DIARY FOR AUGUST.

1. SUN..10*th Sunday after Trinity.*
5. Thur..First Atlantic Cable, 1858.
7. Sat....Candidates for Attorney to leave Articles with Secretary of the Law Society.
8. SUN..11*th Sunday after Trinity.*
10. Tues..Primary Examinations.
12. Thur..First Stamp on English Newspapers used, 1712.
13. Frid..Sir Peregrine Maitland, Lieutenant-Governor, 1818.
15. SUN. 12*th Sunday after Trinity.*
16. Mond..Detroit surrendered to the British, 1812.
17. Tues..Intermediate Examinations.
18. Wed..Last day for setting down and giving notice of re-hearing in Chancery.
19. Thur..Examination for Attorney; candidates for call to pay fees and leave papers.
20. Frid..Examination for Call.
21. Sat....Long vacation ends. Examination for Call with Honours.
22. SUN..13*th Sunday after Trinity.*
23. Mond..Trinity Term commences (36 Vict., cap. 8. s. 53.)
26. Thur .Re-hearing Term in Chancery begins.
29. SUN..14*th Sunday after Trinity.*

CONTENTS.

THE

Canada Law Journal.

Toronto, August, 1875.

This is the season humorously called the "long vacation." A few officials of the courts, a few counsel whose life is untroubled by solicitors' labours, a fortunate judge or two, may enjoy a "long vacation;" but to the majority of the profession the term is a cruel mockery. With appeal courts, election courts, and the incessant treadmill of solicitors' practice, the long vacation, in which we should be laying in stores of health and vigour for the struggle of the rest of the year, is sadly shorn of its proportions. Those on whose shoulders the editing of a legal journal falls, are touching objects of sympathy. To think of a "subject," to examine it when discovered, to ponder over it, to write about it with the thermometer at its present altitude, is "utter weariness and sore distress." If it were justifiable to introduce into these columns dissertations on matters which at this season have some sort of interest for readers, we should feel more hopeful. No doubt pic-nics, boating parties, and tours by land and water are the origin of petitions which are often summarily dismissed, of appeals, of rehearings, of reversals of judgment, of contracts leading sometimes to partnership and sometimes to breach of trust; but these matters are of too delicate a nature to admit of treatment in a purely legal tone. On the whole, we must satisfy ourselves with the reflection that people are as unwilling to read in this weather as we are to write.

It will be remembered that the respondent in the West Wellington election case was unseated. Mr. Justice Gwynne felt obliged to saddle him with the

costs, but owing to the equivocal conduct of his financial agent, "attributable either to gross ignorance of his duty or to a graver charge of want of fidelity to his employer," he regretted that, as could be done under the law in England, he could not order the agent to pay the costs. Possibly some change may be made here in this respect, though this would seem to be the only case where there has been any suspicion of bad faith on the part of an agent.

JUDICIAL COMMENTS ON JUDGES.

Scattered through the reports are to be found criticisms and dicta of the judges upon their fellows and predecessors, which are of the greatest interest and of the highest value to lawyers. Judges, as judges, are best known to the leaders of the bar who practise before them; and when these leaders are promoted to the bench they can best indicate the salient characteristics, the peculiar excellences of the judicial utterances of their predecessors. By an acquaintanceship with such observations we gain all the insight of contemporaries into the strength and weakness of the masters of the law. There are judges and judges. When there is a conflict of authority, the judgment of the greater lawyer may turn the scale. And a like effect should follow where one of the decisions is that of a judge peculiarly skilled in that particular branch of the law which is under consideration.

Nowadays every legal subject is being embodied in a separate treatise, and we suggest as a novelty that some indefatigable scribe should compile a book on "What the judges say of the judges." As a specimen of what can be done in this direction, we proceed to give a collection of extracts jotted down from the reports, interspersed with some curious details culled from other sources. The *olla podrida* we trust will not prove too severe reading for the languid hours of vacation.

Alexander, Chief Baron.—"He was undoubtedly a very eminent lawyer, and a judge perfectly acquainted with the principles of equity." Romilly, M. R., in *Padwick* v. *Hurst*, 18 Jur. 764. "He had been a Master in Chancery, and had great experience of equity pleading," per Hatherly, C., in *Warwick* v. *Queen's College*, 18 W. R. 1099. (He was appointel judge when seventy years of age, and after being twelve years out of practice: 4 L. T. O. S. 506.)

Alvanley, Sir Richard Pepper Arden, Master of the Rolls, and Chief Justice of the Common Pleas.—"He to a very sound judgment joined a very accurate knowledge of the law of real property," per Lord Ellenborough, in *Goodtitle* v. *White*, 15 East. 198. "One of the safest guides in Westminster Hall," per Best, C. J., in *Morton* v. *Cowie*, 4 Bing. 248.

Ashurst, J.—"He was always reckoned a learned judge," per Park, J., in *Balme* v. *Hutton*, 1 Cr. & M. 310. (In personal appearance he was remarkable for a long, lanky visage, whereupon Erskine framed the distich:

> "Judge Ashurst, with his lanthorn jaws,
> Throws light upon the English laws."

Bathurst, Lord Chan.—"He was imperfectly conversant with equity principles; unendowed with any vigour of intellect, and relied on the Registrar (Mr. Dickens) and the Master of the Rolls (Sir Thomas Sewell) for his judgments. See 16 Law Mag. O. S. 280.

Bayley, Baron.—"Eminent in all matters of law, pre-eminent as an authority in matters of practice," per Williams, J., in *Pitcher* v. *King*, 9 Jur. 349.

Buller, J.—"Of whose high legal character all the profession formed a very just estimate," per Park, J. in *Balme* v. *Hutton*, 1 Cr. & M. 310. (He became judge at 32; his dicta, his doubts, and the inclination of his opinion command respect. He often presided in Chancery for Lord Thurlow. See 17 Law Mag. O. S. 27).

Burton, J. (an Irish Judge).—"He was one of the most eminent of modern lawyers," per Martin, B., in *Brook* v. *Hook*, 19 W. R. 509.

Camden, Lord Chan.—"Lord Camden examined the whole question with that accuracy which peculiarly belonged to him," per Lord Redesdale in *Hovenden* v. *Annesley*, 2 Sch. & Lef. 632. (Only one of his decisions, and that but in part, was reversed in appeal. His judgments are of very high authority. See 9 Law Mag. O. S. 53.)

Chambre, J.—"That very able pleader," per Bayley, B., in *Gladstone* v. *Hewitt*, 1 Cr. & J. 578. (He was in pleading the "cracksman of his court." He was singled out by Williams as a great lawyer. See Woolrych "Serjeants" 692. He was great also in conveyancing. See 10 Law Mag. N.'S. 260).

Comyns, Chief Baron.—"A very able common lawyer," per Lord Hardwicke, in *Lawton* v. *Lawton*, 3 Atk. 16. "His opinion alone is of great authority, since he was considered by his contemporaries the most able lawyer in Westminster Hall," per Lord Kenyon, in *Pasby* v. *Freeman*, 3 T. R. 64, and per Blackburn, J., in *Brinsmead* v. *Harrison*, 20 W. R. 785. "He is a high authority himself," per same judge, in *Wells* v. *Abrahams*, 20 W. R. 660.

Cottenham, Lord Chan.—"He was one of the ablest Chancery judges, but he abused references to the master. The general tenor of his judgments turns on a careful consideration of the pleadings; his constant remark was, 'Let us look to the record.'" See 26 Law Mag. O. S. 254, and 27 ib. 270. He was notoriously antagonistic to Vice Chan. Knight Bruce. See 46 Law Mag. 280.

Cowper, Lord Chan.—"That great Master of Equity," per Lord Chan. Parker, in *Litton* v. *Litton*, 1 P. W. 543.

De Grey, C. J.—"A very eminent judge," per Lord Eldon, in *Fox* v. *Chester*, 6 Bing. 22, 3 Bli. N. R. 156.

Denison, J.—"Than whom no person was ever better versed in the rules of special pleading," per Lord Kenyon, in *The King* v. *Stone*, 1 East. 650.

Eldon, Lord Chan.—"The greatest judge in this country," per Sir T. Plumer, M. R., in *Copin* v. *Middleton*, 2 Madd. 433.

Erskine, Lord Chan.—"He was assisted in his cases by Hargrave; his judgments are considered with respect, though wanting in the research of a mature equity lawyer. See 22 Law Mag. O. S. 337.

Eyre, Chief Baron.—"Unquestionably a great authority in questions of revenue," per Lord Eldon in *Phillips* v. *Shaw*, 8 Ves. 250. "He was always considered to be a strong-headed man," per Richards, C. B., in *Duncan* v. *Worrall*, 10 Price 42.

Foster, J.—"Sir Richard Foster was a judge eminently versed in criminal law," per Ferrin, J., in the *Queen* v. *Charleton*, 2 Jr. L. R. 65.

Garrow, B.—"Did not distinguish himself as a profound jurist, but his memory was marvellous." Woolrych "Serjeants," 843.

Gaselee, J.—His peculiarity was "to have great difficulty in deciding the case," and being "rather inclined to come to a different conclusion" from the rest of the court. See *Hargrave* v. *Smee*, 6 Bing. 244; 3 Law Mag. & O. S. 212. He was the original of Dickens' judge in Pickwick, "Mr. Justice Stareleigh."

Gifford, Lord.—"He succeeded Sir Thomas Plumer at the Rolls; he was a common lawyer, was not familiar with the practice of the court, and not in favour with the leaders of the equity bar." See 16 Law Mag. O. S. 14.

Gibbs, C. J.—"One of the most learned and acute judges that ever sat in Wesminster Hall," per Lord Tenterden, in *Whitworth* v. *Hall*, 2 B. & Ad. 697. "A lawyer of great eminence in every department of his profession, and peculiarly skilled in the science and practice of pleading," per Abbott, C. J., in *Lyttleton* v. *Cross*, 3 B. & C. 323. "A man most eminent for his knowledge of commercial law," per Park, J., in *Dougall* v. *Kemble*, 3 Bing. 391.

SELECTIONS.

THE LAW OF TELEGRAPHS.

The constant growth of telegraphy as a popular institution and as an agency for commercial operations, has naturally given rise to many adjudications on the subject. Considering the diversity of judicial opinion, it may be considered as virtually *res integra*, and therefore ripe for original discussion. Of the many questions that have arisen, I will select only the one which I deem of the most importance for consideration in this article, viz.: the relation of telegraph companies to the public.

As an evidence of the distracting state of this question, it is only necessary to say that there are at least three classes of decisions, each tending in a contrary direc-

tion, and asserting opinions totally incompatible with each other.

