittings of the ordinary criminal courts, but this inducement would only apply when the prisoner could not obtain bail in cases bailable; but it is quite evident that a very large number must have preferred being tried before a judge alone. It is very noticeable that a considerable number of the cases tried before the judges were of a serious character, and in some counties every prisoner committed elected to be tried without a jury; indeed in nearly all the counties the claim to be tried by a jury was the exception.

In the counties including the large cities, it was otherwise, for at Toronto of the 99 committed, only 56 consented to be tried by the judge. At London of the 89 committed, but 49. At Hamilton of 79 committed, 60 preferred to be tried by the judge alone. But taking three counties having the largest number of commitments, the figures show as follows:—

Simcoe, 42 committed,	37	elected to be tried by judge.			
Brant, 39	"	35	"	"	"
Norfolk, 37	"	26	"	"	"

In the three counties, including the Cities of Toronto, Hamilton and London, the number of commitments was 267; of these 165, or about three-fifths, elected to be tried by the judge. In all the rest of Ontario the number committed for trial was 669, of whom the large number 577, over five-sixths, claimed the right to be tried by the judge alone without a jury. As might be expected, crime in the counties first named bears a large proportion to the total for Ontario, 267 to 669, or nearly two-fifths of the number of commitments for trial in the whole Province.

Looking to results of trial by judge and trial by jury at the ordinary courts, we find the following figures: 573 convictions in 742 tried by judges, a little over 77 per cent.; 98 convictions in 194 cases tried by juries, but 50 per cent.

Again distinguishing between the three counties which include the cities named, and all the other counties in the Province together—in the former, of 267 tried by the judges, 107, say two-fifths, were convicted; of 165 tried by the jury, 102, say three-fifths, were convicted. In all the other counties, of 577 prisoners tried by judge alone, 466, or nearly five-sixths, were convicted; of 92 tried by jury, 55, or nearly three-fifths, were convicted.

In analysing the return for the whole Province for a classification of the crimes in cases tried by the judge, we find the following results: 92 cases of offences against the person more or less serious; 45 of offences against property, accompanied by violence; 542 cases of larceny, and kindred offences, unaccompanied by violence; 6 offences connected with railways, and 11 cases of minor offences. There is some difficulty in an exact classification from defective returns, but the above figures are very close to the mark.

We do not now pause to reason on the facts disclosed by the figures before us, and

shall content ourselves with remarking at present that one solitary case of assault upon a policeman in a whole year speaks of ready submission to subordinate ministers of the law; but three cases of indecent assault tell favorably for the morals of Upper Canadians; and but two cases for obstructing a railway, with about 4,500 miles of rail in the Province, a considerable portion through a partially settled country tells its own story. On the other hand, perhaps 52 cases of assault, and some 16 cases of aggravated assault, would show a little pugnacity amongst our people. We have no return as to the cases cognizable in other courts and how disposed of, but they are comparatively few in number.

THE LAST EVIDENCE ACT OF ONTARIO.

Some of the legislation of the Local House for this Province has not passed through a very favourable ordeal before the Judges. In the *Goodhue* case it was more than hinted that Lord Tenterden's observation touching the legislation of his time was applicable to the Ontario Parliament, and that of it, too, it could be said that it was "*magnas inter opes inops.*" We are persuaded that a more satisfactory expression of opinion will be accorded by the bench to the Act to amend the law of evidence of 1873. The principal features of change in this Act—those, namely, relating to the admissibility of the evidence of husband and wife, and the provision for the reception of evidence of matters occurring before the testator's death in suits by or against executors, have been before advocated in this journal, as well as recommended by individual judges.

The first section enacts that in any civil suit or action, the husbands and wives of the parties thereto shall be competent and compellable to give evidence therein; save that, as provided by the second section, neither shall be compellable to disclose any communication made to the other during the marriage. This, of course, leaves it to the option of the husband or wife to disclose such quasi-privileged communications, but if so advised, either may decline to answer any questions on matters of this kind. The difference between competency and compellability to testify was discussed by Spragge, then V. C., in *Peterborough* v. *Conger*, 1 Chan. Cham., R. 35.

There is also a further exception introduced in the third section, by which neither husband nor wife can give evidence for or against the other "in any proceeding instituted in consequence of adultery." By the fourth section the party opposing or defending, or the husband or wife of such party, is rendered competent and compellable to give evidence in all proceedings, matters, or questions *not being crimes*, under Acts relating to Licenses or Municipal Institutions or assessments, &c., or on trials before Justices of the Peace and other judicial officers of summary jurisdiction. Some very nice questions have arisen upon "what is a *crime?*" It is remarked in a late case, "there would seem to be little doubt that the violation of a public Statute, and more particularly so when that violation is spoken of as an *offence* and is punishable by fine or imprisonment, as substitutionary for the fine, is a *crime* in law, and the proceedings taken against the party are criminal proceedings:" *Re Lucas*, 29 U. C. Q. B. 92. In Powell on Evidence, where the author comments on the doctrine laid down in *Attorney General* v. *Radloff*, 10 Ex. 84, it is observed thus: "Where the imprisonment follows on default of the payment of a fine, it may be regarded in the nature of an execution; and the deprivation of personal liberty would be quite consistent with the character of the Act as a civil

proceeding. But where it may follow by the direct legal consequence of the offence, it would involve the anomaly of making the offence civil or criminal according to the preliminary view which the magistrate chose to take of the complaint" (*p.* 29.)

The next section repeals sub-section (*e*) of section 5 of the Evidence Act of 1869, and the last section, which was added, we believe, in committee provides that in suits by or against the representatives of persons deceased, the evidence of the opposite party in respect of any matter occurring before the death of such deceased person shall not be sufficient to obtain a verdict upon, unless it be corroborated by some other material evidence. Till quite recently, this might be said to be the well understood rule of the English and Irish Courts. It has been decided again and again that the Court is not prone to act on evidence of conversations with a deceased person, and will never give a plaintiff anything upon his own uncorroborated statement against another after that other's death: See *Rogers* v. *Powell*, 38 L. J., N. S.; *Hartford* v. *Power* Ir. L. R., 3 Eq. 602; and see the cases cited in *Northwood* v. *Keating*, 18 Gr. 669. In one of the cases there noted *Grant* v. *Grant*, 34 Drew 623, the Master of the Rolls laid it down broadly that the Court will not act upon the unsupported testimony of a claimant upon the estate of a person deceased. To this, however, exception has been taken by Wickens, V. C., who says in *Browne* v. *Collins*, 21 W. R. 222, that he considers such evidence though unsupported, admissible, and that in giving effect to it, the nature of the case and a great many other circumstances may very much affect the feeling of the Court, as a juryman, on the subject.

TRAVELLING BY RAIL.

[CONTINUED.]

As a general rule, which however has exceptions as every other general rule, it may be assumed that carriers—including Railway Companies—are bound, generally speaking, either to make actual delivery of the goods carried by them, or to give notice to the consignee of their safe arrival and afford him reasonable time and opportunity to see to his property and provide for his own interests, before the responsibility for the safety of the goods which rests upon them terminates: Macaulay, J. in *McKay* v. *Lockert*, 4 O. S. 407. And this doctrine was affirmed by Draper, C. J., in *O'Neill* v. *Great Western R. W.*, 7 C. P. 207. But when the Company has nothing further to do with the goods as carriers, they have no further responsibility attaching to them as such. *Shepherd* v. *Bristol and Exeter R. W.*, L. R. 3 Ex. 189. And where a company received goods in Buffalo to be carried by them as common carriers to Brantford, and at Brantford the goods were burnt up with the bonded warehouse in which they were stored under control of the Company, the defendants, the Court of Common Pleas held that the defendants' liability as common carriers had ceased upon the goods being stored in the warehouse, where, in the contemplation of the parties, they were to be placed, and that they then became liable as warehousemen, and were therefore not liable as common carriers for the loss sustained by the plaintiff; nor were they bound to give plaintiff notice of the arrival at Brantford station, as the plaintiff was not entitled to demand or receive them except through the custom-house officer: *Bowie* v. *Buffalo, Brantford and Goderich R. W.*, 7 C. P. 191. In *O'Neill* v. *Great Western R. W.*, 7 C.P. 207, and *Inman* v. *Buffalo and Lake Huron R. W.*, 7 C. P. 325, it was clearly laid down that in case of bonded goods the Railway Com-

pany's duty as common carriers was ended on the deposit of the goods in a bonded warehouse. In the latter case Draper, C. J. said, "the terminus of the transport being reached, the duty of common carrier is fulfilled by placing the goods in a safe place, alike safe from the weather and from danger of loss or theft, and whatever the responsibility the company incur if that safe place is one under their own charge and control, it assuredly is not the responsibility of a common carrier."

From these cases it is evident that a traveller who leaves his baggage behind him at the station on his arrival at his journey's end, thinking that so long as he retains his checks all is right, leans upon a broken reed and may find that both his baggage and his right to recover damage therefor from the Railway company has vanished like a morning mist before the rising sun.

In fact such was the actual experience of one Penton, who left Paris by train, for Seaforth, the possessor of two trunks: his baggage came safely to the latter place about three in the afternoon and was put upon the platform of the station. After a time P. helped the baggage-master to carry the trunks into the baggage-room; he then entered the bus and rode in it to the village inn, and there was nothing to have prevented him taking his baggage with him had he so chosen. In the evening, about eight o'clock, he sent his checks down for the trunks, but one had disappeared, and the evidence went to show that it had been stolen, for some weeks afterwards it was found at Clinton dispoiled of its contents. In an action against the company to recover the value of the lost articles, the jury gave him a verdict for $57.20. In term a new trial was ordered, upon payment of costs; this was appealed against, and after argument it was held that the defendants were not responsible; that their duties as common carriers ended when the trunks had been placed on the platform and the plaintiff had had a reasonable time to remove them, as he clearly had here, there being no necessity for his putting them into the baggage-room; a nonsuit was therefore directed: *Penton* v. *Grand Trunk R. W.*, 28 U.C.Q.B. 367. In *Campbell* against the same company, argued during Hilary Term of this year, the plaintiff took a ticket at London and checked his baggage to Toronto: he stopped on the way so that when his trunk arrived at Toronto he was not there to receive it. The company placed it in their baggage-room, whence it was stolen after two days: the Court, without hearing counsel for the defendants, made absolute a rule *nisi* for a nonsuit.

Where it is proved to be the custom of the porters in the employ of the company to assist passengers at the station to obtain cabs within the station grounds, and place their baggage therein, the liability of the company will be somewhat extended. Thus, where this custom prevailed, the plaintiff had with him in the car a carpet-bag containing a large sum of money, and he kept it in his own possession until alighting at the terminus in London. On stepping out of the carriage with the bag he suffered a porter of the company to take it from him, for the purpose of securing a cab. The porter having found a cab within the station grounds, placed the bag in it, and returned to the platform to get the other baggage of the plaintiff. Meanwhile, cabby disappeared, and the bag and all that was therein were lost. It was held that this was a loss through the neglect of the company, and that they were liable therefor in damages: the court considering that the bag had been delivered to the company to be carried and that there had been no re-delivery to the plaintiff, and being unable to distinguish between this and the dressing-case in *Richards* v. *Lon-*

don, B. & S. C. R. W.: *Butcher* v. *London & S. W. R. W.* 16 C. B. 13.