The principle derived from the first class of decisions, is that telegraph companies are to be considered as common carriers, and bound to their extraordinary responsibilities: *Parks* v. *Alta Telegraph Company*, 13 California, 432; *Brown & McNamee* v. *Lake Erie Telegraph Co.*, 1 Am. Law Reg. 685; *McAndrew* v. *Elec. Tel. Co.*, 33 Eng. Law and Eq. 180. In the last case above it was decided that their duties were in the nature of those of common carriers, which would not seem to imply quite so much as the other cases, but as the reasoning upon which it is based is the same, I have classed them together.

The rule laid down in the second class of cases, is that they are not common carriers in the strict sense of that term, but owe duties to the public and hold relations to the public that are very similar. The cases that thus hold are numerous. I cite a few of them: *Birney* v. *N. Y. & Washington Pr. Tel. Co.*, 13 Allen, 226; *DeRutte* v. *N. Y. and Albany Elec. and Magnetic Tel. Co.*, 1 Daly, 547; 30 How. Pr. 403; 1 Allen Tel. Cas. 273, S.C.; *Breese and Munford* v. *United States Telegraph Co.*, Allen Tel. Cases, 663.

The third principle, derived from adjudications on the subject, is that they are bound to the public in no other manner or sense than an individual is bound. The first case in support of this doctrine was the celebrated case of *Leonard* v. *New York Telegraph Co.*, 41 N. Y. Rep. 552. It has been recently followed and approved by Appleton, J., in his learned opinion in the case of *True* v. *International Telegraph Company*, reported in "Chicago Legal News," Vol. V. p. 170.

I think the doctrine of these last cases the most reasonable. I think the conclusions at which they arrive are more in accordance with the liberal views of modern jurisprudence, and follow more logically from all the arguments advanced *pro* and *con*. The principal argument advanced by those who seek to hold telegraph companies to the responsibilities of common carriers, is their public character. But this argument is not sufficient. It is only one of the premises of a logical syllogism. They have assumed that all persons, or companies, who hold themselves out to the public to do a certain business, are insurers by implication of everything of any value that comes into their possession, or under their control; and therefore, in the absence of contract, are liable for any default or accident that may happen to their charge, not occasioned by the act of God or the public enemy. But such is not the case. In the case of *The Bank of the United States* v. *The Planters' Bank of Ga.*, it was held, that whether organized under general laws or under special acts of incorporation, telegraph companies are private corporations, and that this would be so whether the state were the principal or the sole owner of the stock.

Newspapers hold themselves out to the public as advertising mediums, publishing their terms, and are certainly bound to advertise for any body who will pay them the published rates, provided the advertisement is not in itself objectionable; but no one would attempt to hold them bound in damages, in case of breach, beyond the amount paid for their services. They are liable to this extent, because they have made a public offer, and whoever brings them advertising will be deemed to have accepted their terms. In such a case no one would be so fanatical as to claim the damages which might result from a failure to advertise, beyond the amount paid or due, with interest, however proximate the damage.

So with persons who hold themselves out to the public as partners; whoever trusts them in that character binds them, though no partnership does actually exist. The same is true where one allows another to conduct himself as his agent without dissent; he is bound to all who trust such person in that capacity. In these cases they are bound *ex contractu*, and not because of that much abused term "public policy," but because *qui tacet consentire videtur*. The same obligation precisely exists by reason of the public nature of telegraph companies. They have publicly offered themselves to send messages for such as choose to employ them, and any person who offers them employment has accepted this public proposition, and has bound them accordingly. They are indeed bound by public policy in one sense; but it is simply that public policy which binds every man to discharge his obligations, whether such obligations

are evidenced by a written bond or are implied from the acts or situation of the parties. This is very fully expressed by Appleton, J., in *True* v. *International Telegraph Company*, reported in the "Chicago Legal News," Vol. V. p. 170, where he says: "Indeed, the general liberty to contract is the highest public policy." This was a case in which True had employed the telegraph company to send a despatch to parties in Baltimore. The blank on which the telegram was written, bore on its margin a notice stating that the amount of damages to be recovered in case the message was not properly sent should be forty-eight cents, the price paid for the transmission of the message. Upon the question raised on this point, the Court said: "Here is a contract. The consideration is sufficient. It is entered into by parties competent to contract. There is no statute prohibiting. It is a contract for the liquidation of damages, and if there is anything parties can do without let or hindrance, it is to agree in advance upon the measure of damages to be paid in case of a violated contract. Whether the damages agreed upon be large or small, it is a matter for the contracting parties, and for them alone. If they are satisfied with large or small damages, it matters not to any one else. If telegraph companies can thus insert any condition they see fit into a contract, why call them common carriers, or seek to apply to them the rules of common carriers? If they can make their liabilities differ from those of common carriers in one instance, they can make them so differ in all instances, and a liability from which a party can relieve himself at pleasure is no liability at all."

Another question upon which the main question is dependent, is whether there exists between the contracting parties the relation of bailor and bailee. Chancellor Kent defines a bailment to be "a delivery of goods in trust upon a contract expressed or implied, that the trust shall be duly executed, and the goods returned to the bailee as soon as the purpose of the bailment shall be answered." There must be something of which the bailee can take possession — something tangible and of value. What is a telegraphic despatch? Is it matter? No; for it may be sent a thousand miles in an instant, which is impossible of any material substance. The piece of paper upon which the message is written is certainly not the thing bailed; for it never goes, and is merely a passive instrument in the hands of the operator to execute his delicate undertaking. The thing to be done, that is, the sending of the message, is the subject of the contract and not the piece of paper. In the case of *Leonard* v. *The New York, etc., Telegraph Co.*, Hunt, J., said: "He (the telegraph operator) has no property intrusted to his care; he has nothing which he can steal or which can be taken from him. There is no subject of concealment or of conspiracy. He has in his possession nothing which, in its nature and of itself, is valuable. It is an idea—a thought—a sentiment, invisible, impalpable, not the subject of sale or theft, and, as property, quite destitute of value. He cannot himself see, hear or feel the subject of his charge."

That they are liable in damages for any misfeasance or failure in the absence of any conditions exonerating them, has never been denied; but this liability does not grow out of the public nature of their employment, but because they have undertaken something implying and requiring a high degree of care and skill, and because such care and skill may be reasonably expected. The measure of damages in these cases is laid down by Earle, J., in the case just mentioned: "The difficulty is not so much in laying down general rules as in applying them. The cardinal rule undoubtedly is, that the one party shall recover all the damages which have been occasioned by the breach of the contract by the other party. . . . It is not required that the parties *must* have contemplated the actual damages which are to be allowed. But the damages must be such as the parties may fairly be *supposed* to have contemplated when they made the contract." The same rule was observed with respect to damages in the following cases: *Stevenson* v. *Montreal Telegraph Company*, 16 Upper Canada Rep. 530; *Kingham* v. *Montreal Telegraph Company*: *Lansberger* v. *Magnetic Telegraph Company*, 32 Barb. 530; *Gildersleeve* v. *United States Telegraph Company*, Md. Court of Appeals.

It will be observed that these are merely old principles applied to new cases. This digression is made for the

purpose of showing that, since the remedy for a breach of this contract is the same as with ordinary violated contracts, the distinction is purely artificial. As the measure of damages, in case of a breach, is supposed to enter into the minds of the contracting parties, thus forming, to all intents and purposes, a part of the contract, why make this artificial distinction between the *rights* of the parties because one of them happens to be engaged in a public business?

I think it is clear that telegraph companies are not common carriers. The nature of their employment is a hiring. One party promises to give money and the other promises to perform a certain kind of service requiring a certain degree of knowledge and skill, and if he fails to use that knowledge and skill, then he is liable to the first party for the consequences. But this liability does not grow out of, or depend on, his public character, but out of the law of contracts as it is administered to every citizen in a state.—*Central Law Journal.*

PROFESSIONAL ORGANIZATION.

The legal profession in America has not yet thoroughly learned the lesson of the period—the lesson of organization. The distinguishing characteristic of modern times is the prevalence of organization and co-operation among individuals. An observation of the history of the world reveals the fact, that never before were there such a number, extent and completeness of organizations of individuals for the accomplishment of definite purposes. Associations, societies, conventions, congresses, and the less dignified but not less effective "rings," form the mode, *par excellence,* of modern advancement in science, religion and politics. But we search in vain for a corresponding system among the members of the legal profession, in this country especially, for the accomplishment of the peculiar purposes of the law and the lawyers. In England the Inns of Court have existed for centuries, constituting a centre around which the whole legal profession of Great Britain have revolved, and from which have radiated that brilliancy and power which have made the British law and lawyers honoured, valued and admired throughout Christendom. It is with unfeigned disapprobation and even dismay, that the English lawyers look upon a proposal for the establishment of local courts of first instance, which may result in the dispersion of the bar of that country. And yet, it is difficult to understand how such a result is at all possible in view of the strength of the professional union in England and the coherency and stability which it has acquired by time. The difficulties of a thorough professional union in the United States are not easily surmounted. The distinguishing characteristic of our people consists of individuality and independence. The efficacy and desirability of co-operation are of recent perception by the American mind; and while the growth of American organizations in business, in manufactures, in railway systems, in politics, has been immense and absolutely unparalleled during the last quarter of a century, yet the American lawyer has but lately discovered the utility of organization. And the few bar associations which the last year or two have developed (notably that in New York city), have been formed for protection and self-preservation, and *ex necessitate rerum.* The central idea of professional co-operation has not been developed, for organization is not mainly for the purposes of self-preservation, but for the purposes of promotion, improvement, power, dignity.

The Bar Association of New York was the result of a great political, social and commercial crisis which was acting in a damaging manner upon bench and bar, and threatening professional dissolution. Naturally enough, and by the operation of the very first law of life, the law of self-preservation, the legal profession in New York sought refuge in organization, in mutual support, in reciprocal and systematic action. Other bar associations have sprung up in the United States, the principal design of which is to protect, purify and preserve the profession in a social, political and judicial way. This purging, and preserving, and protecting work having been accomplished, these law societies must either dissolve or resolve themselves into associations for the consummation of the true ends of professional organization—the develop

ment of a better *esprit de corps*, the founding of legal institutions, the fostering of a higher legal education, the discussion, promotion and utilization of the great principles of law and law reform. The legal profession in this country ought to be prepared for such association of thought and effort by this time. It has had its heroic period, its age of individual greatness, of gigantic shadow grandeur. It has had its Patrick Henry, its Marshall, its Wirth, its Pinckney, its Choate, Kent, Story and Webster, whose originality, individuality and personal power both allowed and compelled them to tower above their brethren. Such men do not need association; with them, co-operation is as difficult as it is useless; they are only great when they stand alone, unsupporting and unsupported. The true professional organization is that which allows individual freedom, and at the same time demands associated effort; it is the wise combination of the impersonal with the personal in action, the synthesis of individuality and self-denial in the consummation of a common end.