It has been held in England that when there is one entire contract to carry a passenger and his baggage partly by land and partly by sea, the contract is divisible, and that as to the land journey the carrier is within the protection of the Carrier's Act (11 Geo. IV. c. 4 and 1 Wm. IV. c. 68.) So that a man travelling from Jersey to London, having lost a chronometer in the cars at Southampton, sued in vain for compensation, he not having complied with the requirements of the Act: *Le Conteur* v. *London & S. W. R. W.* L. R. 1 Q. B. 54.

A railway company's liability sometimes extends beyond its own lines; for if they undertake the transportation of goods, and book them for a place beyond the terminus of their road, they will be liable for a loss, though it occurs while the goods are in transit over the rails of another company, to whom they transferred them, and necessarily so, for conveyance to the place of destination: *Muschamp* v. *Lancaster & Preston Junction R. W.*, 8 M. & W. 421: and see also *Scothorn* v. *South Staffordshire R. W.*, 8 Ex. 341. The receipt of the goods so to be carried is *prima facie* evidence of the liability of the company: *Watson* v. *Ambergate, N. & B. R. W.*, 15 Jurist 448. These decisions have been followed in several American cases, but latterly some of the courts in that republic have held, that the responsibility is only *prima facie* and may be controlled by general usage among carriers, whether such usage be known to the person sending or not; and Patterson J., in *Watson* v. *Ambergate, N. & B. R. W.* said that the company were liable unless the facts shewed that their responsibility had determined.

The liability of the company may be controlled by special agreement, as *modus et conventio vincunt legem*; so where the South Eastern R. W. Company had upon their through tickets from London to Paris, the words "The S. E. R. W. Co. is not responsible for loss or detention of, or injury to luggage of the passenger travelling by this through ticket, except while the passenger is travelling by the S. E. R. W. Co.'s trains or boats;" and the plaintiff took such a ticket, though he signed no memorandum—his portmanteau being lost between Calais and Paris on a French line, he sued the S. E. Company in vain, they being protected by the conditions on the ticket. However harsh it may appear in practice to hold a man liable by the terms and conditions which may be inserted in some small print, upon the ticket which he gets at the last moment, after he has paid his money, and when nine times out of ten he is hustled out of the place at which he stands to get his ticket by the next comer; however hard it may appear that a man shall be bound by conditions which he receives in such a manner as this, and, moreover, when he believes that he has made a contract binding upon the company to take him, subject to the ordinary conditions of the general contract, to the place to which he desires to be conveyed,—still we are bound, on the authorities, to hold that when a man takes a ticket, with conditions on it, he must be presumed to know the contents of it, and must be bound by them: Cockburn, C. J., in *Zunz* v. *South East. R. W.*, L. R. 4 Q.B. 539. A contract entered into with a common carrier by the party who delivers the goods to be carried, which exempts the carrier from all liability for any loss occasioned by his negligence, is binding upon the parties: *Carr* v. *Lancashire & Yorkshire R. W.*, 7. Ex. 707; and see *Austin* v. *Manchester, Sheffield & Lincoln R. W.*, 10 C. B. 454.

Where a company is in the habit of receiving passengers at the station of another railway for transportation on their

own, it is their duty to have an agent on the spot to see to such passengers, and if they do not, but allow any one else to act for them, they will be held responsible for the loss of luggage committed to the care of the person so acting for them for delivery on their line: *Jordan* v. *Fall River R. W.*, 5 Cushing 70.

If a servant carries his master's luggage with and as his own, and the company receive it as the ordinary luggage which his ticket entitles the servant to carry; if the luggage is lost the master cannot recover, although he may have travelled by the next train without any baggage at all, for the contract is with the servant alone: *Becher* v. *Great Eastern R. W.*, L.R. 5 Q. B. 241: *quære*, could the servant recover, the luggage not being his?

Occasionally the monotony and tedium of a trip is broken and relieved by the sound of a strife of tongues, arising above the din and rattle of the train, and the sight of a conductor struggling either with some poor unfortunate who, having nothing to pay, is endeavoring to reach his desired haven without possessing a talismanic ticket, or with some witty one who has been attempting to palm off a bogus pass or ticket as a *quid pro quo*. Such the conductor is entitled to eject, for the twelfth subsection of section 20 of Railway Act 1868, lays down clearly that "any passenger refusing to pay the fare, may by the conductor of the train and the servants of the company be put off the cars, with his luggage, at any usual stopping place, or near any dwelling house, as the conductor elects, the conductor first stopping the train and using no unnecessary force." Sometimes, however, a conductor is too hasty and errs through excess of zeal, and one with a right to enjoy all the privileges of transportation, is improperly and unlawfully compelled to quit the cars and is left disconsolate and alone beside the track, while the train thunders past him. If one is ejected unlawfully he has a full remedy at law, for trespass lies against a company for an assault (and the putting out is so considered,) committed by their servants authorized by them to do the act. Such authority, although not given by an instrument under seal, is binding upon the company: *Eastern Counties R. W.* v. *Brown*, 6 W. H. & G. 314.

The rule is the same between a private person and a railway company as it is where the same matter is in dispute between two private individuals; and the general rule is that a master is not liable for the tortious acts of his servant, unless that act be done by an authority, either express or implied, given him for that purpose by the master: so that the plaintiff is bound to show that the person who turned him off the cars was, not only a servant of the company, but also, that he had authority so to treat him, or that such conduct towards him has been subsequently ratified by them: *Roe* v. *Birkenhead, Lancaster, &c., R. W.* 7 W. H. & G. 36. An assault committed on behalf of, and for the benefit of, a corporation is capable of being ratified by them, and if ratified renders them liable in trespass for the act: *Eastern Counties R. W.* v. *Brown, ante.* A person who puts another in his place to do a class of acts in his absence necessarily leaves him to determine, according to the circumstances which arise, when an act of that class is to be done; consequently he is answerable for the wrong of the person so intrusted, either in the manner of doing such an act, or in doing such an act under circumstances in which it ought not to have been done, provided that what is done is not done from any caprice of the servant, but in the course of the employment: *Bayley* v. *Manchester, Sheffield, &c., R. W.*, L. R. 7 C. P. 415.

In the absence of anything to the contrary the court must assume that the conductor is the agent of the company,

authorized by them to do all legal acts for the proper management of the business of collecting the tickets and the fares of the passengers, preserving order and regulating the running of the train; and authorised by them, as well as by act of parliament, to remove persons from the cars who misconduct themselves or have not paid their fare. This being within the scope of his authority, if, in assuming to carry out what he is legally empowered to do, and in relation to which he must be considered the general agent of the company, he forcibly re moves a passenger from the cars who has paid his fare, without any excuse for so doing, he will be liable for the assault, and the doctrine of *respondeat superior* applies to his employers, the company: *Williamson* v. *Grand Trunk R. W. Co.*, 17 U. C. C. P. 615. But if during the course of such removal, and while leaving the carriage, the aggrieved party should slip, fall, and be injured, the company will not be liable to him for such injuries so sustained by him; for the removal was not the proximate, but only the remote cause of the accident, and damages, if awarded, would be too remote: (*Ibid*). If one is about to be thus unceremoniously treated it will be wise and prudent quickly to gather together all his surroundings and belongings, and quietly succumb to the powers that be; for *Glover* v. *London & South Western R. W.*, L. R. 3 Q. B. 25, decides that special damages cannot be recovered, as a usual thing, for articles left behind in the train on such occasions. There a traveller was put out of the cars without unnecessary violence, and left on the seat he had been occupying a pair of glasses; but as it was not shewn that the company's servants got possession of them, it was held that he could not recover their value. Cockburn, C. J., in giving judgment remarked, that the case would be very different in his judgment, if the glasses had fallen from the plaintiff's person as the immediate result of the violence offered to him; or if a man had personal property under his care and was dragged away under circumstances which rendered it impossible for him to take it with him and so it was lost. He (the plaintiff) had only himself to blame that the glasses were left behind him in the carriage: and the loss therefore was not the necessary consequence of the defendants' acts, but only due to the plaintiff's own negligence or carelessness: and that this head of damages was too remote for the plaintiff to recover.

The courts do not like the idea of mulcting railway companies in heavy damages for the sins of commission of their servants and conductors. Where a verdict of £50 was given against the Great Western Railway, because their conductor put the plaintiff off the train, though the inconvenience to him was trifling and the conductor had acted *bona fide* under an impression that the plaintiff had not paid his fare, and without using harshness or violence, a new trial was granted on the ground of excessive damages, and the Chief Justice stigmatised the verdict as "outrageous." But there the jurors of our Lady the Queen and my lord differed, and so on the second trial they gave the plaintiff £45 and against that the defendants did not attempt to move: *Huntsman* v. *Great Western R. W.*, 20 U. C. Q. B. 24. And in *Davis* against the same defendants (20 U. C. Q. B. 27,) the Court spoke regretfully of the exorbitant amount of damages (£50) in a case where the defendants were not otherwise concerned than through the act of their conductor, and where the conductor only did what he thought his duty required of him.

But after a second verdict the Court will not grant a new trial, even although it considers the damages excessive. This was held in *Curtis* v. *Grand Trunk R.*

W., 12 U. C. C. P. 90. The plaintiff while travelling between St. Mary's and London mislaid his ticket, and being called upon to produce it could not do so, although in his eager search therefor he pulled out of his pockets, papers, letters, newspapers, and wool, to the great edification and delight of his fellow travellers: the conductor, after waiting some time, stopped the train and turned him off, though while being put off he offered to pay his fare. Damages to the extent of $300 were given against the company, whom the Court held were responsible for the acts of their officers duly authorized and styled under the Act "Conductors," when not committed in excess of his authority, which in this case had not been overstepped; and the Court also declined to disturb the verdict, it being the second one obtained by the plaintiff.

The plaintiff, a passenger on the defendant's line of railway, sustained injuries in consequence of being violently pulled out of a railway carriage by one of the defendant's porters, who acted under the erroneous impression that the plaintiff was in the wrong carriage. The porter had no express authority to remove any person being in a wrong carriage, but he was directed to do all in his power to promote the comforts of the passengers and the interests of the company; it was held that the act of the porter in pulling the plaintiff out of the carriage was an act done within the course of his employment as the defendants' servant, and one for which they were therefore responsible: *Bayley* v. *Manchester, Sheffield & C. R. W.*, L.R. 7 C.P. 415.

Sometimes where one is expelled from a train in a summary manner he will have to shew something more than the mere fact that he was the holder of a ticket, before he can recover damages for his expulsion. For instance, where it appeared that the ticket offered by the plaintiff to the conductor must have been sold about sixteen months before and that on that account the conductor refused to take it, it also being proved that on a previous occasion the same plaintiff had presented an old ticket and on its being rejected had paid his fare; it was held that the circumstances being calculated to excite suspicion, it should have been left to the jury to say whether the plaintiff had obtained the ticket fairly, having paid his fare, or whether he was not intending to impose on the conductor: *Davis* v. *Great Western R. W.*, 20 U. C. Q. B. 27.

Even a friend's vouching that one is a true man will not protect one, for in *Curtis* v. *Grand Trunk R. W.*, *ante*, Draper, C. J., remarked that he supposed that a man who produced no ticket, but asserted that he had paid his fare and had lost his ticket and, therefore, declined to pay it again, would—though a bystander corroborated his assertion—be deemed refusing to pay within the meaning of the Act. The fact that one has not fully made up his mind how far he intends to ride, is no excuse for non-payment: *Fulton* v. *Grand Trunk R. W.*, 17 U.C.Q.B. 433. Where at the last moment a passenger tendered to the conductor a twenty-dollar gold piece, and told him to take the fare ($1.35) out of it, but the conductor ejected him, the court sustained the action of the conductor; saying that an officer at a ticket-office might reasonably object to an offer of a $20 gold piece to pay a fare of $1.35, on account of the trouble and risk involved; and that a person rushing into the cars without a ticket has no reason to expect that he will find the conductor prepared to change a $20 gold piece, for he relies upon receiving tickets from the passengers, or, if money be paid to him instead, that it will be paid with reasonable regard to what is convenient under the circumstances: *Fulton* v. *G. T. R. (ante)*.

A person who declines to pay his fare may be put off near any dwelling-house

which the conductor, in his discretion, may think best. In this case the night was dark and cloudy, but from the place where the ejected man was left the lights of the last station were clearly visible, so the Court considered that the defendants' servants had not exceeded their authority: *(Ibid.)*.

Although a company may, as a general rule, make and enforce proper regulations on all passengers using their railway, still they cannot do so against a party who, in good faith and in ignorance of their regulations, has made a contract with one of the company's duly authorized agents; in which contract there has been no notice of, or reference to, the existence of some such regulation, which would have modified the terms or conditions of the contract: *Childs* v. *Great Western R. W.*, 6. U. C. C. P. 291.

It appears that one may pay his fare to one place, and yet may leave the cars at any intermediate place where the train stops, although the fare to the latter place may be greater than it is to the former: *The Queen* v. *Frere*, 4 E. & B. 598, and *Moore* v. *Metropolitan R. W.*, 8 Q. B. 36.

The rule has been laid down that a passenger, who purchases a ticket for a distant station and gets off temporarily, and without notice, invitation or objection while it is stopping at an intermediate station, does no illegal act; but for the time, he surrenders his place and rights as a passenger on the train, before it starts; and the officers of the railway are bound to give reasonable notice of the starting of the train: *State* v. *Grand Trunk R. R. Co.*, 4 Am. Rep. 258, 58 Me. 176.

In case of fighting or disorder in the cars, the conductor must do all he can to quell it. If necessary, he should stop the train, call to his aid the engineer, fireman, all the brakesmen and willing passengers, lead the way himself—like some valiant Knight of old—and expel the offenders, or else demonstrate by an earnest experiment that the undertaking is impossible: *Pittsburgh, Fort Wayne & C. R. W.* v. *Hinds*, 7 Am. Reg. 14.

SELECTIONS.

THE SUPREME COURT OF JUDICATURE BILL.

On the motion for the second reading of this Bill, Lord Hatherley expressed his entire concurrence in its essential provisions from beginning to end, and his great satisfaction at seeing such a measure in the very able hands of the Lord Chancellor. He believed no one would deny that the time had arrived to take decided steps with respect to the entire system of judicature, divided, as it now was, between the separate tribunals of common law and equity, and by the present Bill the opportunity was afforded of having a cause decided without suitors being bandied from one court to another. In forming the "divisions" of the court care should be taken hereafter to prevent any division being composed of persons of one sort of legal training, so that there should be gradually infused throughout the whole body of judges a feeling in favour of joint administration. It was important that the first part of the Bill should be tried without delay, but the appellate part of the measure was open to more discussion. It was desirable in the interests of the suitors that a single Appellate Court should be formed, sitting during the whole of the judicial year, and giving satisfaction by its uniform results. —Lord Chelmsford regarded the Bill as a great and comprehensive scheme, calculated to effect a vast improvement in our judicature. He did not see, however, that there could be complete fusion of equitable and common law jurisdictions so long as by the formation of "divisions" the old courts would be revived under a new name. He thought the judges should be interchangeable between the "divisions," and should have a joint jurisdiction. With regard to the appellate jurisdiction of the House of Lords, he had long been of opinion that on account of its precarious character, it would be impossible to retain it if a better tribunal could be established, and the tribunal proposed by the Bill was, in his opinion, infinitely preferable, though he regretted that the appeals from Scotland and Ireland were to be excluded from the new Appellate Court, for it was desirable that one great and permanent Court of Appeal should be es-

tablished.—Lord Romilly considered the Bill was the first which effectually grappled with the evils which had to be remedied, and he would, therefore, give his cordial vote in its favour. He, nevertheless, did not concur in that part of the measure which retained the jurisdiction of the House of Lords in appeals from Scotland and Ireland, nor did he approve the proposition that there should be no appeal from the new court to the House of Lords, for in cases of peculiar difficulty it was sometimes desirable to have a second appeal, and the second appeal, if it should be allowed, ought to be made to the House of Lords, which had the advantage of being composed of a mixture of legal men and laymen.—Lord Salisbury hoped the Lord Chancellor would scrutinize most carefully those parts of the Bill whose object was to fuse together the Courts of Law and Equity, for he feared that the Bill as at present framed would divide them by as broad a line of demarcation as at present. With regard to the jurisdiction of the House of Lords, he was compelled to confess that it appeared to him impossible that things could remain as at present, but he thought the proposed new Court of Appeal would benefit as well as the Legislature if the members of the Appeal Court were made peers, with the right to sit and vote in Parliament. He regretted the exclusion of any appeals, and especially of ecclesiastical appeals from the new court.—The Lord Chancellor expressed his satisfaction at the manner in which the Bill had been received. He acknowledged that valuable suggestions had been thrown out, and they would receive due consideration ; but it must be borne in mind that in a process of transition it was necessary to move by practicable steps, and avoid passing from one system to another with a violence which would prevent success. He showed, by reference to various clauses of the Bill, that the statement that the provisions of the Bill would give to the several divisions of the court separate and distinct jurisdictions was incorrect. With regard to the appellate court, it had been suggested that ecclesiastical appeals should be subject to its jurisdiction, and, if their Lordships concurred in the proposals, he should have no objection to its adoption. His reason for retaining the jurisdiction of the House of Lords in the case of Scotch and Irish appeals was, because there might be serious constitutional objections to the transference of those appeals to an English Court created by Act of Parliament. If the new court of appeal should recommend itself to the Scotch and Irish people, a further development of the measure might be looked forward to in course of time.—*Law Times.*

JURIES.

Mr. J. W. Erle, associate in the Court of Common Pleas, has sent to the *Times* some observations on the Juries Bill; and, as our readers are aware, no man is more capable of dealing with the subject. The points discussed by Mr. Erle are the number of jurors and the question of unanimity. We are pleased to observe that there is a substantial agreement between the views of Mr. Erle and the views we lately set forth.

Mr. Erle argues for the reduction of the number of jurors from twelve to eight, mainly on the score of convenience. He shows by reference to the early history of juries, that there were reasons for the larger number that no longer exist. The functions of a juror were different to what they now are. He was not exclusively or principally the judge of the facts, but he was a witness on the trial, and each juror "was advisedly selected and summoned as having a personal knowledge of the facts in dispute." Under such circumstances, it was desirable to have as many jurors as could conveniently be brought together; but now, when the juror is not a witness, but only a judge of the fact, it is desirable to have as few jurors as will insure an acceptable verdict. Will not the opinion of eight or seven men upon evidence that has been reviewed by counsel and reviewed by the judge, be satisfactory?

But Mr. Erle does not advocate a reduction in the number of jurors because he objects to twelve, or because he has any special liking for eight. If we had an abundant supply of jurors, we apprehend that Mr. Erle would not ask for a change. It happens, however, that the supply of jurors is inadequate to the demand, and the duty has become a serious tax upon the time of merchants, shopkeepers, and other busy men. So great

is the pressure, that something will have to be done, and we see no other remedy than a reduction in the number of jurors. It has been suggested that, in certain cases, trial by jury should be dispensed with and the facts as well as the law left to the Court. Such a change would not be popular, and as we have trial by jury issues of fact ought to be decided by juries. The Attorney-General proposes that the number of twelve shall be retained in trials for treason, treason-felony, and murder, because he is unwilling to remove any of the existing protections for the life of an accused person. The suggestion is rather unfavourable to the proposal for a reduction of the number of jurors in any case. If twelve are likely to be more just than eight in a trial of life and death, why should they not be so in a trial, the issue of which will set the prisoner free or send him to penal servitude? And if twelve are likely to be more just than eight in the Criminal Court, why not in the Civil Court? Still there is a distinction in the public mind. There is a prejudice in favour of a man being tried by twelve of his peers, and perhaps it would be better to retain the number of twelve in all criminal cases and to reduce it in all civil cases. Such an arrangement would not offend the public sentiment, and it would give great relief to the demands on the jury list.

Mr. Erle proposes eight as the number of jurors. We should prefer seven, because it is an odd number, and it is a matter of experience that an even number of men are not so likely to agree as an odd number. Besides we have tried the odd number in the County Courts, and there it works very fairly.

We lately remarked that we strongly objected to a reduction of the number of jurors and at the same time the abolition of the rule of unanimity. But we further agree with Mr. Erle in his vindication of the rule of unanimity. Mr. Erle ably, and as we think conclusively, answers the chief objection to unanimity. It is said that if the verdict of the majority was taken, jurors would not have to be discharged and the costs of both litigants wasted. He tells us that the number of instances in which juries disagree is not more than 1½ per cent. of the whole number of trials. Probably it will be contended that there would be more instances of disagreement except that the minority gave way to the majority rather than render the trial abortive. But we must not assume that the minority give way in spite of strong conviction. What happens to the jury happens sometimes to the full Court. A judge who takes a somewhat different view of the law from the rest of the Court, does not feel justified in holding to his opinion against the views of the rest of the bench. Besides, those who dissent from the rule of unanimity can hardly do so on the ground that it practically involves the return of the verdict of the majority. Mr. Erle justly remarks that sometimes—when the evidence is conflicting and evenly balanced, or when the slight legal lapse of the defendant is more than compensated by the moral wrong of the plaintiff—the discharge of the jury is the only just conclusion. There is another consideration not mentioned by Mr. Erle. It is that the majority system would probably subject the jurors to personal obloquy. In trials which were associated with political or social questions, if a minority held the popular view, the names of the majority would soon be known, and they would be likely to suffer for their conscientious discharge of an onerous duty. On the whole, we see no valid reason for abolishing the rule of unanimity whilst there are very cogent reasons for its retention.