This ideal organization is, in the present condition of humanity and of the profession, only capable of partial realisation; but it is so far practicable as to be both desirable and beneficial. The dangers and pernicious influences which are usually to be apprehended from societies and guilds, are not to be feared from professional organizations. The charge of wielding unlawful or base powers, or of concocting cunning political, social or religious schemes, has never been made against the great law societies of England and Continental Europe. Law organizations possess the elements of their purification and correction within themselves. Formed to criticise shams, to discover truth, to promote legal learning, to foster professional dignity, law societies have a tendency to render their members increased admirers of their profession, better satisfied with it, more jealous of its name, dignity and legitimate influence. And it is impossible to resist the inference that much of the grandeur, dignity, purity and power of the English bar is due to the professional unity which there exists and has existed for centuries. And if the American bar will only learn wisdom from example and from the spirit of our time, the unity and organization of the profession will be secured; and the uncertain and ephemeral "bar associations" will become stable and solid institutions where the law shall be enshrined, and lawyers catch the inspiration of success and the glory of professional renown.—*Albany Law Journal.*

SALE OF UNCLAIMED PACKAGES WITHOUT OPENING THEM.

It is well known that express companies are in the constant habit of selling unclaimed packages which have remained in their hands uncalled for during the time provided for by contract or by law, *without opening them*, under the pretence that better prices are obtained where the bidders are kept ignorant of their contents. That this mode of sale, if fairly pursued, would operate as a fraud upon the owners of valuable packages in most instances, cannot be questioned. But it operates a double fraud; for it is not to be expected that dishonest agents will not find means to open the packages before the sale, and ascertain the value of their contents, and by so doing procure the valuable packages to be bid in for a small sum, for themselves or their friends. We are not surprised, therefore, to learn that under the Pennsylvania statute (Purdon's Dig. 220) providing that express companies may, after holding unclaimed packages a certain length of time, "expose" them to sale, etc., the Supreme Court of that state has held that selling the packages unopened, and describing the contents as unknown, is a fraud upon the rights of the owner, and the company is liable for the value of the goods. The case in which this ruling is made is *Adams Express Co.* v. *Schlesinger*, 6 "Legal Gazette," 191.

In delivering the opinion of the Court, MERCUR, J., said:—

"The first and second sections of the act of 14th December, 1863, Pur. Dig. 220, pp. 6 and 7, under which the plaintiff in error proposed to sell the property, authorized the company to 'expose' it to sale at public auction. The fair meaning of 'expose' in this statute obviously is 'to exhibit,' 'to bring into view,' 'display,' to 'point out or show to the bystanders.' Selling the trunks with

the goods locked up in them, and describing the contents as unknown, withholds from the bidders all knowledge of the character or value of the contents, and clearly was not within the meaning of the law which directs the manner of sale. This manner of selling goods of any value is unjust to the owner. It is no answer for a corporation to say that by this method its sales in the aggregate produce quite as large a sum as if the articles were exposed to view. The company may not suffer, yet great injustice be done to the owner of valuable goods. There is no just reason why his goods should be sold at a sacrifice, to enable the almost worthless property of another to be sold for more than its value. Such a mode of selling is unjust to the bidders; generally they will not stand upon equal ground. The strong probability is, that the contents will be known to one or more of the agents, and all packages that are really valuable will be struck down at low prices to some one acting in the interest of the knowing agent. In this very case, the evidence shows that the contents of the trunks were actually examined by one of the agents of the company before the sale, yet each was sold as contents unknown for a few dollars."—*Central Law Journal.*

DIGEST OF THE ENGLISH LAW REPORTS

FOR NOVEMBER, DECEMBER, AND JANUARY, 1874-5.

From the American Law Review.

Action.—*See* Covenant.

Ademption.

1. For the purpose of raising the presumption that a legacy is ademed, it is not incumbent upon the person who alleges a satisfaction to show anything more than that the testator, having given a legacy of a certain amount, afterwards in his lifetime gave the legatee a sum of money—the nature of the two gifts not being so different as to rebut the presumption.—See Hall, V. C., in *Leighton* v. *Leighton*, L. R. 18 Eq. 458.

2. A testatrix bequeathed to M. "the sum of three thousand pounds invested in Indian security." At the date of her will the testatrix held certain Indian securities, which were subsequently paid off and the proceeds invested in other ways, so that at her death she had no Indian securities. *Held*, that the legacy was not ademed.—*Mytton* v. *Mytton*, L. R. 19 Eq. 30.

Adultery.—*See* Divorce, 2.

Allotment.—*See* Company, 2.

Ancient Light.

Adding to the dimensions of ancient lights, or making new windows in close proximity to such lights, does not of itself deprive the owner of the easement of his right to an injunction restraining an obstruction to his ancient lights.

In considering an injury to an ancient light, the Court will consider to what purpose the room in which is the light may thereafter be used, as well as the purpose for which it is then being used.

Where an action could be sustained for obstruction to ancient lights and considerable damages recovered, the Court will generally grant an injunction restraining such obstruction.—See *Aynsley* v. *Glover*, L. R. 18 Eq. 544.

Annuity.

1. A testator charged two annuities upon the *corpus* of certain estates, but added a proviso that, if the surplus rents of said estates, after paying certain charges, should be insufficient to pay said annuities, then the first annuity should abate in favour of the second. *Held*, that said annuities were a charge upon the *corpus* of said estates, notwithstanding said proviso.—*Pearson* v. *Helliwell*, L. R. 18 Eq. 411.

2. A testator bequeathed to his wife an annuity of £1000 per year, and directed his executors to sell such a part of the principal, if the interest should be insufficient, as would make up, including interest on property she might inherit, an annuity of the above amount. The testator's father bequeathed said wife an annuity of £200, and declared that the same should be in addition to any income which she might derive from any other source, and should not be taken into account in regard to any other income. The income of the testator's estate was insufficient to pay said annuity. *Held*, that in determining the deficit to be charged on the principal of the testator's estate, said annuity of £200 was not to be included in the widow's income.—*In re Hedges' Trust Estate*, L. R. 18 Eq. 419.

See Bankruptcy, 2; Election, 1; Trust, 2.

Appointment.

1. A testator devised his estate in trust for his daughter for life, remainder as she should by deed or will appoint, and in default of her appointment to her children equally. One of her children married D., a Frenchman, domiciled in France. He died, and after his death the testator's daughter appointed certain property in favour of Mrs. D. By French law, Mrs. D.'s daughter was entitled to half the property acquired by her mother during marriage. *Held*, that Mrs. D. acquired said property on the date of the appointment, and that it therefore was not subject to said law of France.—*De Serre* v. *Clarke*, L. R. 18 Eq. 587.

2. Bequest of personalty to trustees in trust for the testator's daughter for life, and after her death to her children as she should by will appoint. She appointed to trustees in trust for her children in certain proportions. The Court refused to take the fund from the first trustees and hand it to the trustees appointed by the daughter. The appointment was valid.—*Busk* v. *Aldam*, L. R. 19 Eq. 16.

3. A testator devised property in trust for A. for life, and after A.'s death in trust for A.'s children, or some of them, as A. should by deed or will appoint. A., by will, appointed a sixth of said property in trust for each of her six children living at the testator's decease for life, remainder upon such trusts and for such purposes as each child should by will appoint, with limitations over in default of appointment. *Held*, that A.'s power of appointment was well exercised.—*Slark* v. *Dakyns*, L. R. 10 Ch. 35; s. c. L. R. 15 Eq. 307.

Bankruptcy.

1. The drawer, acceptor, and endorser of a bill of exchange became insolvent, and the holder realized a portion of the bill from certain securities. Before the holder had realized his security he proved for the full amount of the bill against the endorser, who was in liquidation, and received a dividend. *Held*, that the proof must be reduced by the amount the holder received from the security, and that any excess of dividend must be repaid to the liquidator.—*In re Barned's Banking Co. Ex parte Joint Stock Discount Co.*, L. R. 19 Eq. 1.

2. A man went through the ceremony of marriage withhis deceased wife's sister. He subsequently separated from her, and covenanted with trustees to pay her an annuity for their joint lives, with a proviso that if they should ever come together again the deed should become void. The man became bankrupt. *Held*, that the value of the annuity on the wife should be estimated without regard to the proviso, which was void, as the parties could not legally ever come together, and that said estimated value was provable against the bankrupt.—*Ex. parte Naden. In re Wood*, L. R. 9 Ch. 670.

3. A., carrying on business in London and Shanghai, applied verbally, while in Prussia, to B., a merchant in Prussia, for a credit of £5000. B. agreed to open the credit on receiving a deposit of the title-deeds of A.'s house at Shanghai, and A. subsequently wrote from London accepting these terms and sending the title-deeds. B. accepted bills drawn by A.; A. neglected to have the deposit of title-deeds registered at Shanghai, and subsequently went into liquidation. B. applied for an orderdirecting the trustee to cause A.'s house at Shanghai to be transferred to him. According to the law of Prussia, A. was personally bound to pay B.'s debt before he could demand the title-deeds, but B. held no valid mortgage on the house as against other creditors of A. *Held*, that, whether the contract between A. and B. was to be governed by Prussian or English law, there was a contract binding upon A. which was binding upon his trustee in liquidation.—*Ex parte Holthausen. In re Schiebler*, L. R. 9 Ch. 722.

See Contract; Partnership, 2; Principal and Agent, 2.

Barratry.—*See* Bill of Lading.

Bequest.—*See* Ademption, 2; Annuity; Devise; Election, 1; Legacy; Trust.

Bill of Lading.

Diamonds were shipped to be delivered, "pirates, robbers, thieves, barratry of master and mariners, pilferage," *inter alia*, excepted, and the ship-owner was not to be liable for damage capable of being covered by insurance. The diamonds were stolen when on board ship, either on her voyage or after her arrival in port, before the time for delivery arrived; but there was no evidence to show whether they were stolen by one of the crew or by a passenger, or, after her arrival, by some person from the shore. *Held*, that the "thieves" excepted did not include persons on board the vessel; that it was for the ship-owner to show that the theft came within said exceptions, and that he had not shown that the diamonds were stolen by some person not belonging to the ship, and was therefore liable for the loss. Also that the "damage" mentioned above included total destruction, but not a loss occasioned by the total bodily abstraction of the thing.—*Taylor* v. *Liverpool & Great Western Steam Co.*, L. R. 9 Q. B. 546.

See Bankruptcy, 1.

Bills and Notes.

Four firms united in a trading adventure, and agreed that "the finance of the business be carried on by acceptances of the several parties interested as may from time to time be arranged." The association was known among its members as the A. company, but it was never registered, nor was the partnership known to the public. Said adventure had been carried on previously by one of the firms, and was continued in the same name. Bills were drawn by one of said firms for the purposes of the adventure, and accepted by the firm carrying on the business. *Held*, that said bills bound only the parties to the same, and could not be proved against the association on its winding up.—*In re Adansonia Fibre Co.*, L. R. 9 Ch. 635.

See Bankruptcy, 1; Check; Interrogatories.

Bond.