With regard to mixed juries, we are unable to offer any decided opinion. We agree with the Attorney General that the mixed jury system would be a return to the original practice, and that it is an innovation to have a jury entirely composed of common jurymen. But the historical argument is not conclusive, for, like other institutions, trial by jury must be modified by the changes of society. Our doubt about the mixed jury system is with respect to the working. It would not be desirable for the common jurors to submit their judgment to the special jurors, and we do not think that is probable. But is it not possible that the common jurors might resent the advice of the specials as dictatorial, and oppose it without a due regard to the evidence? At all events the substitution of mixed juries for the present common juries would be an experiment, and in such matters we do not approve of exper-

imental changes, unless the existing system renders a change imperative.—*Law Journal.*

LAWYERS IN PARLIAMENT.

The great influence which the Legal Profession possesses in the Legislature may be best gathered from a statement as to the creation of law peers within the last 250 years, the number of law Lords having at present seats in the House of Peers, and the constituencies which members of the Profession (chiefly barristers) represent in the House of Commons. The law lords at present sitting in the House of Peers are ten (with their ages); Lord St. Leonards, 92; Lord Westbury, 73; Lord Chelmsford, 79; Lord Cairns, 54; Lord Hatherley, 72 (ex-Lord Chancellors); Lord Selborne (present Chancellor), 61; Lord O'Hagan, 71; Lord Colonsay, 80; Lord Romilly, 72; and Lord Penzance, 57. Their united ages are 711 years, the average being 71 years, 1 month and 6 days. In the year 1860 the aggregate years of life of the whole 450 Peers of Parliament were 25,403, the average being 61 years, 7 months and 20 days.

In the House of Commons, as nearly as can be ascertained, there are forty lawyers (chiefly barristers) representing various constituencies.

The roll of Lord Chancellors of Great Britain (including two Irish Lord Chancellors), having Peerages, since the union of England and Scotland in 1603, includes the following distinguished persons: — Lords Ellesmere, Lyttleton, Bacon, Ley, Coventry, St. John, Portland, Clarendon, Shaftesbury, Nottingham, Guildford, Jeffreys, Somers, Raymond, Macclesfield, Cowper, Harcourt, King, Talbot, Hardwick, Henley, Camden, Lord C. Yorke (he only survived his appointment three days, his patent of nobility being made out, but it did not descend to his heirs), Bathurst, Thurlowe, Loughborough, Erskine, Eldon, Plunket, Lyndhurst, Brougham, Cottenham, Truro, St. Leonards, Cranworth, Campbell, Westbury, Chelmsford, Cairns, Hatherley, O'Hagan, and Selborne. Out of the above number of Peers, forty-two, the peerages of thirty-one still remain.

Other Law-Lords (judges and their descendants) have been created in the same period, (1603 to 1873), namely, Lords Cramond, Mansfield, Stowell, Kenyon, Harrowby, Grantley, Rolle, Crewe, Wynford, Gifford, Ellenborough, Abinger, Tenterden, Denman, Kingsdown, Wensleydale, Langdale, Romilly, Penzance, Colonsay.

In the case of Lord Wensleydale, it will be recollected that the first patent granted to his Lordship by Queen Victoria was for a life peerage only; but a Committee of Privileges of the House of Lords decided that such a limited creation was not within the prerogative of the Crown, and therefore a fresh patent for a hereditary barony was issued to Mr. Baron Parke.

Out of the Law-Lords last named (numbering twenty), the peerages of fourteen still remain.

Thus in both Houses of Parliament the Legal Profession is, directly and indirectly, represented by eighty-five persons, namely, forty-five peers and forty commoners.

Appended is the roll of Lords Chief Justices of England (presiding in the Courts of King's and Queen's Bench) since the union of England and Scotland, 1603 to the present day. It includes the following names: Lords Chief Justices Popham, Fleming, Coke, Montague (created Lord Kimbolton and Mandeville 1620), Ley (Lord Speaker 1621, and created a peer, and Lord Treasurer as Lord Ley), Sir Randolph Crewe, 1625, (his grandson was created a peer 1706 as Baron Crewe); Lord Chief Justice Tresilian (he was hanged for laying down law distasteful to the Crown), Lord Chief Justice Hyde, Richardson (died 1635, Lord Cramond, a peer of Scotland), Brampton, Sir J. Rolle (from whom descended Lord Rolle, an English peer), Glyn, Newdegate, Oliver, St. John, (created Lord St. John by Cromwell, to whom he was related, in 1757), Lord President Bradshaw, the chief judge at the trial of King Charles I.; Lord Chief Justice Foster, Sir R. Hyde, Kelynge, Sir M. Hale, Raynsford, Scroggs, Pemberton, the president at the trial of Lord W. Russell; Saunders, Lord Jeffreys, Herbert, Lord Chancellor 1689, created Lord Portland by James II., and died in exile; Lord Chief Justice Wright (became Lord Keeper, and presided at the trial of the seven bishops; he died in Newgate 1689); Lord Chief Justice Holt,

Sir J. Parker, 1710 (became Lord Macclesfield); Sir John Pratt (grandfather of Lord Camden), Lord Raymond, 1718; Lord Chief Justice Lee, Ryder (father of Lord Harrowby), Lord Chief Justices Willes and Wilmot; Lord Mansfield, Lord Kenyon, Lord Wynford, Lord Ellenborough, Lord Tenterden, Lord Denman, Lord Campbell, and Sir Alexander Cockburn, the present Lord Chief Justice.

The members of the Judicial Bench and the Bar of the United Kingdom, through their great learning and independence, may be said to be the guardians of the rights and privileges of persons of every rank in the state. Hence, the law to be found in the statute book and the reports of the cases of Equity and Common Law Courts, comprises a system of jurisprudence more elaborate and extensive than that of any other country; nor can its completeness be appreciated until, when disputes and differences arise, the machinery for adjudicating on the rights of parties is required to be put in motion. *Law Times.*

Among the most striking careers of the time has been that of Judah P. Benjamin, who long represented Louisiana in the United States Senate, subsequently became the leading member of the Confederate Cabinet, and after the close of the war, removed his residence to London. He procured naturalization in England, and upon complying with the requisite conditions, began practice as a barrister. His progress has been so rapid that, although he has only been at the English bar five or six years, he has received the honor of "Queen's Counsel," and assumed the traditional "silk gown," thus taking his place among the upper grade of barristers. It is now intimated in some of the English papers that Mr. Benjamin is among the foremost in the line of those who are likely to be raised to the Bench within the next few years. It would be curious to see an ex-United States Senator, and an ex-Confederate Secretary of State, sitting beside Sir A. Cockburn on the Queen's Bench, with patched wig and ermined gown. Mr. Benjamin is a man of brilliant ability as an advocate, and was surpassed by very few as an orator when he sat in our national councils; his speech on retiring from the Senate, just before the war, was one of thrilling eloquence, not soon to be forgotten by those who heard it.—*Pitts. Law Ad.*

Those gentlemen who are familiarly known as the great unpaid, have, in the ordinary course of things, abundant opportunities of straining their jurisdiction and sinning in various ways which suggest censure. Experience has taught that these offences must be dealt with lightly, so long as they do not work flagrant injustice. It is to a particularly small matter that we now direct the attention of our readers—small in itself, but indicating very clearly what we must be prepared for. At the last Quarter Sessions for Essex, a quick-witted magistrate announced that he had found out that all the editions of Burn's Justice of the Peace in use by the clerks to the petty sessional divisions were dated 1845, and he brought forward a motion, "That the last edition of Burn's Justice of the Peace be supplied to each petty sessional divisoin of thecounty." The estimated cost was £96. The motion having been made, a Mr. Johnston rose and delivered himself of the following observations: "I am entirely opposed to this outrageous proposition, and I think after the late decision of the court it will not be seriously pressed. (Laughter.) What is the good of these musty law books? Let us decide the cases that come before us by the law of nature—(loud laughter)—and not give any attention to what quaint and stupid old people have written down in a long work which is to cost six guineas a volume. (Renewed laughter.) Another objection which I have is that no notice whatever has been given of the amount which will be required, and if they had known the amount that was proposed to be expended I am sure a number of magistrates from all parts of the county would have come down to oppose this resolution." How the learned editors of the last valuable edition of Burns will like to be called "quaint and stupid old people," we do not stop to inquire, but if Mr. Johnston is in the habit of deciding cases according to the law of nature, it occurs to us to suggest whether the Lord Chancellor might not deem it advisable to relieve him of the responsible

duty of administering laws which in many respects are exceedingly artificial. The condition of a magistrate's mind, when he desires to decide according to the law of nature, and a clerk is urging him to consider an obsolete law in a Burn's of 1845, is something terrible to contemplate.—*Law Times.*

Oxford and Cambridge Universities, for some reason or other, appear to have lost what was once almost a monopoly of judicial appointments. If we examine the recent promotions it will be found that several of the new judges are not university men at all, whilst one of the most distinguished is a member of London University. The new Baron was educated at St. Paul's School. Mr. Justice Archibald is not a graduate of any University. Sir James Hannen was educated abroad. There are now only two university men among the judges of the Queen's Bench—the Chief Justice (Cambridge), and Mr. Justice Blackburn (Cambridge); Mr. Justice Quain graduated at London. The learned judge who has just resigned, Sir William Channell, was not educated at a university; neither was Baron Bramwell, nor the Chief Baron, nor Baron Pigott; whilst Baron Martin graduated at Dublin. Consequently Baron Cleasby, who graduated at Cambridge, is the only representative of the old universities in the Court of Exchequer. The Common Pleas has a majority of university men on the Bench, but one hails from Dublin. The Chief Justice and Mr. Justice Byles were privately educated. Mr. Justice Keating graduated at Dublin, and Justices Brett and Denman are both Cambridge men. Mr. Justice Grove, of this Court, is the only Oxford man on the Common Law Bench.—*Law Times.*

Perhaps the most remarkable instance that we can adduce of the genius, learning and marvellous power of Dr. Lushington is the judgment in the Banda and Kirwee Booty. This was a case of booty of war referred to the Admiralty Court under the provisions of the 3 & 4 Vict., c. 65, s. 22. It will be remembered that it had hitherto been the custom to distribute the booty of war—*id est*, of booty taken by land forces—without reference to any Court, and therefore Dr. Lushington was called upon to adjudicate without the guidance of direct precedents, and indeed without any precedents that were authoritatively binding on the Court. The case was exceptionally important and complicated. The value of the booty was estimated at 70,672,000 rupees. The point in dispute was whether the co-operating forces had a right to a share of the booty, or whether it was the sole property of the forces directly concerned in the capture. The case began on January 8, 1866, and after twenty-six days hearing, the arguments of counsel were brought to a close on February 28. Fifteen parties were represented by thirty-six counsel. On June 30 Dr. Lushington delivered his judgment. This judgment occupies no less than sixty-three closely-printed pages in the *Law Journal Reports* (New Series), vol. 35. The main principle that the judge enunciates is that only the forces directly concerned in the capture are entitled to a share in the booty. The opening remarks upon the jurisdiction of the Court are concise, lucid, and conclusive, and the rest of the judgment would delight a soldier as well as a civilian, and a layman as well as a lawyer. Dr. Lushington surveys the whole plan of the campaign, and no point, however comparatively minute, is neglected if it has any bearing on the issue. At the end of the judgment the learned judge said, "I cannot bring this judgment to a close without observing that I view with regret the disappointment it must occasion to many gallant claimants who have performed so many noble services during this mutiny." Dr. Lushington was through life distinguished for gentlemanly demeanour and winning courtesy. Such a judgment as that in the Banda and Kirwee Booty case would have made and firmly established the reputation of any man. If that alone remained it would entitle Dr. Lushington to rank as one of the greatest jurists who ever sat on the judicial bench. But when we consider that when Dr. Lushington delivered this judgment he was in his eighty-sixth year, we are amazed as well as delighted that a judge at such an advanced age could have done that which would have taxed the powers of any judge in the day of his physical and mental prime.—*Law Journal.*

THE REPORTERS AND TEXT WRITERS.

(*From the American Law Review.*)

Adolphus and Ellis's Reports. "Distinguished for superior care and accuracy."—J. Pitt Taylor, in The London Law Magazine, vol. xxvii. p. 321.

Amos and Ferard on Fixtures. "A very excellent treatise."—Lord Tenterden, C. J., in Lyde *v.* Russell, 1 B. & Adol. 395.

Arnould on Marine Insurance. "An excellent treatise."—Chief Justice Shaw, in Wilson *v.* General Mutual Insurance Co., 12 Cush. 365. "It was said in the argument," continued the Chief Justice, "that the authorities cited do not warrant the conclusion stated in the text, because they were not the case of a part owner and master, in a case charging barratry. We are inclined to think that this is correct; the passages, therefore, can only be regarded as an application of the principle to this particular case, by writers who have devoted much learning and time to the investigation of principles, and who have stated these as their results."

Atherley (Edmond Gibson). A practical Treatise on the Law of Marriage and other Family Settlements. 8vo. London, 1813. "An able and excellent treatise."—Chancellor Kent, in Reade *v.* Livingston, 3 Johns. Ch. 491.

Benjamin on Sales. "A work from which I have derived great advantage, and which is remarkable for the acumen and accuracy of the writer, who possesses not only a knowledge of English law but of jurisprudence in general."—Willes, J., in Seymour *v.* The London and Provincial Marine Ins. Co., 41 L. J. N. S. C. P. 198.

Blackstone's (Sir William) Commentaries. "Where, if anywhere, we may look to find the principles of our jurisprudence. If he has fallen into some minute mistakes in matters of detail, I believe, upon a great question like this, as to the constitution of marriage, there is no authority to be more relied upon. He began, before the Marriage Act, to read the Lectures at Oxford, which became the Commentaries, but did not publish them till after, and his attention must have been particularly directed to the law of marriage."—Lord Campbell, in The Queen *v.* Millis, 10 Clark & Finnelly, 767.

Blackstone's (Sir William) Reports. "It appears, by the preface to the first volume of his reports, that that learned judge did not give his notes the last correction he had intended, and they were not published until after his death; yet, we are well assured that there is nothing contained in any of the opinions of the judges, or judgments of the court, that did not fall from the bench. He certainly took most accurate notes; and although the words attributed by him to Lord Mansfield, in giving judgment in Cooper *v.* Chitty, are not to be found in the report of that case in Burrow, yet there is little, if any, doubt but that his Lordship used them."—Best, C. J., in Price *v.* Helyar, 1 Moore & Payne, 553.

Bulstrode's Reports. According to Mr. Serjeant Woolrych, "one of the best old 'Reports' of legal cases."—Lives of Eminent Serjeants, vol. i. p. 380.

Burrow's Reports. "I may say, as Lord Mansfield himself said of Sir William Blackstone, Sir James Burrow's Reports are not always accurate."—Lord Campbell, C. J., in The Queen *v.* Newton, as reported in the 24 L. J. N. S. Q. B. 248. As reported in 4 Ellis & Blackburn, 871: "I may say, as Lord Mansfield himself said when speaking of Sir W. Blackstone, that what is reported is not always accurate." In Jones *v.* Roe, 3 T. R. 96, Mr. Justice Buller observed: "It has been openly acknowledged by Lord Mansfield, and I have had repeated opportunities of hearing it from him in private, that he has given to Sir J. Burrow his own note and opinion of a case, which he could not deliver publicly in court; for it was not at that time the practice of this court [the King's Bench] to give their opinions here in cases which came from the Court of Chancery." And again, the same great authority said that Burrow "certainly had the highest assistance in stating what he calls the probable grounds of the judgment."—Goodtitle *v.* Otway, 1 B. & P. 586. "Sir James Burrow was not in the habit of taking short-hand notes in court, and he professes to give rather the substance than the exact words of what was spoken by the Chief Justice; but Lord Mansfield, it is well known, looked over and corrected the greater part of his proofs before they were published, so that if this work does not contain all he actually said, it at least conveys his arguments as nearly as possible in his own language. The eloquent passages from the judgment in Wilkes's case bear evident marks of having been carefully revised by the orator himself; and there are several others that carry with them the same stamp of authenticity."—London Law Magazine vol. v. p. 100.

Campbell on Negligence. "A very good book."—Willes, J., in Oppenheim *v.* The White Lion Hotel Co., 40 L. J. N. S. C. P. 232. "I would also refer to some ingenious remarks as to

The Reporters and Text Writers.

the misapplication of the term 'gross negligence,' which are to be found in Campbell's Law of Negligence, p. 11."—Ibid.

Coke's Fourth Institute. "With respect to what is said relative to the admiralty jurisdiction in 4 Inst. 135, I think that that part of Lord Coke's work has been always received with great caution, and frequently contradicted. He seems to have entertained not only a jealousy of, but an enmity against, that jurisdiction."—Buller, J., in Smart *v.* Wolff, 3 T. R. 348.

Coke's Institutes. Camden's Britannia. Lord Hardwicke, C. J., said that though Coke's Institutes were good authorities as to matters of law, yet that they were no legal evidence of the historical facts mentioned in them; and that the same has been held as to Camden's Britannia, and such like books.—Rex *v.* Reffit, Cunningham, 62, 3d ed.

Comberbach's Reports. "Comberbach, in giving the judgment of the court, which is the only sensible part of his whole report (for it is plain to me that he did not understand the former argument on the former day, which is the first part of his report of the case), agrees with Shower. But he must be mistaken in the first part of this report."—Lord Mansfield, in Cooper *v.* Chitty, 1 Burr. 36.

Comyns's Digest. "A book of very excellent authority."—Lord Ellenborough, C. J., in Kingdon *v.* Nottle, 1 M. & S. 363. "Admirable."—Vaughan, B., in Chapple *v.* Durston, 1 Cromp. & J. 9. "A work almost perfect in its kind," says Judge Story. "He is the most fortunate jurist who possesses the earliest edition. Of the later editions, in octavo, we can say little by way of commendation. They have the gross fault of a total departure from the style, brevity, accuracy, and simplicity of Comyns; a departure which is utterly without apology, as it exhibits, on the part of the editor, either an incapacity for the task or an indifference to the manner of executing it. Mr. Kyd's edition has the negative merit of having done but little injury; Mr. Rose's, in 1800, has interwoven a miserable patchwork; and Mr. Hammond's, in 1824, has even less merit, containing the substance of his indexes to the common-law and chancery reports, thrown together with a strange neglect of the symmetry of the original work."—Story's Miscellaneous Writings, 389-393, ed. 1852.

Carpmael's Patent Cases. In the course of the argument in Feather *v.* The Queen, 6 Best & Smith, 270, 271, the case of Walker *v.* Congreve, 1 Carpmael, 356, was cited. Cockburn, C. J., remarked: "Mr. Carpmael's ability is great, but that is not a professional report."

Cox's Cases in Chancery. "Cox has the reputation of being a reporter of brevity, perspicuity, and undoubted fidelity. That which, says Lord Eldon, makes Mr. Cox's work of so much value in the library of a lawyer, is his habit of examining the registrar's book for the purpose of greater accuracy.—Alrich *v.* Cooper, 8 Ves. 392.

Doctrina Placitandi. "A book which has always been admitted to be of great authority in pleading, and was often quoted by Lord C. J. Willes."—Lawrence, J., in Lee *v.* Clarke, 2 East, 340. "A work which, though extremely learned and elaborate, and for a long time justly considered as the capital source of information upon pleading, amounts, after all, to no more than an extensive collection of adjudged points, classed without any skill of arrangement, under titles in alphabetical series."—Stephen, Pl. preface to the first edition.

Dyer's Reports. "The cases inserted in the margin of Dyer are of great authority, being collected by Lord Chief Justice Treby."—1 Wms. Saund. 59, 6th ed.; 1 Wms. Notes to Saund. 82, Grose, J., in Troward *v.* Cailland, 6 T. R. 442.

Fitzgibbon's Reports. Lord Hardwicke, citing a case from this book, said, "The case is well reported, though the book is not one of authority."—Flanders *v.* Clark, 1 Ves. Sen. 10, quoted in Burbank *v.* Whitney, 24 Pick. 155.

Gray on Costs. "Very high authority."—Byles, J., in Republic of Peru *v.* Weguelin, L. R. 7 C. P. 355.

Hargrave (Mr.). "One of the most learned of our text writers . . . The research and erudition of a lawyer so eminent."—Lord Denman, C. J., in The Queen *v.* The Chapter of Exeter, 12 Ad. & El. 531.

Jarman on Wills. "I certainly admit Mr. Jarman to be authority."—Cockburn, C. J., in Brookman *v.* Smith, L. R. 7 Exch. 274.

Johnson's Reports. In 1820, Mr. Justice Story wrote: "Mr. Johnson is a gentleman, as we have the pleasure to know, of great literary accomplishments, well instructed in the law, and of most comprehensive research. His Reports are distinguished by the most scrupulous accuracy, good sense, and good taste. He gives the arguments of counsel with force, precision, and fluency; transfusing the spirit rather than the letter of their remarks into his pages. One is never puzzled by unintelligible sentences, impertinent sallies, or disproportionate reasoning in his volumes. There is an exactness and symmetry about them that satisfies the judgment. His notes, too, are all good; so good

that we wish we had a great many more of them. He leaves little causes to take care of themselves, and assigns them a brief space. But when he comes to great arguments, where research and talent are brought out with vast power and authority, he pours their whole strength before the reader, giving him all the materials of an independent judgment. He can, if he pleases, repeat such cases for himself, by the aid of the reporter."—Story's Miscellaneous Writings, 177.