1. Where the Court inferred from a bond conditioned to be void if the obligor should not practise as surgeon within certain limits, that there was an agreement by the obligee to employ the obligor so long as the obligee should see fit, it was *held* that there was sufficient consideration to support the bond. —*Gravely* v. *Barnard*, L. R. 18 Eq. 518.

2. A., who was in debt to the defendant, applied to his step-daughter, the plaintiff, who was twenty years of age, to become security.

In consequence of A.'s importunity the plaintiff, without professional advice, signed a joint and several promissory note for said debt and a further advance to A. Shortly after the plaintiff had attained her majority, she joined, under pressure from A., as surety in a bond to the defendant for the amount of said note with interest, payable in six years, being as before without professional advice. In the same manner the plaintiff executed another bond for the principal and interest due on the first bond. *Held*, that as it appeared that the plaintiff was not aware of the invalidity of the first bond when she gave the second, the second bond was not a confirmation of the first; and that both bonds must be set aside.

The plaintiff did not file her bill to have the bonds set aside until an action was brought upon them in 1872. *Held*, that the plaintiff was not guilty of laches.—*Kempson* v. *Ashbee*, L. R. 10 Ch. 15.

CARRIER.

1. The defendant owned barges which he let out under the care of his own servants for carrying cargoes to or from places in the Mersey; a barge carried goods for one person only at a time, and an express agreement was always made as to each voyage or employment of a barge. *Held* (by BLACKBURN, MELLOR, ARCHIBALD, and GROVE, JJ.), that the defendant was a common carrier, and as such liable for loss not caused by his negligence. (By BRETT, J.) that by a recognized custom of England the defendant undertook to carry goods at his own absolute risk, the act of God and of the Queen's enemies alone excepted; but that he was not a common carrier.—*Liver Alkali Co.* v. *Johnson*, L. R. 9 Ex. 338; s. c. L. R. 7 Ex. 267.

2. The plaintiffs were under bond to the Government to pay duties on all whiskey transmitted by them from one duty-free warehouse to another, unless the whiskey arrived without alteration at the second duty-free warehouse according to the terms of a permit. The plaintiffs sold some whiskey to S. & Co., and shipped it, duties unpaid, from a duty-free warehouse, addressed to "Customs Warehouse, Limerick, for S. & Co.," by the defendant railway. S. & Co. applied for the whiskey at the railway station at Limerick, and the defendants delivered it, and S. & Co. thereby escaped paying duty. The plaintiffs were obliged to pay duty on the whiskey under their bond, and brought an action against the railway to recover said duty by way of damage for wrongful delivery of the whiskey. *Held*, that the defendants were not liable.—*Cork Distilleries Co.* v. *Great Southern & Western Railway Co.*, L. R. 7 H. L. 269.

See RAILWAY.

CHARGE.—*See* ANNUITY, 1.

CHECK.

A request by three directors of a railway company that a bank will honour checks signed by two directors and countersigned by the secretary of the company does not make the directors personally liable.—See *Beattie* v. *Lord Ebury*, L. R. 7 H. L. 102; s. c. L. R. 7 Ch. 777.

CODICIL.—*See* LEGACY, 2.

COLLISION.

The steamship A. towing the disabled steamship B., which belonged to the owners of the A., ran into a sailing vessel, and injured her so that she foundered. Before the sailing vessel sunk, the B. came up and slightly injured her. *Held*, that the B. was to blame for the collision as well as the A., as the two vessels must be considered as one.—*The American and the Syria*, L. R. 4 Ad. & Ec. 226.

COMMON CARRIER.—*See* CARRIER.

CONDITION.

A condition subsequent in restraint of marriage, annexed to a gift of the income of the proceeds of real and personal estate, is void.—*Bellairs* v. *Bellairs*, L. R. 18 Eq. 510.

See BOND, 1; RAILWAY.

CONFIRMATION.—*See* BOND, 2.

CONFLICT OF LAWS.—*See* BANKRUPTCY, 3.

CONSIDERATION.—*See* BOND.

CONSTRUCTION.—*See* ADEMPTION, 2; ANNUITY; BILLS AND NOTES; COPYRIGHT; DEED; DEVISE; ELECTION; LEASE; LEGACY; MORTGAGE, 2; SETTLEMENT, 1; TRUST.

CONTRACT.

The defendants contracted to deliver to the plaintiffs two hundred tons of iron at 5s. per ton, cash; twenty-five tons to be delivered monthly, the first delivery to be on April 1. On March 12 the plaintiffs informed the defendants that they were insolvent, and they filed a petition for liquidation March 16. The plaintiffs in their written statement of their affairs made no reference to the above contract, but the contract was mentioned at the meeting of creditors. No further reference was made to the contract until May 14, when the plaintiffs demanded the iron and offered to pay cash for it. The defendants replied that the contract was at an end. It was the practice of the defendants to deliver iron under contracts similar to the above without demand for delivery. The Court had power to draw inferences of fact. *Held*, that the contract was rescinded.—*Morgan* v. *Bain*, L. R. 10 C. P. 15.

See BANKRUPTCY, 3; CARRIER; COPYRIGHT; EQUITY; INSURANCE, 1; JURISDICTION; NOTICE; PRINCIPAL AND AGENT; RAILWAY; VENDOR AND PURCHASER.

CONVERSION.—*See* PRINCIPAL AND AGENT, 1.

CONVEYANCE.—*See* DEED.

COPYRIGHT.

An agreement between an authoress and a publisher that the latter should publish a work at his expense and pay the authoress a royalty on the copies sold, does not prevent the authoress from authorizing another publisher to bring out a second edition of her work before all the copies of the first are sold. *Warne* v. *Routledge*, L. R. 18 Eq. 497.

Costs.

Two executors gave a joint retainer to a firm of solicitors. One executor died insolvent. *Held*, that the surviving executor was entitled to be allowed for all the costs, as he was liable to the solicitor for the whole.—*Watson* v. *Row*, L. R. 18 Eq. 680.

See Power.

Covenant.

The plaintiffs were the lessees of a certain estate, covenanting in their lease to repair and yield up in repair, and also to repair after three months' notice. They underleased to the defendants with similar covenants, except that the notice was to be of two months. In September the lessor gave notice to the plaintiffs to repair, and the plaintiffs gave a similar notice to the defendant. Being threatened with proceedings in ejectment, the plaintiffs did the repairs themselves, and then sued the defendants before the expiration of two months from the time of the plaintiffs' notice to the defendants. *Held*, that the action could not be maintained on the general covenant to repair, as there were no damages to the reversion, and that the action had been brought too soon to be maintained on the covenant to repair on two months' notice. The notice to the plaintiffs in September was not notice to the defendant. *Williams* v. *Williams*, L. R. 9 C. P. 659.

See Lease ; Settlement, 1.

Custom.—*See* Carrier, 1.

Damages.

Action for damages for injuries sustained by the plaintiff through the defendants' negligence while he was travelling on their line. The plaintiff had received a sum from an insurance company which had insured him against accidents. *Held*, that the damages recovered from the defendants were not to be reduced by the sum received by the plaintiff from the insurance company.—*Bradburn* v. *Great Western Railway Co.*, L. R. 10 Ex. 1.

See Ancient Light ; Bill of Lading ; Eminent Domain ; Vendor and Purchaser.

Declaration of Trust.—*See* Gift.

Dedication.—*See* Highway.

Deed.

1. A conveyance was made to the defendant of all that messuage and dwelling house then in the occupation of the defendant, and of all the buildings and easements whatsoever to the said messuage reputed to belong or appertain. The pillar of the portico, string-course, and pediment were in front of the plaintiff's house and overlapped the party-wall dividing the plaintiff's house from the defendant's, but they were built as parts of and ornaments to the defendant's house. *Held*, that said productions were part of the defendant's house.—*Fox* v. *Clarke*, L. R. 9 Q. B. 565 ; s. c., L. R. 7 Q. B. 748.

2. A conveyance of a lot of land described the land as adjoining a road, and as being the lot indicated by a plan on the deed, wherein the site of the lot was coloured pink. The lot marked out on the plan included no part of the road. *Held*, that no part of the road passed under the conveyance. — *Plumstead Board of Works* v. *British Land Co.*, L. R. 10 Q. B. 16.

Description.—*See* Deed, 2.

Devastavit.—*See* Partnership, 2.

Devise.

A testator gave the residue of his real and personal estate to his five children by name, "and to the children born of the body of E., deceased, and to the children born of the body of L., deceased, to be divided amongst them in equal shares and proportions." E. and L., the testator's deceased daughters, left respectively five and two children. *Held*, that the residue must be divided in twelve equal parts between the testator's five children and the seven children of E. and L.—*Payne* v. *Webb*, L. R. 19 Eq. 27.

See Ademption, 2 ; Annuity ; Election, 2 ; Legacy ; Trust.

Director.—*See* Check.

Discovery.—*See* Interrogatories ; Trust, 5.

Distributions, Statute of.—*See* Election, 2.

Dividend.

A holder of shares in a life office and in a fire office bequeathed his personal property to trustees in trust to permit his wife to receive the dividends, interest, and income during life, remainder over. By the deed of settlement of the life office it was provided that a certain sum should be set apart as a "separate fund," and that the residue and all accumulations should form a "surplus fund ;" and dividends at certain intervals were authorized on said "surplus fund." The life office declared an "extraordinary dividend" for the preceding five years ; and it appears that this was a dividend on the "surplus fund." The fire office also declared "a special extra dividend paid out of the profits of the business." *Held*, that both these dividends were income and belonged to the widow.—*In re Hopkins' Trust*, L. R. 18 Eq. 696.

Documents, Inspection of.

1. Where an accident happens on a railway, and the officials of the company, in the course of their ordinary duty, whether before or after action brought, make a report to the company, that report is subject to inspection ; but where a claim has been made, and the company seek to inform themselves by a medical examination as to the condition of the person

making the claim, inspection of that report is not granted.—Bramwell, B., in *Skinner* v. *Great Northern Railway Co.*, L. R. 9 Ex. 298. See *Malden* v. *Great Northern Railway Co.*, L. R. 9 Ex. 300.

2. A foreign government employed A. as agent in London to bring out a loan, and to issue scrip certificates to subscribers, and to exchange the certificates for bonds when the amount subscribed was paid up. The government employed B. as their banker, with power to receive from A. the sums subscribed. Subsequently bonds in the hands of A. were pledged by the president of the government to B., but the validity of the pledge was disputed by the government. The government filed a bill against A. and B., for accounts of the dealings connected with the loan. The court ordered the scrip certificates and the scrip book in which the certificates were entered, and which were called for on cross-examination of A., should be produced; but not the bonds.—*Republic of Costa Rica* v. *Erlanger*, L. R. 19 Eq. 33.

See Privileged Communications.

Dog.—*See* Evidence.

Donatio Causa Mortis.—*See* Gift.

Easement.