Johnson's Chancery Reports. "The chancery decisions of Chancellor Kent are as full of learning, and painstaking research, and vivid discrimination, as those of any man that ever sat on the English woolsack. No lawyer can ever express a better wish for his country's jurisprudence, than that it may possess such a Chancellor and such a Reporter."—Story's Miscellaneous Writings, 178, 179.

March's Reports. "A very indifferent reporter."—Parker, C. J., in Mitchell *v.* Reynolds, 10 Mod. 138. "March is mean, but yet not to be rejected," says Roger North, in his Discourse on the Study of the Laws, p. 24.

Palmer's Reports. Chief Justice Parker, in reviewing a case which is reported in Palmer and in Rolle's Reports, but which Rolle never transcribed into his Abridgment, remarked that Rolle, "being at that time the experter reporter, has given the fullest account, and is chiefly to be regarded."-Lord Kildare *v.* Fisher, 1 Strange, 71.

Park on Insurance. "A very able treatise."—Shaw, C. J., in Loomis *v.* Eagle Life and Health Ins. Co., 6 Gray, 399.

Parke (Baron). In a very recent case, Mr. Justice Willes observed, with reference to a question of pleading, that Baron Parke "was the highest authority on that subject within living memory."—Huddart *v.* Rigby, 10 Best & Smith, 918.

Phillips on Insurance. "The clear and satisfactory statement of the result of the authorities, by Mr. Phillips."—Thomas, J., in Marble *v.* City of Worcester, 4 Gray, 411.

Pothier (Robert Joseph). Treatise on the Law of Obligations, or Contracts. Translated from the French, with an introduction, appendix, and notes, illustrative of the English Law on the subject. By W. D. Evans. 2 vols. 8vo. London, 1806. "In a work, which the author used to say was more used by other writers than noticed, I mean a treatise upon the law of evidence appended to his edition of Pothier, by the late Sir W. D. Evans," &c.—Williams, J., in Doe *v.* Suckermore, 5 Ad. & El. 722. "A most learned and eminent writer upon every subject connected with the law of contracts, and intimately acquainted with the law-merchant in particular."—Lord Ellenborough, C. J., in Hoare *v.* Cazenove, 16 East, 398.

Rastell's Entries. In delivering the considered judgment in the King *v.* Wildey, 1 M. & S. 188, Lord Ellenborough said: "The precedent in Rastell is one of the most vicious precedents that I ever contemplated. . . . . I had a curiosity to know on what authority the precedents in Rastell were founded; and, upon looking at his preface, I find the author is anxious to discharge himself from all responsibility respecting that part of his work. He says, 'Understand this, good reader, that none of the declarations, pleadings, entries, and precedents that be in Latin in this book be of my making or compiling.' He then points at the sources from whence they were derived, viz., four books: first, the old entries; the second, a book of precedents by Mr. Edward Stubbis; the third, precedents by John Lucas; the fourth, a book of precedents, which, he says, 'was my grandfather's, Sir John Moore, some time one of the justices of the King's Bench, but not of his collection.' The only merit which he takes to himself, which is undoubtedly not an inconsiderable one, is in the arrangement of them and the index; but he expressly discharges himself from every other responsibility, assigning as a reason for so doing, in the concluding part of his preface, that he had been absent from the kingdom, 'and lacking conference with learned men." This may be considered as a sufficient excuse for many errors; and, among others, for the insertion of that vicious precedent, on the sole authority of which we are desired to overturn the numerous authorities laid down by Lord Coke and Lord Hale, two of the most eminent authors and judges that have ever adorned Westminster Hall."

Rolle's Abridgment. It was said at the bar that it was the opinion of Rolle that a certain case was not law. Mr. Justice Twisden observed: "That was his opinion, it may be, when he was a student. You have in that work of his a commonplace which you stand too much upon: I value him where he reports judgments and resolutions; but otherwise it is nothing but a collection of Year Books, and little things noted when he made his commonplace book. His private opinion must not warrant or control us here."—Osborne *v.* Walleeden, 1 Mod. 273. "Lord Rolle was a very learned man, and his Abridgment was published by Lord Hale, perhaps the greatest man of the law that ever was."—Lord Holt in The City of London *v.* Wood, 12 Mod. 689.

The Reporters and Text Writers.

Roper on Husband and Wife. "An obscure book."—Lord Campbell, Lives of the Chancellors, vol. viii. p. 141. See Bishop on Married Women, vol. i. §§ 7, 10.

Savile's Reports. An accomplished legal bibliographer says that "this book seems to be pretty much in the condition of Pope's 'most women,' and to have 'no character at all.'"—The Reporters, 142.

Sellon's Practice. "An extremely useful book of practice, both of K. B. and C. P., which the practiser will find of great service."—1 Wms. Saund. 318 *b*, 6th ed. ; I Wms. Notes to Saund. 531.

Sheppard's Abridgment. "This Abridgment being cited at the Rolls, 11 Nov. 1762, with some apology for the book, Sir T. Clarke, M. R., said that it was one of the best the Abridgments ; but he said that the author had been thought a great plagiary, and, in particular, that many parts of this Abridgment were taken from the notes of Sir W. Jones."—MS. note in edition in Lincoln's Inn Library, printed in the London Law Magazine, vol. i. p. 578, note. "Sheppard's Abridgment, printed in 1675, though not disreputable in its execution, scarcely struggled into existence against the superior work of Lord Chief Justice Rolle, which was published under the auspices of Sir Matthew Hale, in 1668."—Story, Miscellaneous Writings, 385.

Siderfin's Reports. "Siderfin does not seem to know what the court was going upon."—Lord Mansfield, in Cooper *v.* Chitty, 1 Burr. 35.

Starkie on Evidence. "A text writer, to whose opinions I shall always pay the greatest respect, Mr. Starkie, I mean, has given this mode of proof the sanction of his authority, as preferable on principle to our own."—Coleridge, J., in Doe *v.* Suckermore, 5 Ad. & El. 706. "A learned and valuable work."—Williams, J., ibid., at p. 722. "A work of great merit."—Patterson, J., ibid., at p. 734.

State Trials. Emlyn's Preface to the Second Edition. "Mr. Emlyn, whose learning and ability are vouched by Mr. Hargrave in his preface to the second edition of the State Trials, expresses an opinion," &c.—Keating, J., in Mordaunt *v.* Mordaunt, L. R. 2 P. & D. 120.

Sugden on Powers. "A book of the highest authority." "The authority of Lord St. Leonards, the highest, perhaps, of the present day with regard to the law of real property."—Cockburn, C. J., in Wright *v.* Wilkin, 2 Best & Smith, 251, 242.

Sugden on Vendors and Purchasers.—In 1809 Lord Eldon remarked that this book "seems to me to be a book of considerable merit."—Mackreth *v.* Symmons, 15 Ves. 354.

Story on Contracts. In a very recent case, the Lord Chief Justice of the Court of Queen's Bench speaks of *Mr. Justice Story's* work on contracts.—Smith *v.* Hughes, 40 L. J. N. S. Q. B. 225.

Swinburne on Wills. See Law Books, New Editions of.

Termes de la Ley. "A very excellent book."—Lord Kenyon, C. J., in Doe *v.* Meakin, 1 East, 459. "A work of high reputation."—Metcalf, J., in Commonwealth *v.* Gallagher, 16 Gray, 241. "That is a book of great antiquity and accuracy, as is observed by Bayley, J., in 5 B. & C. 229."—Putnam, J., in Penniman *v.* French, 17 Pick. 405.

Text Writers. "When we find an opinion in a text writer upon any particular point, we must consider it not merely as the private opinion of the author, but as the supposed result of the authorities to which he refers."—Lord Alvanley, C. J., in Touteng *v.* Hubbard, 3 B. & P. 301.

Vernon's Reports.—In Hardley *v.* Clarke, reported in the *Times* newspapers for May 28 or 29, 1799, Lord Kenyon laments the inaccuracy of Vernon's Reports, although he concluded by saying that Vernon "was the ablest man in his profession."

Viner's Abridgment. "Mr. Justice Foster. 'Brother Viner is not an authority. Cite the cases that Viner quotes : that you may do.'"—Far *v.* Denn, 1 Burr. 364. "Viner's Abridgment is not of much value as a book of Reports." Lord Chanceltor Sugden, in Reilly *v.* Fitzgerald, Drury temp. Sugden, 150.

Webster's Dictionary. "Webster is very impartial."—Erle, C. J., in Earl of Lisburne *v.* Davies, L. R. 1 C. P. 264. In a recent case, Mr. Justice Byles observed : "I was much struck with the quotation from Webster's Dictionary, where one of the definitions given o 'tenant' is, 'one who has the occupation or temporary possession of lands or tenements whose title is in another.'" The quotation is from Cowley :—

> "O fields, O woods, oh, when shall I be made
> The happy *tenant* of your shade ?"

—Birks *v.* Allison, 9 Jur. N. S. 694, 695 ; 13 C. B. N. S. 12, 23.

West's Symboleography. In Ludlow *v.* Drummond, 2 Taunt. 85, Mansfield, C.J., observed that this book "had always been esteemed a book of authority." The writer has had occasion to examine many of the precedents of indictment, and has found them to be faulty.

Wheaton's Reports. "Valuable reports, adorned with much of his own exact learning." —Story, Miscellaneous Writings, 155, 156.

Winch's Reports. "It is rather extraordinary that Lord Hobart has not recorded that case in his excellent volume of Reports. The cases in Winch are in general well reported; but in the preface to Bedloe and Dalison's Reports it seems as if those were not really the reports of Sir H. Winch; for it is there said, 'The book called Winch's Reports, but improperly enough ascribed to that learned judge.' And, indeed, it appears that several of the cases in that book were decided after Sir H. Winch's death."—Lord Kenyon, C. J., in Troward *v.* Cailland, 6 T. R. 441.

Yelverton's Reports. "Are among the best of the old authorities."—*Per Curiam*, in Osborne *v.* Moss. 7 Johns. 164. The American edition, enriched with the learned annotations of Mr. Justice Metcalf, has been universally commended.

Wynne's Eunomus. "A work of great merit and reputation."—Shaw, C. J., in Commonwealth *v.* Anthes, 5 Gray, 212.

CANADA REPORTS.

ONTARIO.

NOTES OF RECENT DECISIONS.

CHANCERY CHAMBERS.

Reported by T. Langton, Esq., M. A., *Barrister-at-Law.*

Davidson v. Boyes.

Married woman — Parties to a foreclosure suit — Separate answer.

[Strong, V. C., on appeal from the Referee, 13th Jan., 1873.]

Semble that a married woman is not in respect of dower, a necessary or proper party to a bill for the foreclosure of a mortgage in which she has joined to bar dower.

On an application, however, for a married woman so made a party to answer separately, an order will be granted, but the plaintiff will take it at the risk of having the costs of making her a party afterwards disallowed.