A suit wherein a mandatory injunction is granted against the further erection of a wall, is not a suit in which property is recovered or preserved.—*Foxon* v. *Gascoigne*, L. R. 9 Ch. 654.

See Ancient Light.

Election.

1. A. covenanted in a deed of separation to pay £52 to his wife annually. Subsequently by will A. gave his wife £52, payable upon the same days as the sum settled upon her in the deed of separation. *Held*, that the widow must elect between the sums payable under the will and the deed.—*Atkinson* v. *Littlewood*, L. R. 18 Eq. 595.

2. A testator devised an estate to trustees in trust for his widow for life, and after her death to sell the same and hold the proceeds in trust for his sons in such manner as his widow should, before a certain period, appoint. The widow duly appointed by deed equally among the testator's three sons, A., B., and C., reserving a power of revocation. She subsequently made a will by which she gave said estate to A., and made certain provisions for B. and C., and the children of B. B. died intestate, and the widow died after the above period. It was held in a suit in equity that the will not having come into operation until the death of the testatrix, said estate belonged to A., C., and the children of B., in accordance with the testatrix's appointment by deed. A. filed a bill to compel C. and the children of B. to elect between the benefits under the deed and those under the will. C. submitted to elect, but the children of B. resisted. *Held*, that though the children derived their rights under the deed by the Statute of Distributions from B., those rights were the same as those of C., and that they must elect; and that they must elect between all the benefits received under the will, including the provisions made to them specifically, and the benefits under the deed.—*Cooper* v. *Cooper*, L. R. 7 H. L. 53.

See Principal and Agent, 2.

Equity.—*See* Executors and Administrators; Interrogatories; Mortgage, 1; Notice; Specific Performance.

Estate Tail.—*See* Legacy, 2.

Estoppel.

B. sued A. in a county court for rent alleged to be due for weekly tenancy at 1s. per week. Judgment was given for A. affirming the tenancy to be yearly. A. brought an action in the Common Pleas Court against B. to recover damages for eviction. *Held*, that A. was estopped by the judgment of the county court from asserting that the tenancy was weekly.—*Flitters* v. *Allfrey*, L. R. 10 C. P. 29.

Evidence.

Action against the owner of a dog who had bitten the plaintiff. One witness who had been bitten by the dog, testified that he entered the bar of the defendant's house, and told two men, who were there serving customers, that the dog had attempted to bite him. A second witness, who had been also bitten, testified that he stated that he had been bitten to a man at the defendant's bar, and to a woman who had entered the room saying that the master was not at home and that the witness had better call when he was. *Held*, that there was evidence to go to the jury that the defendant had knowledge of the dog's ferocity.—*Applebee* v. *Percy*, L. R. 9 C. P. 647.

See Negligence; Practice; Will.

Executors and Administrators.

An executor, who was husband of a legatee, was indebted to the testator and was unable to discharge his indebtedness. *Held*, that the wife had no equity to a settlement, as her equity attached only to such property as her husband was entitled to receive in his marital right.—*Knight* v. *Knight*, L. R. 18 Eq. 487.

See Costs; Interrogatories; Partnership, 2; Retainer; Settlement, 2.

Foreign Judgment.—*See* Jurisdiction.

Foreign Law.—*See* Bankrupicy.

Fraud.—*See* Bond, 2; Mortgage, 1.

Gift.

A husband while on his deathbed handed his wife certain scrip certificates and a deposit note, saying, "These are yours." *Held*, that the gift of the certificates was incomplete, and that there was not a declaration of trust; but that there was a valid *donatio causâ mortis* of the deposit note.—*Moore* v. *Moore*, L. R. 18. Eq. 474.

Highway.

A road was set out as a private road in 1789 under an enclosure act, and the adjoining land owners or occupiers were ordered by the award ever after to keep the road in repair. There was evidence of user by the public sufficient to support the presumption of dedication. *Held*, that the award did not prevent the road becoming a highway repairable by the inhabitants at large.—*Queen* v. *Inhabitants of the County of Bradfield*, L. R. 9 Q. B. 552.

Husband and Wife.—*See* Executors and Administrators ; Settlement, 1.

Implied Contract.—*See* Insurance, 1.

Income.—*See* Dividend.

Infant.—*See* Review.

Injunction.—*See* Ancient Light.

Insolvency.—*See* Contract.

Insurance.

1. Insurance was effected on wine in casks on or under deck. The wine was jettisoned in bad weather by staving in the casks, but the rest of the cargo arrived safely. *Held*, that there was an implied warranty that the vessel was seaworthy for the voyage she was about to undertake, loaded as she was with said cargo ; and that in considering her seaworthiness the jury should consider the nature of the cargo ; and that, if the vessel could only be made seaworthy by the destruction of said cargo, she was unseaworthy, no matter how easy the cargo might be destroyed.—*Daniels* v. *Harris*, L. R. 10 C. P. 1.

2. The plaintiffs requested an insurance broker to effect insurance on a cargo at a premium not to exceed 30s. a ton. The broker obtained insurance at 35s. a ton, and a slip was initialed subject to the plaintiff's approval, and the plaintiffs subsequently approved of the insurance. Between the time of initialing the slip and signing the policy the plaintiffs heard of the loss of the vessel containing the cargo, but did not inform the insurer thereof. By the custom of Lloyd's an underwriter who agrees to take a risk at a premium exceeding the limit authorized, subject to approval, binds himself to take it under all circumstances, provided the principal ratifies. *Held*, that the plaintiffs were not bound to communicate their knowledge of said loss to the insurer, and that the insurer was liable.—*Cory* v. *Patton*, L. R. 9 Q. B. 577.

3. Where a vessel is insured by an owner who is ignorant of her unseaworthiness, the insured is entitled to recover, although the vessel is lost from perils of the sea which would not have destroyed her if she had been seaworthy.—*Dudgeon* v. *Pembroke*, L. R. 9 Q. B. 581.

See Damages.

Interest.—*See* Mortgage, 2.

Interrogatories.

Action by executors upon a joint and several promissory note made by the defendants payable to the testator. Plea, payment as to part, and payment into court of the residue. The plaintiffs were allowed to interrogate the defendants as to where, to whom, by whom, and in what manner said part-payment was made.—*Hills* v. *Wates*, L. R. 9 C. P. 688.

Judge's Notes.—*See* Practice.

Judgment.—*See* Estoppel ; Jurisdiction.

Jurisdiction.

In an action in England upon a judgment obtained in France the plaintiff's declaration and replication set forth that the defendant was the member of a French company within the jurisdiction of a certain court, and that he was bound by the stipulations in the articles of association, one of which was that every member must elect a domicile at Paris, and that in default thereof election should be made at the office of the procurator of the civil tribunal of the department in which the company's office was situated, and that all process should be validly served at such domicile ; that a contest arose wherein the plaintiff, as assignee of the company, caused a summons directed to the defendant to be delivered for the defendant at the office of said procurator, which by the law of France was the defendant's domicile of election for that purpose ; that said service was regular, &c., and that judgment was recovered against the defendant by default.

Similar replication, but omitting all reference to the articles of association under which the defendant subjected himself to the jurisdiction of the French court. *Held*, that the first replication was good (by Amphlett and Pigott, BB.,—Kelly, C. B., dissenting) that the second replication was bad.—*Copin* v. *Adamson*. *Copin* v. *Strachan*, L. R. 9 Ex. 345.

Laches.—*See* Bond, 2 ; Partnership, 1.

Landlord and Tenant.—*See* Covenant ; Notice to Quit.

Lease.

A. leased certain lands of the owner with a covenant not to underlet without the owner's consent. Subsequently A., with the owner's consent, agreed to underlet a portion of the lands to B., agreeing that the underlease should contain the like provisions, conditions and stipulations, in all respects, as were contained in the lease to A. *Held*, that the underlease should contain a covenant against underletting without the consent of A.—*Williamson* v. *Williamson*, L. R. 9 Ch. 729; s. c. L. R. 17 Eq. 549.

See Covenant ; Notice to Quit.

Legacy.

1. A testatrix gave a specific bequest to "my niece A.," and she gave the residue of her personal property "unto all my nephews

and nieces." The testatrix left nephews and nieces surviving her, and also nephews and nieces of her husband, of whom A. was one. *Held*, that A. was not entitled to a share of the residue.—*Wells* v. *Wells*, L. R. 18 Eq. 504.

2. A testator gave his real and personal estate to A., and the heirs male of his body begotten, for ever; but in the case of the death of the said A. without heirs male of his body lawfully begotten, then to B. in the same manner, and after him to C. The testator subsequently made a codicil in which he stated, "In my will I directed that, in the event of the death of A. without leaving issue male him surviving, the residue of my real and personal estate should go to B." He then revoked the bequest to B., and, in the event of the death of A. without leaving male issue him surviving, gave his residuary estate to the eldest daughter of A. *Held*, that the gifts to B. and C. were void as to the testator's personal estate, being gifts over on an indefinite failure of issue; and that A. took an absolute interest in the personalty, subject to an executory bequest to his eldest daughter, if he should die without leaving issue male him surviving.—*Dawson* v. *Small*, L. R. 9 Ch. 651.

See Ademption; Annuity; Condition; Devise; Trust.

Libel.—*See* New Trial.

Life Estate.—*See* Trust, 1.

Luggage.—*See* Railway.

Marriage.—*See* Condition.

Married Woman.—*See* Copyright.

Mortgage.

1. A. and B., trustees, lent trust money to C. on the security of a mortgage from C. C. desired to sell a portion of the mortgaged premises; and A. represented to him that as C. was abroad it would be difficult to obtain a reconveyance from A. and B. to C., and that it would be better to say nothing about the mortgage. C. sold accordingly, and handed the purchase-money to A. in part repayment of the money lent to C. A. appropriated the money, but continued to pay the *cestui que trust* interest upon the whole amount lent to C. Ten years afterwards C. desired to sell another portion of the mortgaged premises; and A. thereupon represented to B. that C. desired to sell his land, including the land already conveyed without the knowledge of B.; and he requested B. to join with him in a reconveyance to C., which B. did. C. then conveyed the second portion of the premises, and handed the purchase-money to A., who took it and absconded. B. filed a bill to have the reconveyance from A. and B. to C. delivered up to be cancelled; that it might be declared that said two sums received and appropriated by A. were still a charge upon said premises; and that the second portion of the mortgaged premises sold as aforesaid might be declared to be still subject to said mortgage. *Held*, that said reconveyance must be cancelled, and that the purchasers from C. had obtained an equity of redemption only. Foreclosure ordered in default of payment. Order that said purchasers give up their deeds upon foreclosure, refused.—*Heath* v. *Crealock*, L. R. 10 Ch. 22; s. c. L. R. 18 Eq. 215.