Elliott v. Queen City Assurance Co.

Statutes—Con. Stat. Can. c. 79, § 4—Subpœna to another Province—Words "suit pending."

[Spragge, C., 27th Jan., 1873.]

Upon a submission to arbitration being made an order of Court, a suit is pending within the meaning of Con. Stat. Can. c. 79, § 4, so as to enable the Superior Courts of Law and Equity to issue process to compel the attendance of witnesses resident out of their jurisdiction.

Waterous v. Farran.

Applications in the nature of appeals—Irregular filing —Jurisdiction of the Referee—34 Vict. Ont. c. 10, § 2—Amending Bill.

[Spragge, C., on appeal from the Referee, 27th Jan., 1873].

When a Deputy Registrar or other officer whose duty it is to file papers, receives and files a paper duly presented to him for that purpose, he does a ministerial act and leaves the regularity of the proceeding on the part of the person presenting the paper to be objected to by any who may have an interest in objecting.

An application to the Referee impeaching the propriety of the filing is not an appeal or in the nature of an appeal from the Deputy Registrar or other officer so as to oust the jurisdiction of the Referee under 34 Vict. c. 10, § 2.

Semble after the expiry of the time limited by an order to amend the right of the plaintiff to amend under such order is strictly gone, but the defendant's right to object to amendments made after the period limited may be waived.

See *Lyle* v. *Elwood*, 54 L. T. (N. S.) p. 59.

Moffatt v. Prentice.

Statutes—Con. Stat. Can. c. 79, § 4—Subpœna to another Province—Witnesses.

[Spragge, C., on appeal from the Referee, 27th Jan., 1873.]

A plaintiff obtained *ex parte* an order under Con. Stat. Can. c. 79, § 4, for the issue of a subpœna to the Province of Quebec, requiring certain defendants to attend before the master at Cornwall for examination upon their answers. An application made to discharge this order on the ground that § 4, applied only to witnesses, and not to parties to the suit, was dismissed, and it was *held* that, looking to the object of the Act and the propriety of its application to the examination of parties, the term witness in this section should be used in its widest sense, and should include parties to the cause as well as witnesses in the ordinary sense of the word.

Bull v. Harper.

Compensation—Effect of Conveyance or vesting order— Misdescription in advertisement.

[The Referee, 28th January, 1873.]

A purchaser by taking a conveyance or vesting order waives all objections to the title. He also

takes the responsibility of obtaining possession upon himself, and if evicted by a title to which his covenants do not extend he has no right to compensation on that account.

Misdescription in the advertisement, where it amounts to a material representation, is a ground for compensation even after conveyance.

Re Lauder & Mulock.

Solicitors—Deceased Solicitor a partner of two firms—Liability of surviving members of one firm to account to surviving members of another firm of which the deceased partner had also been a member.

[Strong, V. C., on appeal from the Referee, 3rd Feb., 1873].

The Referee has no power to exercise summary jurisdiction over Solicitors; such jurisdiction can only be exercised on an application to the Court.

Semble. When one member of a firm of Solicitors has died, the summary jurisdiction of the Court can no longer be exercised over the survivors, because such an application may necessitate a taking of the partnership accounts and the representatives of the deceased partner would then be necessary parties.

Campbell v. Royal Canadian Bank.

Appeal bond—Regularity of.

[The Referee, 7th Feb., 1873.]

A party opposing the allowance of a surety's bond for security for the costs of an appeal, may read affidavits in opposition to the surety affidavit of justification.

An appeal bond is properly entitled in the cause in the Court below.

Hayes v. Shier.

Filing—Service of notice of filing—Gen. Ord. 43—Irregularity.

[The Referee, 13th Feb., 1873].

A paper mailed to or delivered to a Deputy Registrar or like officer, elsewhere than at his office, to be filed cannot be treated as a filing; but if the Deputy Registrar or other officer has notwithstanding afterwards filed the paper in his office, previous irregularities in its delivery to him are generally speaking cured.

When a pleading is filed in a Deputy Registrar's office in a County in which the Solicitor for the opposite party does not reside, service of notice of filing must be effected according to Order 43. Service on the Toronto Agent is irregular.

Notice of filing not having been served on the same day that the pleading was filed is not a ground for moving to take the pleading off the files. The proper course is to move to enlarge the time for taking the next step in the cause.

Buell v. Fisher.

Immediate sale—Chambers.

[The Referee, 14th Feb., 1873.]

An order for an immediate sale after the master has fixed a day for payment, and before it has arrived, will not be made in Chambers.

Grant v. Winchester.

Security for costs—Cross-examination on affidavits—Uncertain abode.

[The Referee, 17th Feb., 1873.]

The rule in force in England (Dan. Pr. 810), that a party who has made an affidavit must submit to cross-examination upon it, if required upon notice to his Solicitor, before taking any further steps in the cause, being founded on an English order has no application in this Province.

On an application for security for costs, a certificate of the state of the cause is only necessary when the application is made before answer filed.

A plaintiff out of the jurisdiction with no certain place of abode, and having no property in this Province, though stating on affidavit that she was only temporarily absent and intended to return, was ordered to give security for costs there being no circumstances from which the Court could reasonably infer that the intention to return would certainly be carried out.

The order was subsequently discharged upon the plaintiff returning to the Province.

Noad v. Noad.

Changing venue—Cause of action—Balance of convenience.

[Blake, V. C., 14th March 1873].

The locality of the cause of action is not regarded in Chancery as a ground for changing the venue.

When the venue has once been laid a very large preponderance of convenience must be shewn to change it, and in investigating this regard will be paid to the ability of witnesses to travel, and to the probability of a postponement of the hearing being the result of a change.

Between private individuals it is impossible to say that one class of witnesses will be more injured than another by absence from home. Between a private individual and a public officer this may be considered.

MCKAY V. HARPER.

Fee Fund—Costs of guardian ad litem when paid out of the Fee Fund.

[SPRAGGE, C., on appeal from REFEREE, 10th March, 1873].

A Solicitor upon the plaintiff's application having been appointed guardian *ad litem* to infant defendants, and being unable to obtain his costs from the plaintiff or from the infants' estate, it was ordered that they be paid out of the suitor's fee fund.

MCGILLIVRAY V. MCCONKEY.

Amendments.

[BLAKE, V. C., on appeal from the REFEREE, 31st March, 1873.]

If a plaintiff amends his bill by *striking out* portions so as to render the answer to them useless, an application may be made by the defendant answering for the costs thus unnecessarily incurred, and such an application should be made at the hearing.

After answer liberal *addition* to the bill by amendment, retaining the original allegations is proper even though rendering a new defence necessary, and the costs of such amendment are proper costs in the suit.

REDMAN V. BROWNSCOMBE.

Irregularity—Endorsement—Gen. Ord. 40.

[The REFEREE, April 2nd, 1873].

The endorsement of the name and place of business of the Solicitor conducting proceedings is by Gen. Ord. 40 required on the first writ *sued out* or proceeding *filed* in a suit or matter, but is not essential on the first papers *served*.

SWETNAM V. SWETNAM.

Purchaser—Registry of mortgage for balance of purchase money—Vesting order.

[The REFEREE, 3rd April, 1873.

A purchaser who to secure a balance of purchase money has given a mortgage to the Court, must have his mortgage registered, and pay the fees for registration before a vesting order will be granted.

UNITED STATES REPORTS.

SUPREME COURT OF PENNSYLVANIA.

BRADSTREET & SON V. EVERSON, PRESTON & CO.

1. *Held*, That the facts in evidence were sufficient to go to the jury upon the question whether the receipt, by which the defendants undertook to collect the claims mentioned in it, was authorized or given by them.

2. The defendants, a "mercantile agency" at Pittsburgh, gave their receipt for a claim "for collection" against a party in Memphis, and transmitted the same to their own attorney, who collected the money and failed to pay it over. *Held*, That they were liable for his neglect.

Error to the Court of Common Pleas of Allegheny county.

Opinion of the court by AGNEW, J. Delivered November 14, 1872.

There are but two questions in this cause which are required to be noticed. First, whether J. M. Bradstreet & Son authorized the receipt of June 2nd, 1865, by which they undertook to collect the claims mentioned in it, and second, the nature of their liability. It is undisputed that J. M. Bradstreet and Son had a branch office in Pittsburgh, of what they termed their "Improved Mercantile Agency," and that the persons employed in this office were their agents. They only deny that their business was a collecting agency; asserting that it was confined to giving to subscribers information of the mercantile standing of men in business in the different parts of the country. It is in testimony that the acceptances mentioned in the receipts were delivered, as the witness states, to J. M. Bradstreet and Son at the office of the agency, and the receipt given for them, is in the name of J. M. Bradstreet and Son, and was made out by a person in the office, acting in their business. This was in 1865. In 1867 the plaintiffs were called on by a person belonging to the office for a power of attorney to be sent to their agent or attorney in Memphis, Tennessee, to enable them to collect the moneys for the acceptances from John W. Wood, the attorney to whom the acceptances had been sent by them, and who having collected the money had failed to pay it over to the defendants. This power directed to J. B. Woodward, of Memphis, and dated August 30th, 1867, was handed to the person in charge of the Pittsburgh office, who gave for it a receipt of the same date in the name of the defendants, stating that the power was executed by the plaintiffs at the request of the defendants, and addressed to *their* agent J. B. Woodward. Woodward himself testifies that he was called on in Memphis by J. De Soto, the agent of J. M. Bradstreet and Son in that city, and at his request and in his company went to John W. Wood and demanded of him the money he had collected on the acceptances. He also testifies that his correspondence was with J. M. Bradstreet and Son, and not with the plaintiffs, and that he was engaged to attend to the business by J. De Soto the agent of the defendants at Mem-

phis. There are some minor matters not necessary to be detailed. These facts were clearly suffieient to go to the jury upon the question whether the receipt was given by the defendants, and we see no error in the court below in refusing to take the case from the jury.

The next question is upon the nature of the liability arising upon the receipt. It is in the following words: "J. M. Bradstreet and Son, Improved Mercantile Agency. Pittsburgh, June 2, 1865. Received of Messrs. Everson, Preston & Co., four duplicate acceptances for collection, versus Watt C. Bradford, Memphis, Tennessee, amounting in all to $1,726.37." (signed) "J. M. Bradstreet and Son."

It is argued, notwithstanding the express receipt "for collection" that the defendants did not undertake for themselves to collect, but only to remit to a proper and responsible attorney, and made themselves liable only for diligence in correspondence, and giving the necessary information to the plaintiffs; or in briefer terms, that the attorney in Memphis was not their agent for the collection, but that of the plaintiffs only. The current of decision, however, is otherwise as to attorneys at law sending claims to correspondents for collection, and the reasons for applying the same rule to collection agencies are even stronger. They have their selected agents in every part of the country. From the nature of such ramified institutions we must conclude that the public impression will be that the agency invited customers on the very ground of its facilities for making distant collections. It must be presumed from its business connections at remote points, and its knowledge of the agents chosen, the agency intends to undertake the performance of the service which the individual customer is unable to perform for himself. There is good reason therefore to hold that such an agency is liable for collections made by its own agents, when it undertakes the collection by the express terms of the receipt. If it does not so intend it has it in its power to limit responsibility by the terms of the receipt. An example of this limited liability is found in the case of *Bullitt* v. *Baird*, decided at Philadelphia in 1870; the only case in this State upon the subject of such agencies. There the receipt read "for collection according to our direction, and proceeds when received by us, to be paid over to King and Baird." Across the face of the receipt was printed these words "N. B. the owner of the within mentioned taking all the risks of the mail, of losses by failure of agents to remit, and also of losses by reason of insurrection or war." The limitation of the liability of Bullitt and Fairthorn, by Mr. Bullitt, himself a good lawyer, is evidence of his belief that a greater liability would arise without the restriction.

Recurring to the analogy of attorneys at law the first point to be considered is the interpretation given by the courts to the terms of a receipt "for collection." In our own State we have several decisions in point. In *Riddle* v. *Hoffman's* Ex'r., 3 Penn. Rep. 224, Riddle, an attorney in Franklin county, gave a receipt in these words "lodged in my hands a judgment bill granted by Henry H. Morwitz to Henry Hoffman for the sum of $1200, due with interest since the 15th of May, 1811, which is entered up in Bedford county, which I am to have recovered if it can be accomplished." Riddle sent this bill to his brother, a practicing lawyer in Bedford. The money was made by the sheriff, but by the neglect of the Bedford Riddle was not received from the sheriff, who became insolvent and the money was thus lost. Hoffman sued the Franklin county Riddle on his receipt and recovered. On a writ of error it was contended that the words of the receipt "which I am to have recovered if it can be accomplished," imported only a limited undertaking to have it collected by another and not to collect it himself. But this court held that the receipt contained an express and positive undertaking for the collection of the money, if practicable, and not merely for the employment of another to that end; and that defendant was bound by every principle of moral and legal obligation to make good the collection of the judgment by the application of reasonable diligence, skill and attention.

The next case is *Cox* v. *Livingston*, 2 W. & S. 103. This was the receipt:—"Received of Mr. Thos. Cox, of Lancaster, Pa., *for collection*, a note drawn in his favor, by Mr. Dubb, calling for $497.65 payable three months after date." The note was left with an instruction to bring suit. The receipt was dated August 30, 1837, and Livingston died in January following without having brought suit. Dubb became insolvent. It was held that Livingston was liable for the collection, though only two terms intervened between the receipt and his death.

Krause v. *Dorrance*, 10 Barr 462, was assumpsit against two attorneys for money collected and not paid by another attorney to whom they sent the note for collection. The liability of the original attorneys for the collection was admitted, but the point was made and succeeded that a demand before suit was necessary. Rogers, J., says expressly they were liable for

the acts of the agent whom they employed, but being without fault themselves a demand was necessary before a resort to an action.

In *Rhines* v. *Evans*, 16th P. F. Smith, 192, the receipt was, "Received for collection of A. Rhines one note on Luckens & Beeson, of Rochester, dated October 30, 1857, for $365." The liability of Evans, the attorney, was conceded, and the question was on the statute of limitations, and it was held the action was barred by the lapse of seven years and five months from the date of the receipt.

These cases show the understanding of the Bench and Bar of this state upon a receipt of claims for collection. It imports an undertaking by the attorney himself to collect, and not merely that he receives it for transmission to another for collection, for whose negligence he is not to be responsible. He is therefore liable by the very terms of his receipt for the negligence of the distant attorney, who is his agent and he cannot shift responsibility from himself upon his client. There is no hardship in this, for it is in his power to limit his responsibility by the terms of his receipt when he knows he must employ another to make the collection. *Bullitt* v. *Baird supra.*

We find cases in other states holding the same doctrine. In *Lewis & Wallace* v. *Peck & Clark* 10 Alabama Rep. 142, both firms were attorneys. The defendants gave their receipt to the plaintiffs for certain notes for collection, and after collecting the money transmitted it to the payees in the notes instead of the attorneys who had employed them, the payees having however endorsed the notes. Held that Peck and Clark were liable to their immediate principals, the plaintiffs, there being no evidence that the payees had given them notice not to pay over to Lewis and Wallace the original attorneys. This is a direct recognition of the liability of the collecting attorney to the transmitting attorney. The case of *Pollard* v. *Rowland* 2 Blackburn (Ind.) Rep. p. 22 is more directly in point. Rowland received from Pollard claims for collection and sent them to Stephen an attorney in another county. Stephen obtained judgment and collected the money. Held that Rowland was accountable to Pollard for the acts of Stephen to the same extent that Stephen was, and could make no defence that Stephen could not; and that Rowland was liable to Pollard for the money. *Cummins* v. *McLean et al* 2 Pike (Ark) Rep. 402 was a case nearly similar to the Pennsylvania case of *Krause* v. *Dorrance, supra.* The attorney sent the claim to another attorney at a distance and was held liable, but for the omission of the plaintiff to make a demand, he failed to recover. The court say the attorney is liable for the acts of the attorney he employs. In a Mississippi case two attorneys Wilkison and Willison received of plaintiff a claim for collection, and brought suit and obtained judgment. They dissolved partnership, Wilkison retiring from the practice; and Willison took another partner, Jennings, who received the money from the sheriff. In a suit against Wilkison as surviving partner of Willison, he was held liable for the receipt of the money by Jennings: *Wilkison* v. *Griswold* 12 Smedes & Mor. Rep. 669.

In view of these reasons and authorities we hold that a collecting agency, such as the defendants have been found to be, receiving and remitting a claim to their own attorney, who collects the money and fails to pay it over, is liable for his neglect.

Judgment affirmed.

—*Pittsburgh Law Journal.*

REVIEWS.

American Law Review—January 1873. Little, Brown & Co., Boston, U. S.

This able Review discusses at length the Geneva Arbitration and its results. The writer thinks that his country will in the end, lose more than it has gained by the Rules of International Law laid down.

"The 'due diligence' which we have gained will some time require of us a police system and methods of repression which will be tantamount to martial law. Nothing was ever done in the public history of the country so opposed to our plainest and best interests. The United States has been and must be a neutral nation. It had been, up to 1861, the acknowledged champion of neutral rights. Its wise, far-sighted, and equitable statesmanship had uniformly pursued the one consistent policy. It is simply amazing, it is nothing but madness, that the authorities of the present day should turn their backs upon all this bright history, and eagerly bind fetters upon the future activities of their country."

The other articles are, The Rights of Assignment and underlease—The need of a Criminal Code—&c. The digest of English Reports we again take advantage of. The Summary of Events is as usual very interesting, and the Reviews of Law Books complete, impartial and searching. We strongly advise those who can find five dollars to spare to subscribe for the *American Law Review.*

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Hilary Term, 36th Victoria.

During this Term, the following Gentlemen were called to the Degree of Barrister-at-Law :

Robert Hebber Bowes.
Allan John Lloyd.
James R. Roaf.
John George Killmaster.
Isaac Baldwin McQuesten.

And the following Gentlemen received Certificates of fitness :

R. McMillan Fleming.
J. Bruce Smith.
J. George Killmaster.
James R. Roaf.
Allan J. Lloyd.
Isaac B. McQuesten.
Peter Cameron.
Rupert E. Kingsford.
Alexander Sampson.
Wicksteed.

And on Tuesday, the 4th February, the following Gentlemen were admitted into the Society as Students of the Laws, their Examinations having been classed as follows :

University Class.

James Joseph Wadsworth, M. A.
Alexander Haggart, B. A.
Samuel Clarke Biggs, B. A.
Elliott Travers, B. A.
Julius Lefebvre, B. A.

Junior Class.

Charles H. Connor.
Thomas G. Meredith.

Ordered, That the division of candidates for admission on the Books of the Society into three classes be abolished.

That a graduate in the Faculty of Arts in any University in Her Majesty's Dominion, empowered to grant such degrees, shall be entitled to admission upon giving a Term's notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his diploma or a proper certificate of his having received his degree.

That all other candidates for admission shall pass a satisfactory examination upon the following subjects, namely, (Latin) Horace, Odes Book 3 ; Virgil, Æneid, Book 6 ; Cæsar, Commentaries Books 5 and 6 ; Cicero, Pro Milone. (Mathematics) Arithmetic, Algebra to the end of Quadratic Equations ; Euclid, Books 1, 2, and 3. Outlines of Modern Geography, History of England (W. Douglas Hamilton's) English Grammar and Composition

That Articled Clerks shall pass a preliminary examination upon the following subjects :—Cæsar, Commentaries Books 5 and 6 ; Arithmetic ; Euclid, Books 1, 2, and 3 ; Outlines of Modern Geography, History of England (W. Douglas Hamilton's) English Grammar and Composition, Elements of Book-keeping.

That the subjects and books for the first Intermediate Examination shall be :—Real Property, Williams; Equity, Smith's Manual ; Common Law, Smith's Manual ; Act respecting the Court of Chancery (C. S. U. C. c. 12), (C. S. U. S. caps. 42 and 44).

That the subjects and books for the second Intermediate Examination be as follows :—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise ; Common Law, Broom's Common Law, C. S. U. C. c. 88, Statutes of Canada, 29 Vic. c. 28, Insolvency Act.

That the books for the final examination for students at law, shall be as follows :—

1. For Call.—Blackstone Vol. i., Leake on Contracts, Watkins on Conveyancing, Story's Equity Jurisprudence, Stephen on Pleading, Lewis' Equity Pleading, Dart on Vendors and Purchasers, Taylor on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

2. For Call with Honours, in addition to the preceding. —Russell on Crimes, Broom's Legal Maxims, Lindley on Partnership, Fisher on Mortgages, Benjamin on Sales, Jarman on Wills. Von Savigny's Private International Law (Guthrie's Edition), Maine's Ancient Law.

That the subjects for the final examination of Articled Clerks shall be as follows :—Leith's Blackstone, Watkins on Conveyancing (9th ed.), Smith's Mercantile Law, Story's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

Candidates for the final examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining certificates of fitness and for call are continued.

That the Books for the Scholarship Examinations shall be as follows :—

1st year.—Stephen's Blackstone, Vol. i., Stephen on Pleading, Williams on Personal Property, Griffith's Institutes of Equity, C. S. U. S. c. 12, C. S. U. C. c. 43.

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

3rd year.—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Story's Equity Jurisprudence, Fisher on Mortgages, Vol. 1, and Vol. 2, chaps. 10, 11 and 12.

4th year.—Smith's Real and Personal Property, Russell on Crimes, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis' Equity Pleading, Equity Pleading and Practice in this Province.

That no one who has been admitted, on the books of the Society as a Student shall be required to pass preliminary examination as an Articled Clerk.

J. HILLYARD CAMERON,
Treasurer.