2. G., a member of a company, mortgaged certain property to secure an advance from the company. By the mortgage G. was to repay the advance in seven years by monthly payments of principal and interest, and in case of default in payment the company could sell the property, and from the proceeds retain all sums of money and payments which should be then due, or which should afterwards become due during the remainder of said seven years, it being agreed that all moneys which would at any time afterwards become due should be considered as then immediately due and payable, and should pay the residue to G. G. made default, and the company sold said property. *Held*, that the company was not entitled to interest for the remainder of said seven years after the principal had been repaid.—*Ex parte Osborne. In re Goldsmith*, L. R. 10 Ch. 41.

See Bankruptcy, 3; Notice; Power.

Negligence.

B., who was fifty-two years of age and very near-sighted, was a passenger to H. on the defendants' railway, and occupied the rear carriage. The train stopped at H., leaving the two rear cars within a tunnel, which was dark, and leaving the last car opposite a heap of rubbish. A passenger in the last carriage but one heard the name of the station called out in the usual way, and got out on to a narrow platform which was a continuation of the main platform. The passenger heard a groan and found B. lying with his legs across the rails and between the wheels of the carriage, and his body on the rubbish. He then heard the warning "Keep your seats," after which the train moved on. *Held*, that there was evidence of negligence on the part of the defendants to go to the jury.—*Bridges* v. *Directors of North London Railway*, L. R. 7 H. L. 213; s. c. L. R. 6 Q. B. 377.

See Railway; Trespass.

New Trial.

In an action for slander the jury found a verdict for the plaintiff, with one farthing damages. A new trial was ordered, on the ground that the damages showed that the jury had made a compromise.—*Falvey* v. *Stanford*, L. R. 10 Q. B. 54.

Notice.

A. agreed to lease certain land and build houses on it. B. agreed verbally to sub-lease from A. a portion of the land, together with the building to be erected upon it by A. After this the owner of the land executed a lease to A., who then, without the knowledge of B., deposited the lease with C. as a security for a loan. At the time of making the loan, B., who had originally been let into possession, had gone away, so that the house on the land was vacant, and C. had no notice, actual or

constructive, of the agreement with B. Subsequently the house was let by B. to other parties, who entered into possession, after which A. assigned the legal estate in the house to C. *Held*, that, as the legal estate in said house was not assigned until after tenants had entered under B., C. had constructive notice of this tenancy, and therefore notice of B.'s title, and that B. was entitled to a decree of specific performance of A.'s agreement for an underlease.—*Mumford* v. *Stohwasser*, L. R. 18 Eq. 556.

Notice to Quit.

The plaintiff, a lessee, underlet to the defendant from year to year, beginning at Michaelmas. At midsummer, 1866, the plaintiff's term ended, and a new lease was granted to him. The defendant remained in possession, and paid a sum equal to a quarter's rent at Michaelmas, 1866. The defendant continued in possession, paying an advanced rent, until Christmas, 1872, when the plaintiff gave him notice to quit at midsummer, 1873. *Held*, that it must be assumed that the tenancy continued according to the terms of the original underlease, being from Michaelmas to Michaelmas, and that the notice to quit was therefore insufficient.—*Kelly* v. *Patterson*, L. R. 9 Q. B. 680.

Notice to Repair.—*See* Covenant.

Parties.—*See* Partnership, 2; Trespass, 1.

Partnership.

1. J. and his son W. were in partnership as solicitors. In 1859 the plaintiff gave to J. and W., who were carrying out the purchase of an advowson for another client, the sum of £1,300 to be used in said purchase, on the security of a written agreement by J. and W. to execute a mortgage of the advowson to the plaintiff as soon as the purchase was completed. The plaintiff subsequently lent £1,700 to W. on his representation that it would be invested in a mortgage of certain lands. In 1862 J. retired from the partnership, and in 1865 he died in ignorance of said second transaction. In 1865 W. induced the plaintiff to execute a deed empowering W. to invest both of said sums as he should think fit, and to hold the same upon trust to pay the income to the plaintiff. No mortgage securing the first sum was ever made to the plaintiff, and it was in fact paid to W. upon the authority of the deed of 1865. W. paid interest to the plaintiff regularly on both said sums, until his (W.'s) death in 1872, when the plaintiff first learned that W. had appropriated both of said sums to his own purposes, and that his estate was utterly insolvent. *Held*, that J.'s estate was liable for said first sum, and that, considering the regular payment of interest thereon, the plaintiff had not been guilty of laches; that J.'s estate was not liable for the second sum, as he was ignorant of the transaction, and it is not part of the regular business of solicitors to borrow money.

C. was a partner with J. and W., but was not liable for the above transactions. *Held*, that all or any of the parties might be sued without joining the remainder, and that C. was not necessarily a party.—*Plumer* v. *Gregory*, L. R. 18 Eq. 621.

2. By articles of partnership between A. and B., the partnership property belonged to A. A. died, and B., his executor, carried on the business in accordance with directions in A.'s will, but he committed a *devastavit* by misapplying A.'s separate property. A.'s estate was declared insolvent, and a receiver was appointed; and B.'s estate was being wound up under a liquidation by arrangement. *Held*, that a claim in respect of the *devastavit* could be proved against the separate estate of B., notwithstanding the rule that a partner cannot prove against his copartner's separate estate until all the partnership debts have been paid.—*Ex parte Westcott. In re White*, L. R. 9 Ch. 626.

See Bills and Notes; Principal and Agent, 1.

Per Capita.—*See* Devise.

Per Stirpes.—*See* Devise.

Petition of Right.

A petition of right will lie for breach of contract where the damages are unliquidated. —*Thomas* v. *The Queen*, L. R. 10 Q. B. 31.

Power.

A power in trustees to raise a certain sum by mortgage implies a power to raise also the incidental costs of the mortgage.—*Armstrong* v. *Armstrong*, L. R. 18 Eq. 541.

See Appointment, 2, 3.

Practice.

When the notes of a judge are produced before a Court of Appeal, and they purport to contain a full record of what took place at the trial, they must be taken as the sole materials on which the Court of Appeal can proceed; and short-hand notes will not be admitted, unless by agreement of parties.—*Ex parte Gillebrand. In re Sidebotham*, L. R. 10 Ch. 52.

See Jurisdiction; Production of Documents; Review.

Presumption.—*See* Ademption, 1; Will.

Principal and Agent.

1. By agreement between a London firm and a Rangoon firm, the former was to purchase goods, charge two per cent. commission, and send the goods to the Rangoon firm. The outward business to the Rangoon firm was to be on joint account. The plaintiff, in ignorance of the agreement between the two firms, furnished goods to the London firm, which were exported to the Rangoon firm in pursuance of said agreement. *Held*, that the Rangoon firm was not liable to the plaintiff for the price of said goods, as there was no joint interest in the goods when purchased, but only when the outward business from

London began.—*Hutton* v. *Bulloch*, L. R. 9 Q. B. 573; s. c. L. R. 8 Q. B. 331; 8 Am. Law Rev. 300.

2. B. purchased goods of the plaintiffs on behalf of undisclosed principals. After the plaintiffs had discovered the principals, they filed an affidavit of proof against B.'s estate, which was in liquidation. *Held*, that the plaintiffs were not precluded from maintaining an action against the principals.—*Curtis* v. *Williamson*, L. R. 10 Q. B. 57.

See Insurance, 2; Trespass, 1.

Privileged Communications.

Certain opinions of counsel on matters which afterward became the subject of litigation, the production of which was objected to on the ground that "they were written in anticipation of and in relation to the litigation," were ordered to be produced.—*Smith* v. *Daniell*, L. R. 18 Eq. 649.

See Documents, Inspection of.

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

Proof.—*See* Bankruptcy, 1.

Proviso.—*See* Bankruptcy, 2.

Railway.

The plaintiff took a ticket of the defendant railway from A. to C. On the back of the ticket was printed, "This ticket is issued subject to the conditions stated in the company's time-tables." The time-tables stated that the company did not hold itself responsible for loss arising "off its lines." Said railway extended to B., and from B. the journey was continued on the L. railway to C. The station at B. belonged to the L. railway, but the defendant was entitled to the use of the station and the services of the porters. On the plaintiff's arrival at B., his luggage was removed by a porter across the station in the direction of the platform from which the L. train was to start; but it was not seen by any one in the L. train. After this the luggage was not seen again. *Held*, that it did not appear that the luggage was lost off the defendant's line, and that the plaintiff was therefore entitled to recover for the loss. *Quære*, whether the plaintiff was bound by said condition on his ticket.—*Kent* v. *Midland Railway Co.*, L. R. 10 Q. B. 1.

See Damages; Documents, Inspection of; Negligence.

Remainder-man.—*See* Dividend; Trust, 3.

Rents.—*See* Trust, 3.

Repairs.—*See* Covenant.

Representation.—*See* Devise.

Rescission.—*See* Contract.

Restraint of Trade.—*See* Bond, 1.

Retainer.

The administrator of an insolvent trustee who has misapplied the trust fund may retain a sum of money coming into his hands as administrator for the purpose of satisfying the debt due to him as trustee from the deceased trustee.—*Sander* v. *Heathfield*, L. R. 19 Eq. 21.

Review.

An infant petitioning for leave to file a bill of review will not be required to give evidence that the knowledge of the facts relied upon could not have been previously obtained by reasonable diligence.—*In re Hoghton*, L. R. 18 Eq. 573.

Right, Petition of.—*See* Petition of Right.

Sale.—*See* Contract; Specific Performance.

Satisfaction.—*See* Election, 1.

Scienter.—*See* Evidence.

Seaworthiness.—*See* Insurance, 1, 3.

Security.—*See* Bankruptcy, 1.

Service.—*See* Jurisdiction.

Settlement.

1. A widow was entitled to a life interest in personal estate and to a moiety of the capital, subject to her own life estate. The widow married again, and executed a settlement of her life interest; and she and her intended husband covenanted to settle property to which she or he in her right should become entitled during the coverture. *Held*, that the husband's interest in said moiety of said property was subject to said covenant.—*In re Viant's Settlement Trusts*, L. R. 18 Eq. 436.

2. By a marriage settlement the wife's real and personal estate was assigned to trustees on trust to pay the income to the husband for life, remainder to the wife for life, remainder as she should appoint, and in default of appointment to her personal representatives. The wife died making no appointment, and without issue. The husband died, and his executors took out administration of the wife's estate. *Held*, that they were entitled to said estate.—*In re Best's Settlement Trusts*, L. R. 28 Eq. 686.

See Executors and Administrators.

Ship.—*See* Bill of Lading; Collision; Carrier, 1; Insurance.

Short-hand Notes.—*See* Practice.

Slander.—*See* New Trial.

Solicitor.—*See* Partnership.

Specific Performance.

The defendants agreed to sell certain freehold property, and to make out a good marketable title. The defendants' title turned out to be good as to one-half of the property only. *Held*, that the purchaser was entitled to specific performance to the extent of one-half of the freehold, with an abatement of one-half the purchase money.—*Hooper* v. *Smart*, L. R. 18 Eq. 683.

See Equity.

STATUTE OF DISTRIBUTIONS.—*See* ELECTION, 2.

STOCK DIVIDEND.—*See* DIVIDEND.

TENANT FOR LIFE.—*See* DIVIDEND; TRUST, 3.

THEFT.—*See* BILL OF LADING.

TRESPASS.

1. A highway board ordered their surveyor to remove the locks from certain gates placed across a way which the board believed to be a public way, but which was in fact the plaintiff's private way, and the surveyor removed the same accordingly. The surveyor was obliged by statute to obey the board in the execution of his duties. The plaintiff brought trespass against the members of the board and the surveyor in the same action. *Held*, (by PIGOTT and CLEASBY, BB.), that the action was maintainable. By KELLY, C.B., dissenting, that the action should have been brought against the board in its corporate character; and that the surveyor was not liable, as he was obliged to obey the orders of the board.—*Mill* v. *Hawker*, L. R. 9 Ex. 309.

2. The defendant's quiet-tempered stallion and the plaintiff's mare got close together on either side of a wire fence separating the defendant's and plaintiff's land, and the stallion bit and kicked the mare through the fence without crossing it. *Held*, that the stallion was guilty of a trespass for which the defendant was liable.—*Ellis* v. *Loftus Iron Co.*, L. R. 10 C. P. 10.

TRUST.

1. A testator gave all property whatsoever that he might die possessed of to his wife, for her sole use and benefit, in full confidence that she would bestow it on her decease on his children in a just, true, and equitable spirit, and in such manner and way as she felt would meet with his approval. *Held*, that the wife took a life estate only, with power of bestowing amongst the children. What interest the children took, not determined.—*LeMarchant* v. *LeMarchant*, L. R. 18 Eq. 414.

2. A testator gave his residuary estate to trustees in trust for his wife for life, remainder over, and empowered the trustees to continue invested any of his government stocks or real securities. *Held*, that certain long annuities for eighty years should have been sold by the trustees, and that the wife's estate was liable after her death for the amount for which such annuities would have sold.—*Tickner* v. *Old*, L. R. 18 Eq. 422.

3. A testator devised real estate to trustees upon trust for his son for life, remainder to his grandson for life, remainder to the grandson's sons in tail, and upon trust to pay the testator's debts on mortgage, bond, or otherwise, including £8,000 charged upon said estate; and the testator directed the trustees to apply the rents in liquidation of his said debts until they should all be paid off, and that no person to whom any estate for life or in tail was limited should be entitled to the rents and profits of said estate until such estate was disincumbered and free from debt, and that the trustees should invest the moneys which might come to their hands until the same should be applied in any payment to be made under the will. A receiver had been appointed, and all the debts had been paid except said £8,000, and there was an accumulated fund in court sufficient to pay this charge. *Held*, that the receiver must be discharged, and the tenant for life let into possession of said estate.—*Tewart* v. *Lawson*, L. R. 18 Eq. 490.

4. A testator gave his real and personal estate to trustees upon certain trusts for his wife and children. One of the trustees died. The court appointed a niece of the testator, aged twenty-seven, trustee, it appearing that no other suitable person could be found willing to undertake the office.—*In re Berkley*, L. R. 9 Ch. 720.

5. A testator gave freehold property to trustees in trust for his son for life, with a gift over if his son should charge or incumber the same. The trustees filed a bill against certain parties, alleging that the latter held a portion of said property by virtue of a charge upon the same effected by the son, and the trustees interrogated said parties concerning all charges in their favour upon said property. The defendants replied that they held a portion of said property under a mortgage from S., who held a lease of the same from the testator's son at a rack-rent. The trustees excepted to the defendant's answer for not setting forth the date of the lease to S. under which the defendants claimed.—*Hurst* v. *Hurst*, L. R. 9 Ch. 762.

See APPOINTMENT, 2; GIFT; POWER; RETAINER.

TUG.—*See* COLLISION.

UNDUE INFLUENCE.—*See* BOND, 2.

VENDOR AND PURCHASER.

Upon a contract for the sale of real estate, where the vendor without his fault is unable to make a good title, the purchaser is not by law entitled to recover damages for the loss of his bargain, whether the vendor has actual possession of the property or not.—*Bain* v. *Fothergill*, L. R. 7 H. L. 158.

See MORTGAGE, 1; SPECIFIC PERFORMANCE.

WARRANTY.—*See* INSURANCE, 1.

WAY.—*See* DEED, 2; HIGHWAY.

WILL.

A soldier in active military service made a will which was unattested. In the body of the will were found alterations. The testator left the service before he died. *Held*, that said alterations must be presumed to have been made by the testator when in active military service.—*In the Goods of Twcedale*, L. R. 3 P. & D. 204.

See ADEMPTION, 2; ANNUITY; DEVISE; ELECTION; LEGACY; TRUST.

WORDS.

"*Damage.*"—*See* BILL OF LADING.

"*Nephews and nieces.*"—*See* LEGACY, 1.

"*Personal Representatives.*"—*See* SETTLEMENT.

"*Property.*"—*See* EASEMENT.

"*Thieves.*"—*See* BILL OF LADING.

WRIT.—*See* JURISDICTION.

REVIEWS.

English Constitutional History. A Text Book for Students and others. By Thomas P. Taswell-Langmead, B.C.L., late Vinerian Scholar in the University of Oxford, of Lincoln's Inn, Barrister-at-law. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar. 1875. (Pp. 736).

It is the pride of an Englishman to study the history of the British constitution. In no part of the world has parliamentary government achieved such success as in Britain; in no part of the world does it work so smoothly and so satisfactorily as in the parent country.

Other countries have attempted and are attempting to imitate the British constitution as a model. Some have succeeded better than others. But all people are not equally capable of enjoying rational liberty and self-government. Hence in some countries the attempt to imitate has been a mockery and a delusion, and in others a simple failure.

The colonies have proved themselves equal to the task of introducing and advantageously working the parliamentary system of Britain. And Canada may especially claim the honour, through one of her sons (Mr. Alpheus Todd, librarian of the House of Commons of Canada), of having produced the most complete and most accurate work that has been yet published on the parliamentary government of the parent country. He has with a master hand traced it from its origin, shown its steady development, and expounded its practical working in a manner so thorough and so effectual as to distance all competitors. What Hallam and Sir Erskine May have done for England and the colonies, Alpheus Todd has done for Canada and the empire, and done most intelligently, laboriously and accurately.

Mr. Taswell-Langmead now appears as a new candidate for public favour. His work, unlike that of Sir Erskine May, is chronological. He certainly begins at the beginning, and steadily traces the growth of the British constitution in a careful and trustworthy manner. He begins with the Teutonic conquest; leads us to the Norman conquest; through the Norman conquest; describes the reigns of the Norman and first Anglian kings; Magna Charta; the administrative system under the Norman and Plantagenet kings; the succession to the crown, the origin of parliament; the growth of parliament; parliament under Lancasterian and Yorkist kings; the Tudor period; the Reformation; the reign of Elizabeth; the Stuart period; the Revolution, and the progress of the constitution since the Revolution, down to Lord Campbell's Libel Act of 1843.

The work is designed for students, but may fairly command the patronage of the general reader. It is clearly written, and abounds with foot notes as vouchers for assertions of fact.

The constitutional history of Sir Erskine May has been the chief guide of the author; but besides, he has largely availed himself of the writings of others.

The work is followed by a good index, which at once places at ready disposal any of its treasure that may be sought in an emergency. It will undoubtedly prove an acquisition not only to every student of English history, but to the library of every educated gentleman in the empire, including the many colonies that add so much to the greatness, the glory and splendour of the British Empire.

The Law relating to Public Worship, with special regard to Matters of Ritual and Ornamentation, and to the means for securing the due observance thereof, and containing the Public Worship Regulation Act, 1874, &c. With Notes and References, by Seward Brice, LL.D., of the Inner Temple, Esq., Barrister-at-Law. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar. 1875. (Pp. 620).

If "Ritualism" has not done any other good, we think that we may thank it for the forthcoming of the exhaustive and able work now before us.

By "Ritualism" we mean the struggle in the Church of England for ceremonial,

ornaments, and vestments, which has caused so much discussion and scandal.

For thirty years at least this struggle has been going on in the body of the Church, and has now assumed such dimensions as to cause the passing in England of the Public Worship Regulation Act, 1874.

Again and again has it forced itself on the attention of the Law Courts, not so much perhaps because of the numbers as of the obstinacy of the parties concerned.

So far, we have been in this colony tolerably free from the effects of the struggle. Our soil does not appear to be congenial for innovation. Whatever inclination towards Ritualism there may be on the part of a few among us it is scarcely known among the masses. The great body of the laity are opposed to church millinery.

In Great Britain there is much wealth, and a system of endowments and livings which, in many instances, renders the clergy independent alike of the support and regard of their congregations. Under such conditions we may expect excesses that would not be thought of in a country where wealth does not much abound, and where livings and endowments, independent of the people, are scarce known. Whether or not the clergy should or should not be entirely dependent upon the contributions of the laity is a matter which it is not our province or our pleasure to discuss; but there can be no dispute as to the fact that there is much warmth and some bitterness in the Church of England, arising from what on the surface are mere ceremonials, but which, as some allege, have a deeper meaning and a much more hurtful menace.

The object of Dr. Price's work is to afford a full exposition of the law of public worship in so far as it concerns the external forms enforced or merely permissible by the rules of the Church of England. Special prominence is given to ornaments, ceremonial, and vestments.

Such portions of the various Liturgies are set forth as will, in the words of the author, probably be sufficient to enable the reader to compare the existing prayer book with the earlier editions, and so to obtain a clear notion of the changes that from time to time have taken place in the services of the Church, and in the regulations for the due conduct and holding of them.

The author appears to have undertaken the work in a very fair and impartial spirit, and to have executed it almost with judicial impartiality. His aim has been simply to unfold the law as it is—not to stretch it as partizans "high" or "low" would desire it.

The work is divided into three parts, the first containing the substantive law relating to public worship; the second, the means provided for enforcing a due observance of the substantive; and the third, the Public Worship Regulation Act, 1874, and the Church Discipline Act, with comments and annotations upon both statutes, and an abstract of the cases decided under the latter act.

Last year we had much pleasure in introducing to our readers a Treatise on the Doctrine of Ultra Vires, by Dr. Brice. This year we have equal pleasure in recommending the present work. The author has the faculty of imparting instruction in terse and attractive language, and this is rather the exception than the rule in the case of English law writers.

CORRESPONDENCE.

County Rate—How Certified. Duties of County and Local Clerks, respectively.

To the Editor of the Law Journal.

Sir,—A county clerk gives a township clerk notice, in the form of a certificate, that the amount required to be collected in the township is $3,185: for general purposes, say, $2,240: educational, $750: special, $195.

Can the township clerk put all the above together on his collector's roll in the column headed "County Rate," or must he put the several items in separate columns? See sec. 90, Municipal Act.

Is such notice sufficient, or must the county by-law state a certain sum in the dollar; that is to say, is it competent for a county council to make an estimate of the gross sum to be collected in each township, without striking a rate per cent., or in the dollar on the assessment?

I have the honour to be, &c.,

J. Phelan,
Township Clerk, Walsingham.

Pleasant Hill, June 24, 1875.

[It is by sec. 75 of the Assessment Act provided that, "When a sum is levied for county purposes, &c., the council of the county shall ascertain, and by by-law direct *what portion* of such sum shall be levied in each township, town or village in such county," &c.

It is by sec. 77 of the same act made the duty of the county clerk, before the fifteenth day of August in each year, "to certify to the clerk of each municipality in the county, *the total amount* which has been so directed to be levied therein for the then current year, for county purposes," &c.

It is by the same section made the duty of the clerk of the municipality "to calculate and invest the sum on the collector's roll for that year."

The notice above from the county clerk appears to be sufficient without more.

The clerk of the township may, we think, put the whole, after making the necessary calculations, in one column, to be headed "County Rate."

It is no part of the business of the county in such a case to strike the rate on the dollar.]—Eds. Law Journal.

Attachment Against a Sheriff.

To the Editor of the Law Journal.

Dear Sir,—For the benefit of myself and several others, I would feel obliged if you would explain the following:

Sec. 280 C. L. P. A. provides that in case a Sheriff has been ordered by any rule or order of the Court to return a writ, and he neglect to do so, the judge may grant a summons to show cause why a writ of attachment should not issue against him, and that on the return of the summons the judge may discharge the same or order the issue of the writ.

Now, if you will refer to R. G. No. 140 T. T. 1856, you will find that that rule runs as follows: "Rules for attachment shall be absolute in the first instance in the two following cases only: 1st, for non-payment of costs on a master's allocation; and 2nd, *against a Sheriff for not obeying a rule to return a writ or bring in the body.*"

Are there two modes of obtaining a writ of attachment against a Sheriff—(1) by *demand, rule*, and then, under the 280 sec. C. L. P. A., a summons and an order; and (2) by demand, rule, and then, under R. G. No. 140, a rule absolute for the writ?

I am, &c.,
A Law Student.

June 19, 1875.

[There seems to be an inconsistency between the section of the Act and the rule. The rule is adopted, like nearly all the general rules, from a corresponding English one, while in the English practice there is no provision similar to that in the Act. It may be that the framers of the rules did not observe the section of the statute. We are not aware of any decision in our courts throwing light on the matter; and with the thermometer rising, we are not tempted to try and form an opinion as to whether two modes of procedure were intended to exist, or whether the provision of the statute is repealed by the rule. We shall be glad to receive enlightenment on the point from any correspondent.]—Eds. Law Journal.

FLOTSAM AND JETSAM.

Rex. v. *Johnson*, Comberbach, 377. Fine or indictment for lying with another's wife prevents an action. Q.

The defendant appeared to be fined upon an indictment for seducing and living with another man's wife. North moved to charge him with an action, but the Court would not suffer that, now he comes to submit to a fine.

The criticism of Lord Chief Justice Willes on Piggott's Treatise of Common Recoveries, is not, *mutatis mutandis*, without its application to some of the text-books of the present day. "Piggott," he says, "who was as able a conveyancer as any man of the profession, has confounded himself and everybody else that reads his book, by endeavouring to give reasons for, and explain common recoveries. I only say

this to show that when men attempt to give reasons for common recoveries they run into absurdities, and the whole of what they say is unintelligible jargon and learned nonsense." *Martin* v. *Strachan*, 1 Wils. 73.

In a recent volume of "Reports of Cases Argued and Determined in the Court of Appeals of the State of New York," is this marginal note, and this only: "Judgment affirmed of course." *Lyman* v. *Wilber*, 3 Keys, 427.

In an action for scandalous words spoken of a justice of the peace, the Court observed: "There is not much difficulty in this case, but there is no end of citing and answering cases. The plaintiff here is said to be a justice, yet no special damage is laid in the case; the office of justice of the peace is not so considerable but that many people choose to decline it."—*Palmer* v. *Edwards*, Cooke, 242, 3d ed.

By the Court: "You cannot charge your attorney without leave of Court, to be obtained on motion, though he be ever so great a cheat."—7 Mod. 50.

By Holt, Chief Justice.—"If we see one against whom there is a judgment of this Court walk in Westminster Hall, we may send our officer to take him up, if the plaintiff desire it, without a writ of execution."—7 Mod. 52.

Mr. Justice Putman, in considering the subject of the conclusiveness of judgments, remarked, that if the principle were otherwise, "the law would become a game of frauds, in which the greatest rogue would become the most successful player."—*M'Rae* v. *Mattoon*, 13 Pick. 58.

Memorandum.—1 Mod. 9.—Seventeen sergeants being made the 14th day of November, a day or two after Sergeant Powis, the junior of them all, coming to the King's Bench bar, Lord Chief Justice Kelyng told him that he had something to say to him, viz.: that the rings which he and the rest of the sergeants had given weighed but eighteen shillings apiece; whereas Fortescue, in his book *De Laudibus Legum Angliæ*, says—"The rings given to the Chief Justices and to the Chief Baron ought to weigh twenty shillings apiece;" and that he spoke not this expecting a recompense, but that it might not be drawn into a precedent, and that the young gentlemen there might take notice of it.

A novel question was presented in *Williams* v. *Firemen's Fund Insurance Co.*, 54 N. Y., 569. The action was on a fire policy, containing a prohibition against storing petroleum, etc., on the premises. The defendant claimed an infraction of this provision. It seemed that the plaintiff, who had been in the army during the late war, had received a gunshot wound resulting in a cutaneous disorder, which he treated by an application of crude petroleum oil to the surface of his body, and for that purpose he kept crude petroleum in a jug on a shelf in his room, and had some quarts of it in the building at the time of the fire. It was not pretended that the fire proceeded from or was aided by this material. The court held that this was not a "storing" within the meaning of the policy. Commissioner Reynolds suggested that even if the plaintiff had taken a quantity of the oil internally it would not have amounted to a "storing" on the premises. We are very glad this is so settled. Any other decision would have been an ungenerous requital for the sufferings of the plaintiff in the cause of his country, and would operate to retard enlistments in the event of another unholy rebellion. Let it once be adjudged that a man must not only bleed but itch for his country, unallayed by emollients of an inflammable nature, or run the risk of having his property destroyed by fire without the power of enforcing his insurance, and our liberties are no longer secure.—*A. L. J.*

The Statute of Merton, so called because the Parliament or Council sat at the Priory of Merton in Surrey, was passed in the twentieth year of the reign of Henry III., A.D. 1236. It is a remarkable fact that women were summoned to this Council: *Omnes uxores comitum et baronum qui in bello occisi fuerunt, vel captivorum.* Gales, *Annales Waverleienes.* Spilsbury's Lincoln's Inn and Library, pp. 200, 201.

In an action for words spoken of the plaintiff, viz.: "She's a whore, a common whore, and N.'s whore," all the Court were of the opinion that these words are not actionable, *being only scolding.—Osborne* v. *Wright*, 2 Mod. 296.

The *Albany Law Journal* makes mention of a statute of New York, which allowed deductions of a certain number of days to be made, on account of good behaviour, from the term of imprisonment of convicts, with a proviso that the statute should not apply to any person *sentenced or the term of his natural life.*

LAW SOCIETY OF UPPER CANADA.

OSGOODE HALL, EASTER TERM, 38TH VICTORIA.

DURING this Term, the following gentlemen were called to the Degree of Barrister-at-Law, (the names are given in the order in which the Candidates entered the Society, and not in the order of merit):

No. 1321—ALFRED HOWELL.
HENRY CARSCALLEN.
JOHN BUTTERFIELD.
JOHN ALEXANDER MACDONNELL.
WILLIAM F. ELLIS.
MORTIMER AUGUSTUS BALL.
JOHN TURNBULL SMALL.
OLIVER AIKEN HOWLAND.
ALEXANDER MANSEL GREIG.
ADAM RUTHERFORD CREELMAN.
JOHN GUNN ROBINSON.
J. STEWART TUPPER.
JOHN HIGHETT THOM.
JOHN DAVISON LAWSON.
CHARLES JAMES FULLER, under special act.
No. 1336—EDWARD STONEHOUSE, " " "

The following gentlemen received Certificates of Fitness, (the names are given in order of merit):

JOHN TURNBULL SMALL.
ALEXANDER MANSEL GREIG.
HARRY SYMONS.
HUGH O'LEARY.
EDWIN HAMILTON DICKSON.
JOHN HIGHETT THOM.
OLIVER A. HOWLAND.
MICHAEL KEW.
J. STEWART TUPPER.
GEORGE A. RADENHURST.
JOHN D. LAWSON.
J. BOOMER WALKEM.
SNELLING ROPER CRICKMORE.
HENRY AUBER MACKELCAN.
JOHN A. MACDONNELL.
WILLIAM HALL KINGSTON.
EDWARD ELLIS WADE.
JOHN BOULTBEE.
GEORGE BRUCE JACKSON.

And the following gentlemen were admitted into the Society as Students-at-Law, and Articled Clerks:

Junior Class.

No. 2537—WILLIAM HODGINS BIGGAR.
GEORGE ANDERSON SOMERVILLE.
WILLIAM BARTON NORTHROP.
ARTHUR OHEIR.
ROBERT HODGE.
WILLIAM H. POPE CLEMENT.
ELGIN SHOFF.
HORACE EDGAR CRAWFORD.
EARNEST JOSEPH BEAUMONT.
JOHN PHILPOTT CURRAN.
JAMES HENDERSON SCOTT.
WILLIAM BERRY.
EUGENE DE BEAUVOIR CAREY.
GIDEON DELAHEY.
SKEFFINGTON CONNOR ELLIOTT.
GERALD FRANCIS BROPHY.
JOHN LAWRENCE DOWLIN.
WM. J. MCKAY.
WILLIAM HENRY DEACON.
JOHN WOODCOCK GIBSON.
JOHN BAPTISTE O'FLYNN.
ALLAN MCNAB.
IVOR DAVID EVANS.
REGINALD BOULTBEE
GEORGE W. BAKER.
JAMES CRAIGIE BOYD.
ARCHIBALD STEWART.
No. 2563—CHARLES HENRY COGAN, as an Articled Clerk.

A change has been made in some of the books contained in the list published with this notice, which will come into effect for the first time at the examinations held immediately before Hilary Term, 1876. Circulars can be obtained from the Secretary containing a list of the changed books.

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

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

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

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

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 Vict. c. 28, Ipsolvency 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:—

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

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

3*rd 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. I., and Vol. II., chaps. 10, 11 and 12.

4*th 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.